

Mailing Date: MAR 29 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-0924
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-475677
	:	
39 <sup>TH</sup> AND SANSOM STREETS	:	
CORPORATION	:	PLCB LID - 15344
T/A CAVANAUGH'S LEPRECHAUN	:	
119-125 S. 39 <sup>TH</sup> ST.	:	
PHILADELPHIA PA 19104-3135	:	PLCB License No. R-AP-SS-12136
	:	
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ANDREW R. BRITT, ESQ.**

FOR THE LICENSEE:

**EDWARD B. McHUGH, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 13, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 39<sup>th</sup> and Sansom Streets Corporation, t/a Cavanaugh's Leprechaun, License Number R-AP-SS-12136 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, May 27, 2015, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on March 8, 2014, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) visibly intoxicated patrons.

FINDINGS OF FACT:

1. On Saturday, March 8, 2014 at approximately 2:00 p.m., an officer from the Bureau arrived in the vicinity of the licensed premises, along with another officer. The officers were in the vicinity working "Erin Express," a Saint Patrick's Day event, which runs buses to various participating bars. The officer observed a "rowdy" crowd of approximately 200-250 people drinking beer from cans and cups in the street outside the premises (N.T. 7-10).

2. The officers joined a line of twenty people, several of whom were drinking beer, and waited to enter the premises. When he reached the entrance, the officers' identification was checked by one of the employees standing at the front door. Four male bartenders at the main bar and two female bartenders near the entrance were tending bar and rendering service of alcoholic beverages to patrons. The officer proceeded to a position to the left of the entrance door, about eight feet away from where the two female bartenders were serving shots of liquor and canned/draft beer from metal tubs. The officer remained at this location for approximately 90 minutes and observed the two female bartenders, the four male bartenders at the main bar and a total of about approximately 300 patrons (N.T. 10-12).

3. A male patron approached the officer with a pitcher of an amber colored frothy liquid that appeared to be beer. The patron was unsteady, swaying back and forth, and the liquid was sloshing and spilling on the officer's and other patrons' feet. The patron was approximately 5'9" tall, 170 pounds, with black hair, wearing his hat backwards and a green t-shirt with a black long sleeve shirt underneath, and jeans. When the patron leaned in to speak to the officer, the officer noticed the smell of alcohol on his breath and that the patron's eyes were glassy and bloodshot. The patron said, "I'm hammered," and "You guys want to hang with me?" The patron continued to rock back and forth and spit on the officers when trying to talk with them. The patron's speech was slurred (N.T.12-16, 20).

4. The patron approached the female servers and ordered another pitcher of draft beer. A female bartender filled the pitcher from a tap and placed it on the counter. The patron subsequently removed it. The patron made his way back to the officers and boasted that the pitcher was free. The officer again noted that his gait was unsteady and that he had slurred speech. The officers were not aware of any drink specials. The officers paid for their drinks and saw other patrons exchanging money for drinks. The intoxicated patron remained near the officer's location for the remainder of their 90 minute visit, and attempting to initiate conversations with groups of patrons as they entered the premises. The officer was approached by other patrons who had interacted with the visibly intoxicated patron and commented on his condition (N.T. 16-21).

5. While the officers were making observations, an "Erin Express" bus arrived at the premises, dropping off more patrons. The officer observed a female patron, approximately 5'5" tall, 130 pounds, wearing an orange baseball hat, lime green tank top, green leopard print shorts, green socks and an American flag fanny pack, enter the premises, announcing to everyone to look out because she was "hammered." She moved through the crowd, with glassy eyes with one eye squinting; she was unsteady and wobbling. The patron sat at a table with her head down for a few minutes as if falling asleep. She then got up from the table, nearly falling as she did so. (N.T. 21-23).

6. The female patron then ordered and was served two cans of Miller Lite beer by a female bartender. The female bartender appeared hesitant about serving the patron, but did so anyway. The patron fumbled with her money and had difficulty opening the cans of beer. When she finally got the cans open, the patron stumbled back into the crowd. The officer observed the two female bartenders look at each other and one made a gesture, which the officer took to mean that the patron was being "cut off" from further service of alcohol. The officer exited the licensed premises at 4:00 p.m. with the two visibly intoxicated patrons remaining outside (N.T. 24-26).

