

Mailing Date: MAR 7 2006

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0855
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-305892
v.	:	
	:	LID - 50091
78 H & N ENTERPRISES INC	:	
202 ½ – 204 ½ S 43 rd ST &	:	
4302 WALNUT ST	:	
PHILADELPHIA PA 19104-2936	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-4242	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq. For
Licensee: Frances J. Cannon, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 10, 2005. There are two counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on February 10, 2005, and on divers other occasions within the past year, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to two male minors, twenty years of age.

The second count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4493(14), on February 10, 2005, and on divers other occasions within the past year, by permitting two male minors, twenty years of age, to frequent its licensed premises.

A hearing was held on Tuesday, October 11, 2005, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. On February 10, 2005, a young man who had been born on July 16, 1984, entered the licensed premises at about 10:15 p.m. He saw some friends of his seated at a table, so he joined them. One of them, an adult, had purchased a six-pack of bottled beer. This minor took one of the bottles and

drank from it. His age was not questioned. During the preceding year, he had been to the premises on two other occasions, on one of which he also drank beer (N.T. 11-18).

2. On February 10, 2005, a young man who had been born on July 31, 1984, entered the licensed premises, with the minor born July 16, 1984, at about 10:15 p.m. He also sat at the table on which the six-pack of bottled beer had been placed, and also took one of the bottles and drank from it.

His age was not questioned. On a previous occasion, longer than a year earlier, this minor had given Licensee a privately-issued identification card falsely showing him to be an adult. Licensee's employee had photocopied this card and retained it (N.T. 21-25, Exhibit L-1).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on February 10, 2005, by permitting the giving of alcoholic beverages to two male minors, twenty years of age.

Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on February 10, 2005, and on two other occasions within the year preceding that date, by permitting one male minors, twenty years of age, to frequent its licensed premises.

The identification card photocopied by Licensee's employee did not comply with the provisions of 47 P.S. §4-495, because it was not a valid driver's license or identification issued by a state.

PRIOR RECORD:

Licensee has been licensed since October 22, 2002, and has had one prior violation:

Citation Nos. 03-0698 & 03-0816 (consolidated). \$2,000.00 fine.

1. Sales to minors. March 27 and April 3, 2003.
2. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises. March 27, 2003.
3. Minors frequenting. April 3, 2003.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239 OF 2004

Section 479 of the Liquor Code, 47 P.S. §4-479, establishes a numerical system for use in cities of the first class. Every restaurant and eating place licensee in cities of the first class who has been cited for a violation under §471 of the Liquor Code, 47 P.S. §4-471, on or after February 6, 2005, must have points assessed as of the date of the final adjudication. Points are in addition to other provisions of the Liquor Code regarding license transfer and renewal. Points are required to be assigned in addition to a monetary penalty and/or suspension and/or revocation of the license by the administrative law judge.

Enhanced penalty violations, such as the two involved in this case, require that the administrative law judge assign five to ten points, depending upon the circumstances, to a license record based on each separate violation. The Board has by regulation established a point system ranging from one to five points for other violations of the Liquor Code and Regulations not specifically set forth in §479.

Section 481(a), 47 P.S. §4-481(a) provides that when any license accumulates ten points or more, the administrative law judge must require the license holder to become compliant with and remain

compliant with the provisions of §471.1, 47 P.S. §4-471.1, relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an order within ninety days shall result in two additional points being assessed against the license record.

Section 481(b), 47 P.S. §4-481(b) provides that when any license accumulates fifteen points or more, the administrative law judge must place the license in safekeeping. The license can only be removed from safekeeping upon approval by the board of a transfer to a disinterested third party. Upon completion of the transfer, the points assigned to it will be reduced to ten. If, within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of §471.1, two additional points will be removed from the license record.

Notwithstanding other provisions of the Act, §481(c), 47 P.S. §4-481(c), provides that when any license accumulates twenty points in more than one citation, the administrative law judge must revoke the license.

DISCUSSION:

It is apparent that Licensee has made some efforts to address the problem shown in this case since September 9, 2003, the date of the hearing on Citation Nos. 03-0698 & 03-0816 (consolidated), since a photocopy machine is now used to retain copies of identifications relied upon. There is also a mitigating factor in the present case, that Licensee did not sell the beer directly to the minors involved.

The difficulty in conducting a business which includes sales of alcoholic beverages is that licensees are absolutely required to supervise the licensed premises so as to insure that minors do not frequent, possess, or consume alcohol. One cannot sell a six-pack of bottled beer to an adult and then permit his underage friends to sit with him at the same table and help themselves, which is what happened in this case.

Section 471(d) of the Liquor Code, 47 P.S. §4-471(d), authorizes me to require Licensee to comply with 47 P.S. §4-471.1, Responsible Alcohol Management, under the circumstances of this case. In the adjudication of Citation Nos. 03-0698 & 03-0816 (consolidated), Judge Wright advised the Licensee “to contact the Responsible Alcohol Management Program (R.A.M.P.) for assistance in detecting and deterring minors.”

Because the provisions of 47 P.S. §4-481(a) in that Licensee has now accumulated ten points or more, the law requires that I now order licensee to become compliant with and remain compliant with the provisions of §471.1, 47 P.S. §4-471.1, relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with this order within ninety days shall result in two additional points being assessed against the license record.

As Licensee is represented by able and experienced counsel, I encourage Licensee’s management to obtain and follow her advice concerning the further steps which must now be taken to prevent loss of this license. In view of Licensee’s location and the severe penalties now required by Act 239, it is extremely urgent that this be done as soon as possible.

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 \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case. The two counts are merged for penalty purposes.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 78 H & N Enterprises, Inc., License No. R-AP-SS-4242, pay a fine of one thousand five hundred dollars (\$1,500.00) 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.

IT IS FURTHER ORDERED that ten (10) points are hereby assessed against the record of Licensee, 78 H & N Enterprises, Inc., License No. R-AP-SS-4242, as required by 47 P.S. §479(b)(1) and (3).

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 contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (90) days after the mailing date of this adjudication. Licensee must remain in compliance for a period of one year from the date such certification is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

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. Section 4-471(d).

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 24th day of February, 2006.

David L. Shenkle, 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.