

Mailing Date: MAR 17 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1519
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-314059
v.	:	
	:	LID - 10096
MIDTOWN IV RESTAURANT INC	:	
2013 CHESTNUT STREET	:	
PHILADELPHIA PA 19103-3307	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-1649	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.  
For Licensee: Albert G. Weiss, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 3, 2005. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on July 2, 2005, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one female minor, eighteen years of age.

A hearing was held on Tuesday, January 31, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. On July 2, 2005, Yassou Beyene was a customer at the licensed premises, arriving at about 1:00 p.m. He sat at the first seat at the bar in the bar area near the back of the restaurant. He was the only customer, apart from another guy all the way in the back, playing a video game. Adalia Sales was tending the bar as a favor to Helen Hionis, Licensee's owner. Ms. Hionis had stepped out of the restaurant in order to get change. She was gone about ten minutes (N.T. 55-57, 48-50, 61-62, 7).

2. A group of young people then came into the restaurant, so that it went from being essentially empty to relatively full. Two of the young people, both men, came to the bar to order drinks. Their ages were questioned by Ms. Sales (N.T. 58-60, 49-51).

3. A young woman whose birth date is December 3, 1986, a student at the University of the Arts, was among the young people who came into the restaurant shortly after 1:00 p.m. on July 2, 2005. She obtained a bottle of beer from one of the young men, who were both over the age of 21, and she drank about half of it. She was seated at a table in the restaurant portion of the premises, and she was in possession of the beer which had been obtained for her when Liquor Enforcement Officer Ryan Burns entered the premises and noticed her (N.T. 22-26, 8-9).

#### CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on July 2, 2005, by permitting the furnishing of alcoholic beverages to one female minor, eighteen years of age.

#### DISCUSSION:

The minor witness had the motive and the opportunity to testify falsely about some of the facts which attended the events of July 2, 2005. In particular, I think it is not likely that she went to the bar with the two young men, as she testified. I think this falsehood was intended to protect the young men against consequences the young woman fears if it were proven that they, adults, furnished her, a minor, with alcohol.

But there is no question in my mind that this young woman was a minor on July 2, 2005, that she was in the licensed premises on that date, that by one method or another she obtained a bottle of beer, and that she was drinking from that bottle of beer when her youthfulness was noticed by a liquor enforcement officer.

In any other context this would not be enough to impose liability, since the intervening criminal behavior of the young man or the young men was the proximate cause of the minor's unlawful possession of beer.

In the context of the Liquor Code, however, this evidence requires me to impose a penalty. Licensees have absolute liability concerning activities under their control on licensed premises. Licensees have an inescapable duty to use whatever means are required to prevent the furnishing or giving of alcoholic beverages to minors.

#### 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 shall 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 28, 1980, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 01-1436. \$400.00 fine.

1. Gambling (machine). February 21, 2001.

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. I consider the Licensee's efforts to prevent sales to minors in this case to be a mitigating factor, on account of which I will impose the minimum fine.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Midtown IV Restaurant, Inc., License No. R-SS-1649, shall pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of Licensee, Midtown IV Restaurant, Inc., License No. R-SS-1649, as required by 47 P.S. §479(b)(1).

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 14<sup>th</sup> day of March, 2006.

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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.**