

Mailing Date: MAR 15 2007

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1076
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-309498
v.	:	
	:	LID - 48086
BIG HEADS OF NEW BRITAIN LLC	:	
T/A BLUE DOG FAMILY TAVERN	:	
4275 COUNTY LINE RD STORE 17	:	
CHALFONT PA 18914	:	
	:	
	:	
BUCKS COUNTY	:	
LICENSE NO. R-AP-SS-5923	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Roy Harkavy, Esq.
For Licensee: Christopher Staub, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 1, 2005. There are three counts in the citation.

The first count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on April 13, 2005, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The second count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4493(1), on April 13, 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 four female minors, twenty years of age.

The third count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4493(14), on April 13, 2005, and on divers other occasions within the past year, by permitting four female minors, twenty years of age, to frequent its licensed premises.

Hearings were held on April 13 and September 6, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. On April 13, 2005, Liquor Enforcement Officer Gina Kepler entered the parking lot of the licensed premises at about 11:20 p.m. and parked in the second parking space, about twenty feet from the door. She heard music coming from inside the premises. Inside, she saw that the source of the music was loudspeakers in front of a bay window, being used by a disc jockey (N.T. 5-7).

2. On the same date, a young woman who had been born on December 28, 1984, purchased a mixed alcohol beverage from the bartender in the licensed premises. Her age was not questioned. During the preceding year, she had visited the licensed premises eight or nine times, and drank alcohol on six or seven of those occasions (N.T. 25-28).

3. On the same date, a young woman who had been born on November 19, 1984, entered the licensed premises in the company of the young women described in findings 2 and 4 of this adjudication. Her age was not questioned. During the preceding year, she had visited the licensed premises more than once, and drank alcohol a couple of times. During her first or second visit her age was questioned, and she presented an identification card on which the birth date had been changed so as to make her older than 21 (N.T. 35-38).

4. On the same date, a young woman who had been born on June 5, 1984, entered the licensed premises. Her age was not questioned. During the preceding year, she had visited the licensed premises about six times, and drank alcohol two or three times. During one visit her age was questioned, and she presented an identification card on which the birth date had been changed so as to make her older than 21 (N.T. 42-44).

5. On the same date, a young woman who had been born on April 12, 1985, entered the licensed premises. Her age was not questioned. During the preceding year, she had visited the licensed premises ten or twelve times, and drank alcohol (N.T. 49-50).

CONCLUSIONS OF LAW:

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on April 13, 2005, by permitting the use on the inside of the licensed premises of a loudspeaker, whereby the sound of music could be heard outside.

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 13, 2005, by selling alcoholic beverages to four female minors, twenty years of age.

Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on April 13, 2005, and on divers other occasions within the past year, by permitting three female minors, twenty years of age, to frequent its licensed premises.

DISCUSSION:

The findings of fact regarding the second and third counts are based on the testimony of the minors themselves as to their dates of birth and the circumstances of their presence in the premises on April 13, 2005. It is true that young people who find themselves in this position have a strong motivation to lie concerning their possession of counterfeit identification and Licensee's use of doormen demanding identification and age declaration cards. However, these witnesses were sequestered from each other during the hearing and they were consistent. I find that their testimony is credible and adequate to support the charges in the second count.

As to the third count, I find that the evidence supports the conclusion that only three minors frequented the premises in the year ended April 13, 2005. The minor born November 19, 1984, testified only that she had visited the licensed premises "more than once," and drank alcohol "a couple of times." Under the rule of *In Re Appeal of Speranza*, 416 Pa. 348, 206 A.2d 292 (1965), "frequenting" means to visit often, more than once or twice, so I have limited my conclusion for this count to the three minors whose testimony clearly supports the charge.

Licensee would have me believe that there is some sort of ill feeling held by one member of the New Britain Township Police Department towards this establishment. Bifurcation was allowed so as to permit additional evidence to be presented on this point. The officer in question did not appear in response to Licensee's subpoena, so I have only speculation to go on, and I lack the power to compel the attendance of witnesses with any efficacy.

It was suggested that there were age declarations completed by the minor witnesses, but that these were removed from the premises by the officer in question. No competent evidence supports this conclusion. Licensee asked me to draw an adverse inference on this point from his failure to appear.

I cannot base a decision in this case on speculation as to what might have been said had a given witness appeared. I find that there was not sufficient evidence presented in this case to make out the affirmative defense available under 47 P.S. §4-495.

PRIOR RECORD:

Licensee has been licensed since May 8, 2001, and has had no prior violations.

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 No. 1, any fine must be in the \$50.00 to \$1,000.00 range. For violations of the type found in Nos. 2 and 3, any fine must be in the \$1,000.00 to \$5,000.00 range. Penalties are allocated as follows:

Count No. 1 – a fine of	\$ 50.00.
Count Nos. 2 and 3 (as merged) – a fine of	<u>1,250.00</u>
	\$ 1,300.00 total fines

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Big Heads of New Britain, LLC, t/a Blue Dog Family Tavern, License No. R-AP-SS-5923, shall pay fines totaling one thousand three hundred dollars (\$1,300.00) within 20 days of the mailing date of this order. In the event the fines are 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 8th day of March, 2007.

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.