

Mailing Date: OCT 11 2019

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

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	<b>IN RE: CITATION NO. 19-0700</b>
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No. PA 2019-58327
	:	
v.	:	
	:	
	:	PLCB LID - 69450
LANCASTER CIGAR, LLC	:	
25 WEST KING ST. SPACE #N/O	:	PLCB License No. R-AP-SS-7903
LANCASTER, PA 17603	:	
	:	
LANCASTER COUNTY	:	

**ADJUDICATION**

BEFORE: John H. Pietrzak, ALJ  
FOR BLCE: Christopher L. Herrington, Esquire  
LICENSEE COUNSEL: Melvin E. Newcomer, Esquire

**BACKGROUND:**

This proceeding arises out of a citation that was issued on May 2, 2019, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (BLCE) against LANCASTER CIGAR, LLC, (Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on February 8, 2019, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated patron

An evidentiary hearing was held on this matter on August 28, 2019 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, I make the following Findings of Fact and reach the following Conclusions of Law:

**FINDINGS OF FACT:**

1. The investigation which gave rise to this citation was assigned on January 11, 2019 and was completed on April 5, 2019. The Bureau sent the Licensee a Notice of Violation letter on April 17, 2019 by certified mail (N.T. 8-9; Commonwealth Exhibits B-1 and B-2).

2. On February 8, 2019, at approximately 11:00 p.m., an undercover BLCE officer entered the licensed establishment and sat at a table near the bar counter. One male bartender was preparing drinks and two female servers were waiting on tables in the bar area (N.T. 9-12).

3. At approximately 11:10 p.m., the officer observed a female patron enter the premises who was displaying symptoms of visible intoxication. The female patron was not able to walk without assistance. Her arm was hooked through her friend's arm and she was leaning on the friend as she walked. The friend helped the female patron into a seat at a high-top table near where the officer was seated (N.T. 12, 43, 45, 48-49).

4. Once the female patron was seated, the officer observed that her head bobbed and shook from side to side and that she repeatedly fumbled with her cell phone. She continued this behavior throughout her visit (N.T. 13, 16, 18-19, 49). The female patron shouted throughout her visit to no one in particular that it was her twenty-first birthday and that she wanted tequila (N.T. 14, 15, 16, 19, 49). Five other people sat at the table with the visibly intoxicated female patron (N.T. 53). As the other people sat at the table, the female patron attempted to hug them and instead slumped into them (N.T. 16).

5. One of the female servers took the group's drink order (N.T. 15). The female patron shouted that she wanted tequila and that it was her twenty-first birthday (N.T. 16, 55). The server brought two bottles of beer and six Kamikaze shots, which contained tequila among other ingredients (N.T. 16, 56, 75; Licensee Exhibit L-2). The server gave the bottles of beer to two male patrons seated at the table and placed the Kamikaze shots on the table (N.T. 17, 57, 75). The female patron picked up one of the Kamikaze drinks and consumed it (N.T. 17-18, 67).

6. The only other service made to the table was an order of food and two glasses of water (N.T. 57-59, 62-63, 69-70, 81; Licensee Exhibit L-2).

7. Approximately five to ten minutes after the service of alcohol, the female patron stood up and knocked over some bottles and glasses, breaking some of them (N.T. 18). The other female server came to the table and cleaned up the broken glass (N.T. 18, 68, 80). Due to this incident, the bartender decided to cut off the service of alcohol to the female patron's table (N.T. 68, 80).

8. A short time later, the female patron fell to the floor. The officer assisted the patron back into her seat. The officer observed that the female patron smelled of alcohol and had bloodshot eyes (N.T. 20-21).

9. There were approximately 25-30 patrons in the establishment during the time the female patron was there (N.T. 23). The female server waiting on the female patron's table and the bartender who prepared drinks were focused on making drinks, serving patrons and collecting payment and did not pay particular attention to the VIP or her actions (N.T. 45, 52-53, 59-60, 64, 66, 81-83).

### **CONCLUSION OF LAW:**

1. The Bureau has satisfied all notice and investigatory requirements of the Liquor Code, 47 P.S. §4-471.

2. On February 8, 2019, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated patron, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

### **DISCUSSION:**

The citation charges the Licensee with a violation of Liquor Code Section 493(1) [47 P.S. §4-493(1)]. The cited section prohibits:

[A]ny licensee of the board, or any employee, servant or agent of such license or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated[.]

There was significant contradictory testimony from the BLCE officer and from Licensee's witnesses. Some of the contradictions can be reconciled but some cannot. Ultimately, there was enough consistent testimony to arrive at a decision that is supported by testimony from both sides.

