

Mailing Date: May 24, 2006

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 05-1728
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
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	:	
	:	
PINE VALLEY PARTNERS, INC.	:	License No. R-1120
8929 Krewstown Road	:	
Philadelphia, PA 19115-4516	:	

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OPINION

Pine Valley Partners, Inc. ("Licensee") appeals from the Adjudication and Order of Administrative Law Judge Tania E. Wright ("ALJ"), wherein the ALJ sustained both counts of the citation, imposed a penalty of a three thousand dollars (\$3,000.00), assessed ten (10) points against Licensee's

record, and ordered participation by Licensee in and compliance with the requirements of the Responsible Alcohol Management program.

The first count of the citation charged Licensee with violating section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] in that, on July 21, 2005, and on divers other occasions within the past year, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to four (4) male minors and seven (7) female minors, seventeen (17) to twenty (20) years of age.

The second count of the citation charged Licensee with violating section 493(14) of the Liquor Code [47 P.S. § 4-493(14)] in that, on July 21, 2005, and on divers other occasions within the past year, Licensee, by its servants, agents or employees, permitted five (5) male minors and seven (7) female minors, seventeen (17) to twenty (20) years of age, to frequent its licensed premises.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal of this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused her discretion, or if her decision was not based upon substantial evidence. The Pennsylvania Commonwealth Court defined

“substantial evidence” to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Worker’s Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, Licensee contends that the ALJ abused her discretion, committed an error of law and/or made a decision not supported by substantial evidence in finding that Licensee violated Liquor Code sections 493(1) and 493(14) on July 21, 2005. The Board has reviewed the record, including the ALJ’s Adjudication and Order, with Licensee’s contention in mind, and has concluded that the ALJ’s decision is supported by substantial evidence.

On July 21, 2005, J. Cooper, an officer with the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”), along with Officer Leo Viola, visited the licensed premises in an undercover capacity. (N.T. 4-5; Ex. B-3). They observed a white male bartender, later identified as Michael Coyle, and two (2) white female bartenders, later identified as Bonnie Day and Evelyn Beers, who were rendering service to approximately

sixty (60) patrons. (Ex. B-3). The officers noted that several patrons were youthful in appearance. (Ex. B-3).

Approximately twenty (20) minutes later, Officer Cook entered the licensed premises in an undercover capacity. (Ex. B-3). She proceeded to the rear entrance of the premises. (Ex. B-3). Approximately fifteen (15) minutes after that, a detail consisting of eight (8) Bureau officers entered the licensed premises. (Ex. B-3). They identified themselves and conducted an inspection of the premises. (Ex. B-3). They found seven (7) female minors and four (4) male minors, eighteen (18) to twenty (20) years of age, and a seventeen (17)-year-old male on the premises. (Ex. B-3). All seven (7) female minors, three (3) of the male minors, and the juvenile were observed in possession of and consuming alcoholic beverages. (Ex. B-3). It was found that three (3) of these minors used false identifications in order to gain service of alcoholic beverages. (Ex. B-3). Statement questionnaires were obtained from all twelve (12) youths. (Ex. B-3). All the minors appeared to Officer Cooper to be their actual ages. (Ex. B-3). Licensee does not maintain a declaration of age card file. (Ex. B-3).

J.M.M., born September 16, 1984, stated that, on July 21, 2005, she was not twenty-one (21) years of age. (Ex. B-3). She entered the licensed premises on that date. (Ex. B-3). She was not questioned relative to age; however, it should be noted that she was in possession of false identification. (Ex. B-3). She was served three (3) to four (4) Miller Lite draft beers by a female bartender, paying one dollar (\$1.00) for each beer. (Ex. B-3). She stated that this was her second visit to the licensed premises during which she was served alcoholic beverages. (Ex. B-3).

P.M.W., born September 10, 1985, stated that, on July 21, 2005, he was not twenty-one (21) years of age. (Ex. B-3). He entered the licensed premises on that date. (Ex. B-3). He was served one (1) Yuengling draft beer by a male bartender, paying one dollar (\$1.00) for it. (Ex. B-3). He was not questioned relative to age. (Ex. B-3). He stated that this was his only visit to the licensed premises. (Ex. B-3).

E.D.V., born March 16, 1987, stated that, on July 21, 2005, he was not twenty-one (21) years of age. (Ex. B-3). He entered the licensed premises on that date. (Ex. B-3). He was served about six (6) Miller Lite draft beers by a female bartender, paying one dollar (\$1.00) for each beer. (Ex. B-3). He was not questioned relative to age; however, it should be

noted that he was in possession of false identification. (Ex. B-3). He stated that this was his only visit to the licensed premises. (Ex. B-3).

