

Mailing Date: JUN 2 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1388
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-304505
	:	
APPLE INN II INC	:	
T/A APPLE INN	:	LID-41844
2895 W LIBERTY AVE	:	
DORMONT	:	
PITTSBURGH PA 15216-2631	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-9918	:	

**BEFORE:** JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement  
Nadia L. Vargo, Esquire

For Licensee  
Marc S. Reisman, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on July 12, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Apple Inn II, Inc., T/A Apple Inn, License Number R-AP-9918 (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on January 14 and 15, 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 (1) female minor, eighteen (18) years of age.

The investigation which gave rise to the citation began on January 20, 2005 and was completed on June 8, 2005. The notice of violation letter was mailed to Licensee on July 12, 2005 and received by Licensee on July 15, 2005.

Evidentiary hearings were held on this matter on December 14, 2005, and March 28, 2006, in Pittsburgh, Pennsylvania.

Upon review of the transcripts of the hearings and the Pre-Hearing Memorandums, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is a corporation located in Allegheny County, Pennsylvania, and holds Restaurant Liquor License Number R-AP-9918. (N.T. 12/14/05 at 4)
2. On Friday, January 14, 2005, during the late evening hours and continuing into the early morning of January 15, 2005, an 18-year old female minor, B.V., gained entrance into the licensed premises using her adult sister's photo driver's license and consumed several alcoholic beverages. (N.T. 12/14/05 at 26-29, 38-40, 44-47, 48-50, 58, 60 & N.T. 3/28/06 at 21-22, 25, 28-29, & Exhibits L-1, L-2, L3).
3. The minor, B.V., was accompanied by an adult female, F.L. (N.T. 12/14/05 at 29).
4. The minor purchased the alcoholic beverages for herself and her adult friend. (N.T. 12/14/05 at 29, 39-40m 45-46, 49-50).
5. The minor consumed mixed alcoholic beverages called "Sex on the Beach," "Jaeger-Bombs" and "Apple-X Bombs." (N.T. 12/14/05 at 39-40, 44, 49)
6. Licensee employs a doorman to check identification at the front door of the licensed premises. (N.T. 12/14/05 at 70-74, 76-77, 80-81, 88-89, 96-98, Exhibits, L-1, L-4, L-5, L-6)
7. The licensed premises did not maintain a Declaration of Age Card file, transaction scan device or a photocopy or other visual/video presentations of a patron's identification. (N.T. 12/14/05 at 84, 89)
8. On Thursday, January 20, 2005, Enforcement Officer Bonadio received a complaint about Licensee serving a minor in January, 2005. (N.T. 12/14/05 at 9, 16)
9. On January 22, February 8 and 16, and March 5, 2005, Enforcement Officer Bonadio made undercover visits to the licensed premises and found no violations. (N.T. 12/14/05 at 10-11, 17, 21, 24)
10. On March 17, 2005, Enforcement Officer Bonadio contacted the complainant. (N.T. 12/14/05 at 18)

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11. On April 5 and 19, 2005, Enforcement Officer Bonadio attempted to contact the complainant. (N.T. 12/14/05 at 11, 19)

12. On May 2, 2005, Enforcement Officer Bonadio contacted the complainant. (N.T. 12/14/05 at 19)

13. On May 25, 2005, Enforcement Officer Bonadio took the statement of B.V., a minor, regarding her visit to the licensed premises on January 14 and 15, 2005. (N.T. 12/14/05 at 11)

14. On June 2, 2005, Enforcement Officer Bonadio took the statement of F.L., who was with B.V. at the licensed premises on January 14 and 15, 2005. (N.T. 12/14/05 at 12, 20)

15. Enforcement Officer Bonadio did not cite B.V. for underage drinking in order to gain her cooperation in this case. (N.T. 12/14/05 at 21, 22)

16. In June, 2005, Enforcement Officer Bonadio interviewed Licensee's bartender who worked on January 14 and 15, 2005 and found the premises does not maintain a Minor Declaration of Age card file, and serves the types of drinks mentioned by B.V. (N.T. 12/14/05 at 11)

#### CONCLUSION OF LAW:

Sustained as charged.

#### DISCUSSION:

Counsel for the Bureau and Licensee submitted briefs in this case.

