

Mailing Date: JUN 27 2016

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

PENNSYLVANIA STATE	:	In re Citation No. 15-0571
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W02-491791
	:	
v.	:	PLCB LID No. 33239
	:	
COCKEYED OSCAR AND HIS	:	PLCB License No. R-AP-SS-17461
MAD DOG BARTENDERS, INC.	:	
1234 MULBERRY ST.	:	Lackawanna County
SCRANTON, PA 18510-2272	:	

JUDGE SHENKLE
BLCE COUNSEL: Craig A. Strong, Esq.
LICENSEE: Antoinette Hamidian

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 6, 2015. There are two counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on February 22, 2015, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the service of alcoholic beverages is required to cease.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on February 22, 2015, by permitting patrons to possess alcoholic beverages in and/or remove them from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

A hearing was held on May 11, 2016 in Scranton, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On February 22, 2015, liquor enforcement officers arrived in the area of the licensed premises at about 2:35 a.m. An officer looked through one of the windows in the front of the building and saw three women seated at the bar with cups in front of them, although he did not see them drink anything from the cups. There were also two men, one standing behind the bar drinking from a plastic cup and the other standing on the patron side of the bar, also drinking something from a plastic cup (N.T. 6, 7, 37).

2. At 2:40 a.m. the people described in the previous finding were seen occupying the same positions as before. The officers knocked on the door and identified themselves through it. After a few minutes, the door was opened by the man who had been seen standing on the patron side of the bar; he was employed by Licensee as a bouncer. He had the cup from which he had been drinking in his hand when he opened the door. He smelled of alcohol, and had bloodshot eyes. An officer asked him what he was drinking; he said it was Jack Daniels and Coke, which he was just drinking while cleaning up at the end of his shift (N.T. 7-8).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

The Liquor Code, 47 P.S. §4-499(a), provides in pertinent part as follows:

(a) Except as provided for elsewhere in this section, all patrons of a licensee shall be required to leave that part of the premises habitually used for the serving of liquor or malt or brewed beverages to guests or patrons not later than one-half hour after the time the licensee is required by this act to cease serving liquor or malt or brewed beverages and shall not be permitted to have any previously served liquor or malt or brewed beverages in their possession, nor shall they be permitted to remove any previously served liquor or malt or brewed beverages from that part of the premises....

The Liquor Code defines a “patron” as “an individual who purchases food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration from a licensee **or any person on the licensed premises except those actually engaged in an employment related activity.**” 47 P.S. §1-102. (Emphasis supplied).

The evidence and the law permit no other conclusion in this case, because no one in a licensed restaurant is permitted to remain in possession of alcoholic beverages longer than one-half hour after sales of alcoholic beverages are required to cease; i.e., not later than 2:30 a.m.

A person who is present in licensed premises after 2:30 a.m. must be actually engaged in employment related activity. Since no one is permitted to drink alcoholic beverages in a licensed premises after 2:30 a.m. it follows that one who is drinking in the premises after that time is not engaged in an employment related activity. It is not necessary to find that the person purchased the alcoholic beverage for a consideration; mere possession is sufficient.

PRIOR RECORD:

Licensee has been licensed since June 8, 1994, and has had prior violations as follows:

In re Citation No. 98-0084. 2 days suspension.

1. Sales to minors.

In re Citation No. 99-0586. 5 days suspension.

1. Sales to minors.
2. Minors frequenting.

In re Citation No. 07-0625. \$1,500.00 fine and RAMP training mandated.

1. Sales to minors.
2. Minors frequenting.

In re Citation No. 12-1737. \$1,000.00 fine and 3 days suspension.

1. Minors frequenting.

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 \$50.00 to \$1,000.00 range, or both, for violations of this type. The two counts are merged for penalty purposes.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Cockeyed Oscar and His Mad Dog Bartenders, Inc., License No. R-AP-SS-17461, shall pay a fine of two hundred dollars (\$200.00) 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 23RD day of JUNE, 2016.



David L. Shenle, 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

The fine must be paid by cashier's check, money order, or a check drawn on the 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: if you have already registered with PLCB+ you should be able to pay by Credit/Debit card; if you have not registered with PLCB+ you may obtain the information on how to register by sending an email message to:
RA-LBLICENSINGMOD@pa.gov.