

Mailing Date: DEC 27 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1303
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-307738
v.	:	
	:	LID - 51357
REVAMP DATOM INC	:	
T/A CALLAGHAN'S	:	
534 S MAIN STREET	:	
GREENSBURG PA 15601-3017	:	
	:	
	:	
WESTMORELAND COUNTY	:	
LICENSE NO. R-AP-SS-15593	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Richard Parker, Esquire

For Licensee
Mark Migliozi,
Corporate Officer, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 6, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Revamp Datom, Inc., t/a Callaghan's, License Number R-AP-SS-15593 (hereinafter Licensee).

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on March 11, 2005 and March 12, 2005, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on March 20, 2005, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

An administrative hearing was conducted on November 15, 2005, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Richard Parker, Esquire. Corporate Officer Mark Migliozi appeared on behalf of Licensee corporation.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on March 14, 2005, and completed its investigation on May 27, 2005. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated June 8, 2005, which was sent by certified mail and received by Licensee on June 11, 2005. (Exhibit C-2)
3. The citation was issued on July 6, 2005, and was sent by certified mail and received by Licensee on July 21, 2005. (Exhibits C-3, C-4)

COUNT 1

4. On March 11, 2005 between the hours of 10:00 p.m. and 10:30 p.m., Ryan S. accompanied by three of his friends entered Licensee's premises without question relative to age. (N.T. 17-18, 21)
5. Ryan S. was born on April 2, 1984, and was 20 years of age on the evening of March 11-12, 2005. (N.T. 17)
6. Upon entering Licensee's premises, Ryan S. approached the bar and purchased a Long Island Iced Tea mixed drink for \$4.75 without question relative to his age from a male bartender described as 24-25 years of age, having black hair in a "punk style," and a tattoo on his neck. (N.T. 18-22)

7. During the course of his visit to Licensee's premises, Ryan S. played pool with his friends and purchased a total of two Long Island Iced Tea mixed drinks from the aforementioned bartender prior to midnight on March 11, 2005. Ryan S. also purchased approximately two Long Island mixed drinks after midnight, then being March 12, 2005, and two shots of Jose Cuervo from the same bartender shortly before his departure at approximately 2:00 a.m. (N.T. 18-23)

COUNT 2

8. On March 20, 2005 at 3:15 a.m., Officer Robert Jones with the Greensburg Police Department while on patrol in the vicinity of Licensee's premises observed four individuals depart the premises through the front door. (N.T. 25-27)

9. Officer Jones questioned two of the aforementioned individuals as they were entering a vehicle parked in a parking lot, which services another business located across the street from Licensee's premises. These individuals were identified as Shannon Jamison and David Angiolini. Both individuals advised Officer Jones that they were not employed at Licensee's establishment. (N.T. 27-29)

DISCUSSION:

Upon review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations as charged in counts one and two of this citation by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

Licensee's corporate officer Mark Migliozi appeared pro se and testified that he was not present during the evening of March 11-12, 2005, or March 20, 2005. Mr. Migliozi did not offer the testimony of any individuals who were present at Licensee's premises on the dates in question.

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On March 11 and March 12, 2005, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, 20 years of age, in violation of Section 493(1) of the Liquor Code.

3. On March 20, 2005, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code.

PENALTY:

Relative to count one, Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case. As to count two, Section 471 of the Liquor Code prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for a violation of this type.

Licensee is advised to engage its management and staff in the Responsible Alcohol Management Program (RAMP) to detect and deter minors and/or visibly intoxicated persons by contacting the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone Number: 1-866-275-8237; Web Site: www.lcb.state.pa.us).

In mitigation, the record discloses that this citation represents Licensee's first violations.

For the foregoing reasons, the following penalties shall be imposed:

Count one - \$1,200.00.

Count two - \$150.00.

ORDER:

THEREFORE, it is hereby ordered that Revamp Datom, Inc., t/a Callaghan's, License Number R-AP-SS-15593, pay a fine of \$1,350.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

REVAMP DATOM, INC.
Citation Number 05-1303

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

Jurisdiction is retained to ensure compliance with this Order.

Dated this 20th day of December, 2005.

Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.