

Mailing Date: MAR 17 2015

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

PENNSYLVANIA STATE : In re Citation No. 13-2122  
POLICE, BUREAU OF :  
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W09-466575  
 :  
 v. : PLCB LID No. 14283  
 :  
 ARLENE M. SEIDEL T/A THE AMERICAN HOUSE : PLCB License No. R-AP-SS-10259  
23-25 RAILROAD AVE., BOX 331 :  
LEESPORT, PA 19533-0331 : Berks County

JUDGE SHENKLE  
BLCE COUNSEL: Roy Harkavy, Esq.  
LICENSEE COUNSEL: Frank C. Sluzis, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on November 15, 2013. There are two counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on August 30, 2013, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on August 30, 2013, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one 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. On August 30, 2013, a liquor enforcement officer entered the licensed premises at 12:51 a.m. and saw a bartender serving approximately 20 patrons. He purchased beer and went to the area of the establishment where there was a pool table. He watched people playing pool, and eventually played pool himself. He noticed a woman whose eyes were bloodshot. Her face was flushed and she was sweating. He played pool with her, and at one point she became “touchy-feely” (N.T. 6-8).

2. At 2:08 a.m. the bartender served draft beer to this woman, and the bartender continued to serve alcoholic beverages to patrons until 2:17 a.m.

3. Surveillance videos taken at the licensed premises that evening corroborate the officer's statement that the service of alcoholic beverages continued after 2:00 a.m., but videos showing the woman suspected of visible intoxication contradict the officer's observations that the woman walked with a staggered gait and had difficulty lining up her pool shots (Exhibit L-2).

#### CONCLUSIONS OF LAW:

Licensee violated the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on August 30, 2013, by furnishing alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The weight of the evidence was insufficient to prove that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on August 30, 2013, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to a visibly intoxicated patron.

#### DISCUSSION:

I have heard many witnesses testify to the behavior and appearance of people said to be visibly intoxicated, and the descriptions given do not resemble the appearance and behavior of the woman in this case. She did not stagger to any degree. She did not have difficulty lining up pool shots, and appeared to understand how to do so.

The video shows the woman flirting in various ways with every man who crossed her path. If the officer heard her say that she was intoxicated, I believe it may have been a ploy to get him or another one of the men she flirted with to take her to bed. Her behavior makes it obvious what she has on her mind, and the request for assistance in lining up shots was just an excuse to make body contact with the men she was flirting with.

The videos show that the woman frequently made trips to the bar when it was not her turn to play or when other people were playing, and it must be conceded that she drank a number of glasses of draft beer that evening. However, she had a substantial body mass and appeared to hold her liquor well. I see no signs of visible intoxication in the videos. I believe the officer's attention was called to her because of her flirtatiousness.

The videos cut both ways, of course, since they corroborate the Bureau's evidence that alcoholic beverages were furnished to patrons after 2:00 a.m.

PRIOR RECORD:

Licensee has been licensed since April 23, 1980, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

In re Citation No. 89-2031. Licensee held in partnership with Paul Seidel. \$500.00 fine.

1. Sales to visibly intoxicated persons.

In re Citation No. 05-1427. \$350.00 fine.

1. Loudspeakers could be heard outside. June 17 and 18, 2005.

In re Citation No. 06-2305. \$100.00 fine.

1. Sold more than 192 fluid ounces for off-premises consumption. August 30, 2006.

In re Citation No. 11-0809C. \$1,250.00 fine and RAMP certification mandated.

1. Sales to a minor. April 7, 2011.

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 this type. Penalties are assessed as follows:

Count No. 1 – a fine of \$1,000.00.

Count No. 2 – DISMISSED.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Arlene M. Seidel, t/a The American House, License No. R-AP-SS-10259, shall pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 4<sup>TH</sup> day of MARCH, 2015.



David L. Shenkle, J.

**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.**

**Detach Here and Return Stub with Payment – Note Citation Number on Check**

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The fine must be paid by cashier's check, money order, or a check drawn on the business or trust account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation, to:

PLCB – Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg PA 17110-9661

**Credit/debit cards may be used:** visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us)  
and look under LEGAL/Office of ALJ for instructions.