K.A.B., born October 11, 1985, stated that, on July 21, 2005, she was not twenty-one (21) years of age. (Ex. B-3). She entered the licensed premises on that date. (Ex. B-3). She was not questioned relative to age; however, it should be noted that she was in possession of false identification. (Ex. B-3). She was served a twelve-ounce (12 oz.) bottle of Miller Lite beer by a friend. (Ex. B-3). She stated that this was her third visit to the licensed premises during which she was served alcoholic beverages. (Ex. B-3).

R.H.L., born March 28, 1985, stated that, on July 21, 2005, she was not twenty-one (21) years of age. (Ex. B-3). She entered the licensed premises on that date. (Ex. B-3). She was served a twelve-ounce (12 oz.) bottle of Miller Lite beer by a bartender, paying one dollar (\$1.00) for it. (Ex. B-3). She was not questioned relative to age. (Ex. B-3). She stated that this was her only visit to the licensed premises. (Ex. B-3).

J.B.M., born October 22, 1984, stated that, on July 21, 2005, she was not twenty-one (21) years of age. (Ex. B-3). She entered the licensed premises on that date. (Ex. B-3). She was served two (2) Miller Lite draft beers by a female bartender, paying possibly two dollars (\$2.00) for each

beer. (Ex. B-3). She was not questioned relative to age; however, it should be noted that she was in possession of false identification. (Ex. B-3). She stated that this was her second visit to the licensed premises during which she was served alcoholic beverages. (Ex. B-3).

L.C.W., born March 17, 1986, stated that, on July 21, 2005, she was not twenty-one (21) years of age. (Ex. B-3). She entered the licensed premises on that date. (Ex. B-3). She was served a Miller Lite draft beer by a friend, paying two dollars (\$2.00) for it. (Ex. B-3). She was not questioned relative to age. (Ex. B-3). She stated that this was her sixth visit to the licensed premises; however, on the previous five (5) visits she was acting as bartender. (Ex. B-3).

A.M.W., born October 6, 1986, stated that, on July 21, 2005, she was not twenty-one (21) years of age. (Ex. B-3). She entered the licensed premises on that date. (Ex. B-3). She was served one (1) Miller Lite draft beer by a friend, paying two dollars (\$2.00) for it. (Ex. B-3). She was not questioned relative to age. (Ex. B-3). She stated that this was her only visit to the licensed premises. (Ex. B-3).

I.M., born February 12, 1988, stated that, on July 21, 2005, he was not twenty-one (21) years of age. (Ex. B-3). He entered the licensed

premises on that date. (Ex. B-3). He was served one (1) Yuengling draft beer by a friend who paid two dollars (\$2.00) for it. (Ex. B-3). He was not questioned relative to age. (Ex. B-3). He stated that this was his only visit to the licensed premises. (Ex. B-3).

N.G., born May 12, 1985, stated that, on July 21, 2005, he was not twenty-one (21) years of age. (Ex. B-3). He entered the licensed premises on that date. (Ex. B-3). He was served one (1) mixed alcoholic drink consisting of 99 Bananas and ginger ale by a female bartender, paying seven dollars (\$7.00) for it. (Ex. B-3). He was not questioned relative to age. (Ex. B-3). He stated that this was his third visit to the licensed premises during which he was served alcoholic beverages. (Ex. B-3).

R.L.K., born November 8, 1985, stated that, on July 21, 2005, she was not twenty-one (21) years of age. (Ex. B-3). She entered the licensed premises on that date. (Ex. B-3). She was served one (1) Miller Lite draft beer by a female bartender, paying one dollar fifty cents (\$1.50) for it. (Ex. B-3). She was not questioned relative to age. (Ex. B-3). She stated that this was her only visit to the licensed premises. (Ex. B-3).

A.H., born August 11, 1986, stated that, on July 21, 2005, he was not twenty-one (21) years of age. (Ex. B-3). He entered the licensed

premises on that date. (Ex. B-3). He was not questioned relative to age. (Ex. B-3). He was not served any alcoholic beverages. (Ex. B-3). He stated that this was his only visit to the licensed premises. (Ex. B-3).

Relative to the first count of the citation, section 493(1) of the Liquor Code provides that it shall be unlawful “[f]or any licensee or the board or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given,... to any minor... .” [47 P.S. § 4-493(1)].

