

Mailing Date: December 14, 2005

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-0711
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

BUFFALO BILL'S CHARCOAL : License No. R-2323
PIT, INC. :
3501-3511 Lancaster Avenue :
Philadelphia, PA 19104-4915 :

Representative for Vassilios Mokas, Pro Se
Licensee: (President)

Counsel for Bureau: James E. Dailey, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue
Philadelphia, PA 19142

OPINION

Buffalo Bill's Charcoal Pit, Inc. ("Licensee") appealed from the Adjudication and Order of Administrative Law Judge David L. Shenkle ("ALJ"), wherein the ALJ sustained the citation, imposed a one thousand two hundred fifty dollar (\$1,250.00) fine and assessed five (5) points against the license.

The first count of the citation charged that, on March 10, 2005, and on divers other occasions within the past year, 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) male minors and two (2) female minors, eighteen (18) to nineteen (19) years of age, in violation of section 493(1) of the Liquor Code [47 P.S. § 4-493(1)].

The second count of the citation charged that, on March 10, 2005, and on divers other occasions within the past year, Licensee, by its servants, agents or employees, permitted five (5) male minors and two (2) female minors, eighteen (18) to nineteen (19) years of age, to frequent its licensed premises, in violation of section 493(14) of the Liquor Code [47 P.S. § 4-493(14)].

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers'

Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, Licensee raises a series of objections to the adjudication of the ALJ. Specifically, Licensee contends that it was denied due process in that its representative was not given the chance to cross-examine the witnesses who testified against Licensee. Licensee also contends that there was insufficient evidence to support that any minors were served on Licensee's premises and the sales to minors charge, as the minors obtained alcohol from friends, rather than from Licensee's staff. Lastly, Licensee objects to the issuance of points against the license on constitutional grounds.

The parties stipulated¹ that, on March 10, 2005, a detail of six (6) Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") officers arrived at the licensed premises at approximately 10:30 p.m. for purposes of conducting an open inspection for minors. (Ex. B-3). It was discovered by the officers that a male minor, eighteen (18) years of age (DOB: August 27, 1986), purchased and was served two (2) bottles of

¹ Before the notice documents and the Pre-hearing Memorandum were entered into evidence at the hearing before the ALJ, Bureau counsel, James Dailey, withdrew the second count of the citation and specified that the ALJ should exclude the witness summaries for witnesses seven, eight, eleven and twelve. (N.T. 5-6; Ex. B-3).

Coors Light beer while on Licensee's premises. (Ex. B-3). When questioned relative to his age, the minor presented a false New Jersey driver's license. (Ex. B-3). He was not required to sign a Declaration of Age card on that date, nor was he accompanied by a parent or guardian. (Ex. B-3).

Also on March 10, 2005, a female minor, nineteen (19) years of age (DOB: January 1, 1986) was found on Licensee's premises in possession of a Coors Light beer which had been purchased by her friend. (Ex. B-3). After being questioned relative to her age, the minor was allowed entry when she said that she was only going in to eat. (Ex. B-3). She was not required to sign a Declaration of Age card, nor was she accompanied by a parent or guardian. (Ex. 3).

Licensee's president, Vassilios MOKAS, stated that Licensee's business is primarily that of a sit-down restaurant, and that it intends to purchase a scanner to better detect false identifications. (N.T. 7, 9).

Relative to the Licensee's contentions that it was denied due process in that Mr. MOKAS was not given an opportunity to cross-examine the witnesses whose statements were included in the Pre-hearing Memorandum, the record is clear that Licensee formally waived that right when questioned by the ALJ. After the Pre-hearing Memorandum was introduced into evidence, the ALJ

asked Mr. Mokaš if he understood that if he received the document with Licensee's agreement, then that was as if the Bureau's counsel identified the witness and had them testify before the ALJ. (N.T. 6). Mr. Mokaš responded that the situation was acceptable to him. (N.T. 6). Accordingly, the Board finds no basis for Licensee's claim that it was denied due process to confront the witnesses against him.

Relative to Licensee's contentions that there was insufficient evidence to support the sales to minor's charge, section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] provides that it shall be unlawful "[f]or any licensee,...or employee, servant or agent of such licensee 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 minor...." Section 495 of the Liquor Code [47 P.S. § 4-495] provides that a licensee who has provided alcohol to a minor may, nonetheless, escape liability if the licensee required the minor to provide proper identification and if the licensee required the minor to complete and sign a declaration of age card; photocopied, photographed or subjected the identification to a transaction scanning device and relied upon the information gathered, in good faith.

Licensee clearly violated section 493(1) of the Liquor Code because it failed to meet the requirements of documenting the identification of the minors via age declaration card, photocopy, photograph or proof that identification was scanned through a transaction scan device. When a licensee fails to meet any of the criteria set forth in section 495 of the Liquor Code, the issue of good faith need not be considered in determining liability.

Licensee's policy of simply checking identification cards places Licensee's license in peril when underage patrons are found on the premises. Further, as to the minor who obtained a beer from a friend, it is the well-established law in Pennsylvania that licensees are deemed to have permitted alcoholic beverages to have been furnished to a minor when they acquiesce by failing to prevent such from occurring. Pennsylvania Liquor Control Bd. v. Abraham, 541 A.2d 1161 (Pa. Cmwlth. 1988). In the instant case, Licensee clearly failed to prevent a female minor from obtaining alcohol from another patron of the licensed establishment.

Relative to Licensee's contentions that the assessment of points pursuant to Liquor Code section 479 [47 P.S. § 4-479] is unconstitutional, the Board is without authority to rule on the constitutionality of its enabling legislation,

or the constitutionality of its own regulations. Bunch v. Bd. of Auctioneer Examiners, 620 A.2d 578 (Pa. Cmwlth. 1993).

Based upon the foregoing, the Board finds that the ALJ's decision is supported by substantial evidence and is, therefore, affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee is hereby ordered to pay the fine in the amount of one thousand two hundred fifty (\$1,250.00) dollars within twenty (20) days of the mailing date of this Order. Failure to do so will result in a suspension and/or revocation of the license.

Licensee is assessed five (5) points against its license pursuant to section 479 of the Liquor Code [47 P.S. § 4-479].

Licensee must adhere to all other conditions set forth in the ALJ's Order dated September 28, 2005.

Board Secretary