

Mailing Date: FEB 06 2015

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR THE PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE : In re Citation No. 13-2077
POLICE, BUREAU OF :
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W09-464946
 :
v. : PLCB LID No. 56210
 :
CAROLYN W. MICHAELS, T/A OYSTER BAR : PLCB License No. R-AP-13051
113-115 S. MAIN ST. :
SHENANDOAH, PA 17976-2337 : Schuylkill County

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE: Carolyn W. Michaels, *pro se*

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 9, 2014. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on August 1, 2013, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to a visibly intoxicated patron.

A hearing was held on December 2, 2014 in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. A liquor enforcement officer entered the licensed premises at 10:30 p.m. on August 1, 2013, and saw about 30 patrons attended by one bartender. He took a seat at the bar and ordered beer. There were three women seated to his left. One of them, whom the others called Mary, caught the officer's notice. She was being belligerent. She had bloodshot eyes and her speech was slurred (N.T. 5-6).

2. Another member of this group, who looked younger than Mary, said "Great, now I get to take care of my drunk mother." There was a glass of beer in front of Mary. Her daughter had to catch her a number of times, to keep her from falling off of her seat. Mary was trying to get her friend, whom she called Suzy, to sing karaoke. When Suzy refused, Mary stood up and yelled "you fucking bitch" at her, although her tone was friendly and not belligerent (N.T. 7, 14-15).

3. At about 11:50 p.m. two women, who appeared to be friends of Mary's daughter, came to the bar. One of them ordered three (*sic*) "slippery nipples," which is a drink containing vodka. The bartender put shot glasses in front of the woman who ordered the drinks, as well as three of the other women, including Mary. She then poured the drinks. All of the women served, including Mary, drank the liquid in a single draught. The member of the group who did not participate in this

was Suzy, who was seated at the corner of the bar. It is possible that the bartender intended to exclude Mary, because of her condition, but poured the drinks in front of the customers being served, whereupon Mary took one of them as hers, and no objection was made (N.T. 8-13).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Although I accept the fact that Licensee's bartender may have not intended to serve the visibly intoxicated woman, she had a duty to see to it that the woman did not receive any more alcoholic beverages. In light of this duty, pouring the drinks directly in front of the woman in question was negligent.

Licensee and her husband were not in the premises on this occasion, because they do not like karaoke. This is not an excuse, of course, because Licensee is responsible for the actions of her employee, who fell short of the behavior expected of a bartender on this occasion. I am persuaded that Licensee did not intend to operate her premises this way.

PRIOR RECORD:

Licensee has been licensed since May 16, 2006, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

ORDER

THEREFORE, it is hereby ORDERED that the restaurant liquor license of Licensee, Carolyn W. Michaels, t/a Oyster Bar, License No. R-AP-13051, shall be suspended for a period of one (1) day (including all permits and Licensee Discount Card) BEGINNING at 7:00 a.m. on Monday, March 23, 2015, and ENDING at 7:00 a.m. on Tuesday, March 24, 2015.

Licensee is directed on Monday, March 23, 2015, at 7:00 a.m. to place the enclosed notice of suspension (Form No. PLCB-1925 as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Fine Wine & Good Spirits Stores.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Tuesday, March 24, 2015, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; www.lcb.state.pa.us) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (90) days of the mailing date of this adjudication. Licensee must remain in compliance for a period of one year from the date such certification is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

Failure to comply with this order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d). Jurisdiction is retained.

Dated this 30TH day of JANUARY, 2015.



David L. Shenle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.