In Pennsylvania, licensees are deemed to have permitted alcoholic beverages to have been furnished to a minor when they acquiesce by failing to prevent such from occurring. Pennsylvania Liquor Control Bd. v. Abraham, 541 A.2d 1161, 1164 (Pa. Cmwlth. 1988). In the instant case, all of the underage minors, except for A.H. who was not served alcoholic beverages, corroborated the Bureau officer’s observations that they drank alcoholic beverages on Licensee’s premises on July 21, 2005.

A licensee will have a defense against a charge of serving a minor if the licensee requires one of the following acceptable forms of identification as proof of age: (1) a valid photo driver’s license from any state; (2) a valid

photo identification card used by any state; (3) a valid armed forces/military identification card; or (4) a valid passport or travel visa with a photo. [47 P.S. § 4-495(a)]. If the licensee obtains a valid form of identification and either (1) has the patron complete a Declaration of Age card, (2) photocopies or videotapes the identification, or (3) ensures the validity of the identification by scanning the identification card with a transaction scan device, and so long as the licensee acts in good faith, the licensee will not be held liable for serving a minor. [47 P.S. § 4-495(e),(f),(g)]. Declaration of Age cards must be filed alphabetically by a licensee, in a file box containing an alphabetical index, at or before the close of business on the day the form is executed. [47 P.S. § 4-495(c)].

In the instant matter, it is undisputed that the minors never completed Declaration of Age cards, nor presented any identification to Licensee before consuming alcoholic beverages on its premises on July 21, 2005. Therefore, Licensee cannot avail itself of the defense in section 495. Thus, the ALJ's findings of fact relative to the first count of the citation are sustained.

Relative to the second count of the citation, section 493(14) of the Liquor Code provides, in pertinent part, that:

[m]inors may only frequent licensed premises if: (a) they are accompanied by a parent; (b) they are accompanied by a legal guardian; (c) they are under proper supervision; (d) they are attending a social gathering; or (e) the hotel, restaurant or retail dispenser licensee has gross sales of food and non-alcoholic beverages equal to fifty per centum or more of its combined gross sales of both food and alcoholic beverages.

[47 P.S. § 4-493(14)].

The Pennsylvania Supreme Court has established that the term “frequenting” as used in section 493(14) of the Liquor Code means:

to visit often or to resort to habitually or to recur again and again on more than one or two visits...we do not mean to say that it must be found that the same minor or minors come to the premises habitually. But it must be established by a fair preponderance of specific evidence that, as a course of conduct, licensees permit minors to come on the premises.

Appeal of Speranza, 416 Pa. 348, 206 A.2d 292, 294 (Pa. Cmwlth. 1965).

In the instant matter, five (5) of the twelve (12) minors gave statements, which have been stipulated to by Licensee, that they had been in the licensed premises on prior occasions. J.M.M. was on the licensed premises on one (1) prior occasion. K.A.B. was on the licensed premises on two (2) prior occasions. J.B.M. was on the licensed premises on one (1) prior occasion. L.C.W. was on the licensed premises on five (5) prior

occasions, but was tending bar during those prior occasions. N.G. admitted that he had been on the licensed premises on two (2) prior occasions. As substantial evidence existed that Licensee allowed minors to frequent its licensed premises on more than one (1) occasion prior to July 21, 2005, the ALJ's findings of fact relative to the second count of the citation are sustained.

Based on the foregoing, the Board finds that the ALJ's Adjudication is based upon substantial evidence, and is, therefore, affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid the fine in the amount of three thousand dollars (\$3,000.00).

It is hereby ordered that ten (10) points are assessed against the record of Restaurant Liquor License No. R-1120 held by Licensee.

It is further ordered that Licensee shall comply with the requirements set forth in Liquor Code section 471.1 [47 P.S. § 4-471.1] pertaining to Responsible Alcohol Management in the following manner. Licensee must receive Responsible Alcohol Management certification from the Board's Bureau of Alcohol Education within ninety (90) days after the mailing date of the ALJ's Adjudication and Order. Licensee must remain in compliance with the Responsible Alcohol Management certification requirements for a period of one (1) year from the date such certification is issued.

Failure to comply with this Order will be grounds for modification of the penalty and may also constitute grounds for issuance of a new citation, as authorized by section 471(d) of the Liquor Code [47 P.S. § 4-471(d)].

Licensee must adhere to all other conditions set forth in the ALJ's
Order dated March 14, 2006.

Board Secretary