#### CONCLUSIONS OF LAW:

On March 8, 2014, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) visibly intoxicated patrons, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

#### PRIOR RECORD:

Licensee has been licensed since September 2, 1988, and has a record of prior violations as follows:

- In Re:  
Citation No. 91-0603. \$1,000.00 fine.
1. Sales to minors.

Citation No. 93-0002. \$200.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.  
November 18 and December 4, 1992.

Citation No. 95-1086. \$300.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.  
April 1, 1995.

Citation No. 95-1104. \$1,000.00 fine.

1. Sales to minors.  
April 18, 1995.

Citation No. 95-2252. \$1,200.00 fine.

1. Sales to a minor.  
August 22 and 23, 1995.

Citation No. 96-0862. \$1,000.00 fine and one day suspension.

1. Sales to minors.  
March 31, 1996.
2. Minors frequenting.  
March 31, 1996.

Citation No. 98-0584. \$1,500.00 and two days suspension.

1. Sales to minors.  
February 19, 1998.
2. Minors frequenting.  
February 19, 1998.

Citation No. 98-1495. Three days suspension.

1. Sales to a minor.

Citation No. 98-1647. \$1,000.00 fine and three days suspension.

1. Sales to minors.

Citation No. 99-1700. \$1,500.00 fine and six days suspension and Verification restitution made.

1. Fortified, adulterated and/or contaminated liquor.
2. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store.
3. Refilled liquor bottles.
4. Obtained liquor from sources other than Pennsylvania state stores.

Citation No. 01-1976. Three days suspension.

1. Minors frequenting.
2. Sales to minors.

Citation No. 04-0796. \$2,000.00 fine.

1. Sales to a minor.

Citation No. 10-2026X. \$200.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.  
June 3 and July 29, 2010.

Citation No. 10-2274X. \$150.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.  
July 16, 2010.

Citation No. 10-2417X. \$150.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.  
August 27 and September 21, 2010.

Citation No. 11-1685X. \$250.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.  
July 7, 2011.

Citation No. 11-1962X. \$300.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.  
September 13 and 14, 2011.

Citation No. 12-0142X. \$350.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.  
December 6, 2011.

Citation No. 12-0305X. \$350.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.  
December 8, 2011.

39<sup>th</sup> and Sansom Streets Corporation  
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Citation No. 13-2008. \$1,700.00 fine.

1. Sales to a minor.  
August 30, 2013.
2. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.  
August 30, 2013.

DISCUSSION:

Clearly the "Erin Express" creates an unusually busy day with patrons moving in and out of various bars throughout the event. The circumstances make the policing of minors and visibly intoxicated patrons very difficult. Licensee appears to have been diligent regarding identification checks for minors. However, Licensee opted to participate in this special event, which by its nature brings large crowds of people to the premises, many of whom are drinking, before they even arrive at this particular location. Licensee is held to no lesser standard.

Here visibly intoxicated individuals were on the premises for some time and had personal contact with the servers. The servers, albeit busy, still had a responsibility not to serve to those who were exhibiting signs of intoxication, which included glassy eyes, boisterous and slurred speech, and unsteady gaits. There is no exception for the festive occasion.

Licensee has a substantial history of past violations, although none are related to visibly intoxicated patrons. Under the circumstances, a moderate monetary penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, 39<sup>th</sup> and Sansom Streets Corporation, t/a Cavanaugh's Leprechaun, License Number R-AP-SS-12136, pay a fine of One Thousand Dollars (\$1,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

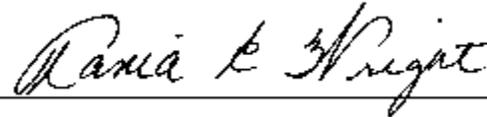
39<sup>th</sup> and Sansom Streets Corporation  
t/a Cavanaugh's Leprechaun  
In Re: Citation No. 14-0924

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 No.: 1-866-275-8237; Web Site: [www.lcb.state.pa.us](http://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 of this matter is retained.**

Dated this 21<sup>ST</sup> day of MARCH, 2016.



Tania E. Wright, J.

**NOTE:** MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

**If you wish to appeal the decision of the Administrative Law Judge's Order, the appeal must be filed within 30 days of the mailing date of the Order. Please contact the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.**

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39<sup>th</sup> and Sansom Streets Corporation  
t/a Cavanaugh's Leprechaun  
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**Detach Here and Return Stub with Payment - Note Citation Number on Check**

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

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

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39<sup>th</sup> and Sansom Streets Corporation