

Mailing Date: MAY 03 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1850
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-307691
v.	:	
	:	LID - 24399
MAXIE'S, INC.	:	
T/A MAXIE'S	:	
458 W. MAIN ST.	:	
PLYMOUTH, PA 18651-2927	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-17834	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Michael R. Mey, Esquire
318 Penn Avenue
Scranton, PA 18503

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 21, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Maxie's, Inc., t/a Maxie's (Licensee), License Number R-AP-SS-17834.

This citation¹ contains three counts.

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on February 12, 2005, Licensee, by servants, agents or employes, 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 second count charges Licensee with a violation of Sections 401(a) and 407 of the Liquor Code [47 P.S. §4-401(a) and §4-407]. The charge is that on February 12, 2005, Licensee, by servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

The third count charges Licensee with a violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.41]. The charge is that on July 26, 2005, Licensee, by servants, agents or employes, operated its licensed establishment without a valid health permit or license, which expired on May 31, 2005.

An evidentiary hearing was conducted on March 30, 2006 at the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 14, 2005 and completed it on August 6, 2005. (N.T. 8)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 22, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

Count Nos. 1 and 2:

3. On February 12, 2005, an eighteen year old (born July 11, 1986) claims to have visited the subject premises at approximately 1:00 a.m. (N.T. 26-28)

4. She, claims to have purchased two, twelve packs of twelve ounce cans of beer in a single sale for off premises consumption. (N.T. 28-30)

1. Commonwealth Exhibit No. C-2, N.T. 6.

5. The minor had been drinking with her mother from 5:00 p.m., the following evening to 1:00 a.m., February 12, 2005.

Count No. 3:

6. On July 26, 2005, during a routine inspection, a Bureau Enforcement Officer discovered Licensee's health permit expired on May 31, 2005 and not yet been renewed. Licensee was open and in operation selling alcoholic beverages. (N.T. 15-22)

7. Licensee secured the health permit the following day, July 27, 2005. (N.T. 22)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. The Bureau has **failed** to prove Licensee, by servants, agents or employes, 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, on February 12, 2005.

Count No. 2:

3. The Bureau has **failed** to prove Licensee, by servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises, on February 12, 2005.

Count No. 3:

4. **Sustained** as charged.

DISCUSSION:

Based on the minor's drunken condition that evening of February 11 and 12, 2005, I cannot accord her testimony significant weight. I therefore dismiss Count Nos. 1 and 2.

PRIOR RECORD:

Licensee has been licensed since January 19, 1990, and has had eight prior violations (Commonwealth Exhibit No. C-4):

Adjudication No. 91-1565. Fine \$300.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
May 18, 1991.
2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
May 18, 1991.

Adjudication No. 93-0229. Fine \$500.00.

Sales to a visibly intoxicated person.
January 15, 1993.

Adjudication No. 96-0095. Fine \$150.00.

Used loudspeakers or devices whereby music could be heard outside.
December 9, 1995.

Adjudication No. 01-0525. Fine \$150.00.

Used loudspeakers or devices whereby music could be heard outside.
March 3, 2001.

Adjudication No. 01-0645. Fine \$150.00.

Used loudspeakers or devices whereby music could be heard outside.
March 17, 2001.

Adjudication No. 01-0920. Fine \$200.00.

Used loudspeakers or devices whereby music could be heard outside.
April 21, 2001.

Adjudication No. 02-1430. Fine \$450.00.

Used loudspeakers or devices whereby music could be heard outside.
June 27 and July 11, 2002.

Adjudication No. 03-1480. Fine \$600.00.
Used loudspeakers or devices whereby
music could be heard outside.
July 10 and August 7, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Count No. 3 in this case.

I impose:

Count No. 3 – \$250.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$250.00 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.

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, Pennsylvania 17110-9661

Dismissal of Count Nos. 1 and 2:

IT IS FURTHER ORDERED that Count Nos. 1 and 2 of Citation No. 05-1850, issued against Maxie's, Inc., t/a Maxie's, are DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 26th day of April, 2006.

Felix Thau, A.L.J.

pm

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.