It is a fact-finder's responsibility to resolve conflicts in the evidence and to determine witness credibility and evidentiary weight. *McCauley v. Pennsylvania Bd. of Probation and Parole*, 510 A.2d 877 (Pa. Cmwlth. 1986). The fact-finder may give testimony such consideration as it deserves and accept it or reject it in whole or in part. *McFarland Landscape Service v. WCAB*, 557 A.2d 816, 817-18 (Pa. Cmwlth. 1989); *Rizzo v. Baldwin-Lima-Hamilton Corp.*, 259 A.2d 178 (Pa. Super 1969).

The testimony that is consistent from all witnesses establishes that the female patron that the officer described was in fact present at the licensed establishment, was served one Kamikaze shot containing tequila and did consume the shot.

The officer's testimony concerning the female patron's display of symptoms of visible intoxication was largely undisputed. None of the Licensee's witnesses specifically contradicted the officer's testimony that the female patron's friend assisted her as she walked into the establishment, helped her into a seat, that the female patron repeatedly bobbed her head or fumbled with her phone and displayed poor coordination when trying to hug her friends. This testimony is credible and sufficient to support a finding that the patron in question was displaying symptoms of visible intoxication before she was served.

There was some dispute concerning whether the female patron used an obscenity when stating that it was her twenty-first birthday or whether she was being unreasonably loud. Given the clear indicia of intoxication described above, I find this point to be insignificant in the outcome of the case.

Both the server who waited on the female patron's table and the bartender who made the drinks for the table testified that they were busy with their duties and taking care of other customers and that neither of them paid particular attention to the female patron or her table. This is not unexpected and leads me to give the officer's testimony more weight than that of the Licensee's witnesses concerning the female patron's display of visible intoxication.

The incidents when the female patron later knocked over glasses and bottles and then fell from her seat are corroborative of the officer's earlier conclusion that this patron was exhibiting symptoms of visible intoxication. Even the Licensee's bartender thought the knocking over of the glasses and bottles warranted cutting the female patron off from further service of alcohol.

There are some points of testimony that cannot be reconciled. The officer testified that it took the female patron and her friend four to five minutes to walk a distance of approximately 20-30 feet to her seat (N.T. 12-13, 28-29). As Licensee's counsel pointed out, this seems to be an extraordinarily long period of time under the circumstances described. As such, I disregard the testimony concerning the amount of time it took the patron to reach her seat.

The officer testified that the female patron and her friend sat alone at the table for approximately fifteen minutes before the rest of her group arrived while the Licensee's bartender testified that they all arrived together (N.T. 13-15, 43, 53-54, 79). Whether they all arrived together is not significant since the witnesses all agree regarding the timing of the first service of alcohol to the patron in question.

The officer testified that the visibly intoxicated female patron and her friends were served a second round of drinks consisting of beer and Kamikaze shots (N.T. 19-20). This is contradicted by both the testimony of the bartender and server as well as the itemized bill for that table's purchases (N.T. 58, 67, 80-81; Licensee Exhibit L-2). The officer also testified that the female patron's table did not receive any food, which is clearly contradicted by the server's testimony and the itemized bill (N.T. 36, 57, 67; Licensee Exhibit L-2). As such, I accept the Licensee's testimony and evidence on these points and disregard the officer's contradictory testimony.

Ultimately, these disputed points were not material to the decision in this case because there are sufficient facts of record to conclude that the patron in question was visibly intoxicated prior to the undisputed first service of alcohol.

**PRIOR RECORD:**

Licensee has been licensed since May 19, 2014 and has 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 of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,500.00 and mandatory RAMP certification.

**ORDER**

THEREFORE, it is hereby ordered that Licensee LANCASTER CIGAR, LLC, pay a fine of \$1,500.00 within 20 days of the mailing date of this Order. In the event the fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

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. Licensee is directed to initiate contact with 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); Email Address: [LBEducation@state.pa.us](mailto:LBEducation@state.pa.us)) within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 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.

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. §4-471(d)].

Jurisdiction is retained.

Dated this 9<sup>TH</sup> day of October, 2019.



John H. Pietrzak, ALJ

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**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.**

**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 CHIEF COUNSEL'S OFFICE AT 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.** Please make your guaranteed check 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 registered with PLCB+ you may pay by Credit/Debit card at [www.lcb.pa.gov](http://www.lcb.pa.gov) by following the PLCB+ link. 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](mailto:RA-LBLICENSINGMOD@pa.gov).

In Re: Citation No. 19-0700  
Lancaster Cigar, LLC