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d 857 (Pa. Cmwlth. 1982).

I find that the Bureau's investigation was continuous and on-going. (N.T. 12/14/05 at 10-12, 16-20)

I find the testimony of female minor, B.V., and her adult companion to be credible in that on January 14 and 15, 2005, B.V. did visit the licensed premises and consume alcoholic beverages.

Section 4-495 of the Liquor Code, provides Licensee an affirmative defense as follows:

(e) No penalty shall be imposed on a licensee, licensee's employe or State Liquor Store employe for serving alcohol to a minor if the licensee or employe can establish that

the minor was required to produce an identification card as set forth in subsection (a), the minor completed and signed the form as set forth in subsection (c) and these documents were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions.

(f) In addition to the defense set forth in subsection (e), no penalty shall be imposed on a licensee, licensee's employe or State Liquor Store employe for serving alcohol to a minor if the licensee or employe can establish that the minor was required to produce an identification card as set forth in subsection (a), a photograph, photocopy or other visual or video presentation of the identification card was made and those documents were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions.

(g) In addition to the defense set forth in subsections (e) and (f) no penalty shall be imposed on a licensee, licensee's employe or State Liquor Store employe for serving alcohol to a minor if the licensee or employe can establish that the minor was required to produce an identification card as set forth in subsection (a), the identification card is identified as a valid card by the transaction scan device and the identification card and transaction scan results were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions. For purposes of this section, a "transaction scan device" is a device capable of deciphering in an electronically readable format the transaction encoded on the magnetic strip or bar code of an identification card set forth in subsection (a).

Although Licensee does have a doorman to check identification cards, and Licensee's president testified as to using a machine and having a Declaration of Age Card file, there is insufficient evidence in the record that Licensee used one of the statutory methods above to verify the minor's age. Therefore, Licensee has not met the affirmative defense to the charge. (N.T. 12/14/05 at 84, 89)

As such, the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since February 2, 1998 and has four (4) prior violations, to wit:

Citation No. 98-1991. Fine \$100.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m.

Citation No. 01-2151. Fine \$2,500.00.

1. Sales to minors.  
August 11, 2001 and one unknown date.
2. On February 21, 2002, in magisterial district no. 05-2-19, your corporate president, Robert Morosetti, Sr. pled

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guilty to two counts of harassment, in violation of section 471 of the liquor code, 47 P.S. 4-471, and 2709(a)(1) of the crimes code, 18 Pa. C.S. 2709(a)(1).

3. Not a bona fide restaurant in that you failed to provide food upon request and food items were insufficient. November 7, 2001.

Citation No. 02-0437. 2 days suspension.

1. Sunday sales after 2:00 a.m. February 10, 2002.

Citation No. 02-1130. Fine \$1,000.00.

1. Sold alcoholic beverages during prohibited hours. April 22, 2002.

Citation No. 03-1814. Fine \$1,000.00 and one year suspension of Sunday sales permit.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years immediately preceding September 23, 2003.

PENALTY:

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.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudication No's. in combination with this citation, require that license revocation or suspension be included as part of the penalty: 01-2151, 02-0437 and 02-1130.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$1,500.00 and a one (1) day suspension will be imposed as the penalty in this case.

It is suggested that Licensee contact the Board's Bureau of Alcohol Education at 1-866-275 8237 for voluntary RAMP (Responsible Alcohol Management Program) training as provided for by Section 471.1 of the Liquor Code.

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ORDER:

THEREFORE, it is hereby ordered that Apple Inn II, Inc., T/A Apple Inn, License Number R-AP-9918 pay a fine of \$1,500.00 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, Licensees' license shall be suspended or revoked.

IT IS FURTHER ORDERED that the restaurant liquor license of Apple Inn II, Inc., T/A Apple Inn, License Number R-AP-9918, be suspended for a period of one day **BEGINNING** at 7:00 a.m., on Monday, July 24, 2006, and **ENDING** at 7:00 a.m. on Tuesday, July 25, 2006.

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 aforementioned licensed premises for compliance with this Order.

Licensee is authorized on Tuesday, July 25, 2006, at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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 17110-966

**JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.**

Dated this 22nd day of May, 2006.

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Robert F. Skwaryk, J.

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**MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.**