

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 02-1816
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-260302
v.	:	
	:	LID - 35297
ARC TAVERNS INC	:	
2661-2663 E CUMBERLAND ST	:	
PHILADELPHIA PA 19125-3722	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-4370	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Edward B. McHugh, Esq.  
For Licensee: no appearance

**ADJUDICATION**

BACKGROUND:

On October 15, 2002, the Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation to ARC. Taverns, Inc., License Number R-AP-4370.

There are five counts in the citation.

The first count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on September 7, 2002, and on divers other occasions, by permitting two female minors, twenty years of age, to frequent its licensed premises.

The second count alleges that Licensee violated §§406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on September 7, 2002, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The third count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on September 7, 2002, 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 required time for the cessation of the service of alcoholic beverages.

The fourth count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on September 7, 2002, by permitting patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fifth count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on September 7, 2002, by permitting patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 7:00 a.m.

At the hearing scheduled for Thursday, March 27, 2003, in Plymouth Meeting, Pennsylvania, there was no appearance by or on behalf of the Licensee; therefore, the matter proceeded *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee on September 7, 2002, and sent written notice of the results of its investigation to the licensed premises by certified mail on October 4, 2002, (N.T. 11-12, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on November 12, 2002 (N.T. 12, Exhibit B-2).

3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on February 5, 2003

4. Liquor Enforcement Officer Wendy Macknair entered the licensed premises at 2:35 a.m. on September 7, 2002. A bartender called A.J. was on duty. The officer attempted to purchase a drink for herself at 2:40 a.m., but another patron at the bar bought a drink for her, as well as a beer for himself. This patron paid the bartender five dollars for the purchase, and that money was deposited in the cash register (N. T. 5-6).

5. At 3:10 a.m. the officer bought the next round for herself and the patron who had treated her. This money was also deposited in the cash register. At 3:15 a.m. a man came in and bought two six-packs of Heineken beer for \$18.00. At 3:20 a.m. A.J. asked the officer for the time of day, and she answered. There were still about 15 patrons present (N.T. 7-8, 11).

6. Rebecca Tanghe was born on September 1, 1982. Cynthia Devers was born on November 10, 1981. On September 7, 2002, when these women were both twenty years old, they entered the licensed premises at about 3:00 a.m. for the purpose of picking up Cynthia's boyfriend, who had finished his work that evening as the disk jockey. Neither of them had anything alcoholic to drink inside the licensed premises. Rebecca had been outside of the premises once before in the preceding year, at a barbecue held by the Licensee. Cynthia had only been to the premises once previously, again to pick up her boyfriend at the end of his work (N. T. 13-22).

CONCLUSIONS OF LAW:

1. The evidence is insufficient to show that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on September 7, 2002.

2. Licensee violated §§406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on September 7, 2002, by selling alcoholic beverages between 2:00 and 7:00 a.m.

3. Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on September 7, 2002, 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 required time for the cessation of the service of alcoholic beverages.

4. Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on September 7, 2002, by permitting patrons to possess alcoholic beverages in that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

5. Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on September 7, 2002, by permitting patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 7:00 a.m.

#### DISCUSSION:

The testimony of the two young women who entered the premises after hours established that the business was not open and they were present only to rendezvous with their friend, the disk jockey. Rebecca had attended a barbecue outside the premises on one prior occasion while Cynthia's testimony does not support the frequenting charge on any occasion.

In evaluating the weight of this evidence I have come to the conclusion that it does not support a charge of permitting minors to frequent the licensed premises. Technically the opposite conclusion might be reached if one had complete confidence in the accuracy and weight of the testimony, but in this case I do not have such confidence.

#### PRIOR RECORD:

Licensee has been licensed since November 15, 1994, and has had four prior violations:

Citation No. 97-0031. 1 day suspension.

1. Sales between 2:00 a.m. and 7:00 a.m. December 7, 1996.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time. December 7, 1996.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. December 7, 1996.

Citation No. 99-2137. \$400.00 fine.

1. Not a *bona fide* restaurant in that food, eating utensils, dishes and chairs at tables were insufficient. November 20, 1999.
2. Failed to keep records on the licensed premises. November 20, 1999.
3. Failed to constantly and conspicuously expose restaurant liquor license on the licensed premises. November 20, 1999.

Citation No. 01-1231. \$2,000.00 fine.

1. Sales to minors. April 21 and May 6, 2001.
2. Minors frequenting. April 21, May 7 and 7, 2001.
3. Sold an unlimited or indefinite amount of alcoholic beverages for a fixed price. February 14, 2001.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Count Nos. 1 and 2, any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in Count Nos. 3, 4 and 5, any fine must be in the \$50.00 to \$1,000.00 range. Penalties are assessed on each count as follows:

1. Dismissed.
2. A fine of \$1,500.00.
3. A fine of \$400.00.
4. A fine of \$400.00.
5. A fine of \$400.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, ARC. Taverns, Inc., License No. R-AP-4370, pay a fine of two thousand, seven hundred dollars (\$2,700.00) 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.

The fine must be paid by treasurer's check, cashier's check, certified check or money order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

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

Dated this 29th day of May, 2003.

---

David L. Shenkle, 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.**