

Mailing Date: APR 11 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1777
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W07-308845
v.	:	
	:	LID - 14081
DELUCA'S BAR INC	:	
20700 RTE 19	:	
CRANBERRY TWP PA 16066	:	
	:	
	:	
BUTLER COUNTY	:	
LICENSE NO. R-AP-SS-EHF-9899	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Richard Parker, Esquire

For Licensee
Marian DeLuca,
Corporate
Secretary/Treasurer

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 9, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against DeLuca's Bar, Inc., License Number R-AP-SS-EHF-9899 (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 September 30, 2004, 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.

The second count charges Licensee with violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)], in that Licensee, by its servants, agents or employees, issued checks or drafts dated April 27 and May 4, 2005, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

An administrative hearing was conducted on February 14, 2006, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Richard Parker, Esquire. Licensee's Secretary/Treasurer Marian DeLuca 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 April 4, 2005, and completed its investigation on August 5, 2005. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated August 17, 2005, which was sent by certified mail and received by Licensee on August 19, 2005. (Exhibit C-2)
3. The citation was issued on September 9, 2005, and was sent by certified mail and received by Licensee on September 13, 2005. (Exhibits C-3, C-4)

COUNT 1

4. On September 30, 2004 at approximately 11:20 a.m., Richard W. entered Licensee's premises and took a seat at the bar at which time a female bartender described as being in her forties, with blond hair and a thin build questioned him relative to his age. Richard W. provided the female bartender with his photo driver's license bearing his correct date of birth. (N.T. 27-28)

5. Richard W. was born on February 23, 1984, and was 20 years of age on September 30, 2004. (N.T. 26)

6. During the course of his visit, Richard W. proceeded to purchase a total of two 12-oz. bottles of Budweiser beer, paying approximately \$2.00 for each bottle, and a total of two shots of Tequila, paying approximately \$3.00 for each shot. (N.T. 27-28)

7. Richard W. departed Licensee's premises shortly after 2:00 a.m., and was subsequently stopped by a Jackson Township Police officer for a motor vehicle violation and was ultimately charged with driving while under the influence of alcohol. (N.T. 29)

COUNT 2

8. An investigation conducted by Enforcement Officer Ned E. Drake disclosed that Licensee issued the following checks to O'Donnell's Distributors, Inc., in payment for purchases of malt or brewed beverages which checks were dishonored by the drawee bank for nonsufficient funds:

Check No. 4329 dated April 27, 2005, at Invoice #597722 in the amount of \$919.20. This "NSF" check was subsequently satisfied on May 24, 2005. (Exs. C-5, C-6, N.T. 8-12)

Check No. 4332 dated May 4, 2005, at Invoice #598445 in the amount of \$840.86. This "NSF" check was subsequently satisfied on May 26, 2005. (Exs. C-7, C-8, N.T. 8-12)

9. Licensee issued a prior "NSF" check to O'Donnell's Distributors, Inc., dated March 2, 2005, which was subsequently honored within ten days from the date of issuance. On August 17, 2005, Licensee was issued a warning letter and was not cited by the Bureau for this infraction. (Ex. C-9, N.T. 8-12)

DISCUSSION:

This court is of the opinion that the testimony offered by Richard W. (date of birth February 23, 1984) relative to his purchase and consumption of alcoholic beverages at Licensee's premises on September 30, 2004, is credible and shall be afforded significant weight. This court further concludes that the Bureau has established by a clear preponderance of the evidence the violation as charged in counts one and two of this citation. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

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 September 30, 2004, 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. Licensee, by its servants, agents or employees, issued checks or drafts dated April 27, and May 4, 2005, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks, in violation of Section 493(26) of the Liquor Code.

PRIOR RECORD:

Licensee has been licensed since June 21, 1979, and has had four prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 87-3301. Three-day suspension.

1. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises.
2. Illegal gambling.

Citation No. 88-0106. Fine \$1,000.00 and three days suspension.

1. Permitted a 19-year-old female minor to frequent the licensed premises.
2. Sold, furnished and/or gave alcoholic beverages to a 19-year-old female minor.

Citation No. 94-1231. Fine \$400.00.

1. Illegal gambling (tickets).
2. Offered and/or gave alcoholic beverages as a prize.

Citation No. 00-0390. Fine \$100.00.

1. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises.
January 5, 2000.

DELUCA'S BAR, INC.
Citation Number 05-1777

PENALTY:

With respect to count one of this citation, 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).

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

Count one - \$1,200.00.

Count two - \$100.00.

ORDER:

THEREFORE, it is hereby ordered that DeLuca's Bar, Inc., License Number R-AP-SS-EHF-9899, pay a fine of \$1,300.00 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.

DELUCA'S BAR, INC.
Citation Number 05-1777

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 4th day of April, 2006.

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.