

Mailing Date: OCT 19 2005

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 04-1711
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-296901
	:	
v.	:	LID - 8492
	:	
WILSBACH DISTRIBUTORS, INC.	:	
905 KATIE COURT	:	
HARRISBURG, PA 17109	:	
	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. ID-178	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
Francis X. O'Brien, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 14, 2004, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against WILSBACH DISTRIBUTORS, INC., License Number ID-178 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] in that Licensee, by its servants, agents or employes, falsified records covering the operation of the licensed business on July 2, 2004.

The investigation which gave rise to the citation began on August 20, 2004 and was completed on September 17, 2004; and notice of the violation was sent to Licensee by Certified Mail on September 27, 2004. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 5, 2005 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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

FINDINGS OF FACT:

1. James C.L. Tyler (hereinafter "Tyler") is employed as a sales representative for Licensee (N.T. 29-30).
2. Tyler calls licensees within his territory to talk to them about new products, and new packages and to help with marketing (N.T. 30).
3. Tyler has forty one accounts in Perry County and fifty four accounts in Mifflin and Juniata counties (N.T. 31).
4. In July of 2004, Tyler held the same title and had the same duties with Licensee described above (N.T. 32).
5. Sherman's Creek Inn was one of Tyler's customers in 2004 (N.T. 36).
6. On July 2, 2004, Tyler was contacted by his friend, Mike Diller (hereinafter "Diller") (N.T. 38).
7. Diller said that he was having a family get together and asked if Tyler could help him out with the purchase of beer. Tyler said, "well, let me call you back." (N.T. 38).
8. Tyler finished his work for the day, and called Diller back around 5:00 (N.T. 38).
9. Tyler then met Diller at Diller's house and they drove to Licensee's facility. They were accompanied by Diller's girlfriend, Lorri Schweitzer (N.T. 38-39).
10. Tyler, Diller and Schweitzer drove to the warehouse. All of the trucks were in, and most employes were gone (N.T. 38).

11. Mr. Diller told Tyler that he wanted two half kegs of beer and three cases of beer. Tyler took the order to Steve Apostolopoulos, an employe in the warehouse who was still there (NT. 40).
12. Tyler told Apostolopoulos that the order was for Sherman's Creek Inn. Apostolopoulos typed the order in the computer and generated an invoice in the name Sherman's Creek Inn and gave it to a man in the warehouse who picked the order (N.T. 41).
13. The order (two half kegs and three cases) was brought to the holding dock on a skid by a forklift. Tyler and Diller then loaded the beer onto Diller's truck (N.T. 41-42).
14. The warehouseman gave Tyler the invoice. Tyler gave it to Diller and asked for payment. Tyler was given a check by Schweitzer. He, in turn gave it to the warehouseman (NT. 43).
15. Tyler told no one at Licensee's place of business that he had placed the order for his friends in the name of Sherman's Creek Inn prior to the creation of the invoice and the sale (N.T. 44).

CONCLUSIONS OF LAW:

The charge in the citation is **dismissed**.

DISCUSSION:

The Bureau has failed to establish that personnel of License intentionally falsified the record in question. The charge in the citation will, therefore, be dismissed.

As Administrative Law Judge Thau indicated in *All American Rathskellar*, Citation No. 89-1082, Sel. Op. Vol. 3, pg. 236, if the Bureau in framing its charge chooses words which necessarily include intent, the Bureau then has the burden of proving that element.

In this case the Bureau has charged the Licensee with falsifying records covering the operation of the licensed business.

As with the situation in *All American Rathskellar* (supra), the Bureau's charge has used a word (falsify) which necessarily infers intent. Falsification cannot take place without the intent to do so. (See *Black's Law Dictionary, Fifth Edition*, "Falsify.")

No employe of Licensee, acting in furtherance of Licensee's business deliberately created a document containing false information. The invoice in question was created by Mr. Apostolopoulos based upon information which he had no way of knowing was false.

The Bureau has indicated that the providing of false information by Mr. Tyler to Mr. Apostolopoulos, resulting in the invoice with incorrect information on it is attributable to Licensee. I disagree. In providing Mr. Apostolopoulos with the false information, Mr. Tyler was not conducting his employer's legitimate business, but was, in fact pursuing his own interests by helping a friend obtain an illicit discount on a purchase of beer.

Based upon the foregoing, I conclude that the Bureau has not made its case, and the charge in the citation is dismissed.

ORDER:

IT IS HEREBY ORDERED that Citation No. 04-1711 be **DISMISSED**.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 11th day of October, 2005.

Daniel T. Flaherty, Jr., J. an

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.