

Mailing Date: JUN 07 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1088
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-309682
v.	:	
	:	LID - 43856
MYUNG ENTERPRISE INC	:	
1101 NORTH 66 th ST	:	
PHILADELPHIA PA 19151-2417	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. E-SS-117	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 6, 2005. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 28, 2005, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to two male minors, sixteen and seventeen years of age.

A hearing was held on Thursday, April 27, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

On April 28, 2005, a young man who had been born on November 1, 1987, entered the licensed premises with a friend of his and ordered malt beverages from Kang Sik Kim, who was working behind the counter. Mr. Kim demanded proof of age and in response the young man displayed the expired Pennsylvania junior driver's license of his older brother, whose birth date was January 29, 1983. Mr. Kim accepted this identification as proof of age, and sold malt beverages to the minor (N.T. 25-28, 44-46, Exhibit B-3).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 28, 2005, by selling alcoholic beverages to one male minor, seventeen years of age.

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 of §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.

An enhanced penalty violation requires that the administrative law judge assign five to ten points, depending upon the circumstances surrounding the violation, to a license record, for each and every enhanced penalty 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 will 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 or more points in more than one citation, the administrative law judge must revoke the license.

PRIOR RECORD:

Licensee has been licensed since May 21, 1999, and has had prior violations as follows:

Citation No. 02-1511. \$1,000.00 fine.

1. Sales to a minor. July 18, 2002.
2. Minor frequenting. July 18, 2002.

Citation No. 03-1317. \$200.00 fine and 3 days suspension.

1. Sales to minors. June 28, 2003.
2. Minors frequenting. June 28, 2003.
3. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises. June 28, 2003.

Citation No. 04-0418. \$200.00 fine and 1 day suspension.

1. Failed to post a notice of suspension. February 2 and 3, 2004.

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. Since this is Licensee's third violation of a provision listed in 47 P.S. §4-471(b), 47 P.S. §4-471(c) requires that the penalty include license suspension or revocation. Licensee became certified under the provisions of 47 P.S. §4-471.1 on April 12, 2006.

ORDER

THEREFORE, it is hereby ORDERED that the Eating Place Liquor License of Licensee, Myung Enterprise, Inc., License No. E-SS-117, shall be suspended for a period of five (5) days BEGINNING at 7:00 a.m. on Monday, July 24, 2006, and ENDING at 7:00 a.m. on Saturday, July 29, 2006. Jurisdiction is retained.

Licensee is directed on Monday, July 24, 2006, at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Saturday, July 29, 2006, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of Licensee, Myung Enterprise, Inc., License No. E-SS-117, as required by 47 P.S. §479(b)(1).

Dated this 31st day of May, 2006.

David L. Shenkle, J.

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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.