

Mailing Date: March 19, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-0973  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

JOE SIX PACK, INC. : License No. R-7045  
7015 Roosevelt Boulevard :  
Philadelphia, PA 19149-1430 :

Counsel for Licensee: Edward Taraskus, Esquire  
The Philadelphia Building  
1315 Walnut Street, Suite 1002  
Philadelphia, PA 19107-4721

Counsel for Bureau: Erik S. Shmukler, Esquire  
Pennsylvania State Police, Bureau of Liquor  
Control Enforcement  
6901 Woodland Avenue  
Philadelphia, PA 19142

OPINION

Joe Six Pack, Inc. ("Licensee") appealed from the Adjudication and Order of Administrative Law Judge Tania E. Wright ("ALJ"), wherein the ALJ sustained the citation and imposed a one thousand six hundred dollar (\$1,600.00) fine.

The citation charged that, on April 7, 2005, Licensee, by its servants, agents or employees, violated section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one (1) female minor, seventeen (17) years of age.

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 her discretion, or if her 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 avers that the ALJ's decision was not based upon substantial evidence. Specifically, Licensee contends that it had a valid, good faith defense to the charge of sales to a minor, since the minor was required

to present a valid identification card, and Licensee's transactional scanning device identified the identification card as being valid.

The record reveals that, on April 7, 2005, at approximately 10:15 p.m., Pennsylvania State Police Bureau of Liquor Control Enforcement ("Bureau") Officers S. Graham and D. Collins, arrived in the area of the licensed premises and began surveillance of the licensed premises. (Ex. B-3). A short time thereafter, a youthful-appearing female, later identified as N.S., was observed departing from the premises with what appeared to be an alcoholic beverage. (Ex. B-3). The officers stopped N.S., identified themselves and requested her identification. (Ex. B-3). At that time, N. S. produced a false identification card reflecting that she was twenty-nine (29) years old. (Ex. B-3). Shortly thereafter, N.S. produced her real identification card reflecting that she was seventeen (17) years old. (Ex. B-3). N.S. was found to be in possession of a twelve (12)-pack of Milwaukee's Best beer. (Ex. B-3). She was issued a citation for underage drinking. (Ex. B-3). The licensed premises did not maintain an age verification card file. (Ex. B-3).

The record further reveals that the N.S., born April 10, 1987, entered the licensed premises at approximately 7:00 p.m. or 8:00 p.m. and

purchased, was served and possessed one (1) twelve (12)-pack of Milwaukee's Best beer. (N.T. 8-10). When carded by Licensee's server, she produced a valid Pennsylvania driver's license, which was issued to Lisa Morano. (N.T. 10-11). The license presented by the minor was swiped on a machine by Licensee's server. (N.T. 11-12).

Raymond Swendlow, president of Licensee's corporation, stated that Licensee's policy to prevent selling to minors is to look at the identification cards, ask the patron his/her name, birth date and address. (N.T. 14). Licensee has two (2) swipe machines to check for underage patrons. (N.T. 14-15). Licensee's swipe machine read the identification presented by N.S. on April 7, 2005 as belonging to Lisa Marie Morano, whose date of birth is September 26, 1975. (N.T. 14-16; Ex. L-1). Licensee was Responsible Alcohol Management Program ("RAMP") certified in December of 2003 and in March of 2006. (N.T. 16-17, 19-20; Ex. L-2). Licensee received a Notification of Compliance from the Bureau to a visit on October 25, 2006 under the Underage Buyer program. (N.T. 17-20; Ex. L-3).

Section 493(1) of the Liquor Code provides that it shall be unlawful "[f]or any license . . ., or any 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 . . . .” [47 P.S. § 4-493(1)]. Section 495(f) of the Liquor Code 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 acted in good faith. [47 P.S. § 4-495(f)].

Licensee asserts that the fact that a transaction scan device was used to determine the validity of the proof of age card constitutes good faith on its part. The ALJ chose to resolve the obvious discrepancy between the fact that a seventeen (17)-year-old minor presented identification establishing her to be twelve (12) years older, and Licensee’s testimony, in favor of the Bureau. In reaching this conclusion, the ALJ relied on her judgment on the demeanor of the witnesses, as well as her personal observations.

It is well-settled that matters of witness credibility are the sole prerogative of the ALJ, and the ALJ’s findings on credibility will not be disturbed absent a showing of insufficient evidence. Borough of Ridgway v. Pennsylvania Public Utility Comm’n, 83 Pa. Cmwlth. 379, 480 A.2d 1253 (1984).

The decision of the ALJ is, therefore, affirmed.



ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid the fine in the amount of one thousand six hundred (\$1,600.00) dollars.

Licensee must adhere to all conditions set forth in the ALJ's Order dated December 11, 2007.

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Board Secretary