

Mailing Date: JUL 11 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1900
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-315993
	:	
THE AMERICAN SARDINE BAR INC.	:	
T/A SOUTH PHILLY TAP ROOM	:	LID - 45092
1509 MIFFLIN ST.	:	
PHILADELPHIA PA 19145-2231	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-1675	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 27, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against The American Sardine Bar, Inc., t/a South Philly Tap Room, License Number R-SS-1675 (hereinafter "Licensee").

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An Administrative hearing was held on Tuesday, July 25, 2006, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on August 5, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, twenty (20) years of age.

FINDINGS OF FACT:

1. Officer Eric Gall from the Bureau of Enforcement conducted an investigation of the licensed premises on August 5, 2005. Officers Gall, Bernesky and Ford went to the licensed premises at approximately 11:00 p.m. When they entered the premises, they walked to the back. They observed six youthful appearing patrons in possession of alcoholic beverages (N.T. 6-8).

2. The officers observed the youthful patrons for approximately forty-five minutes. There were approximately twenty-five patrons on the premises. During this time, a female member of the staff, Meredith Twist, served the table alcoholic beverages (N.T. 8-9).

3. At 11:45 p.m., the officers approached the table and identified themselves and asked the patrons for identification. Five patrons produced identification, which indicated that they were of legal drinking age. A sixth patron later identified as K.W., gave the officers an Ohio state license. The officers indicated that the photograph did not look like the person who presented it (N.T. 9).

4. There was no declaration of age card on file or any scanning device. There was no system set up for photocopying or videotaping (N.T. 10).

5. The youthful appearing individual at the table was served draft beer. K.W. was observed consuming and possessing a twelve-ounce bottle of Perrier Cider, also an alcoholic beverage (N.T. 10).

6. The officer returned to the premises on August 8, 2005. He conducted a routine inspection to make sure the license was properly posted and that there were beer and liquor invoices on the premises (N.T. 16-17).

7. On August 8, 2005, the Licensee asked the officer where he could get declaration of age cards (N.T. 17).

8. Officer Bernesky has worked for the Bureau for approximately two and a half years. On August 5, 2005, he accompanied Officer Gall to the licensed premises. He arrived at approximately 11:00 p.m. Officers Bernesky and Gall made observations for about forty-five minutes. During this time, Officer Bernesky observed a table with six or seven patrons consuming alcoholic beverages (N.T. 18-19).

9. At some point during the evening, he had an occasion to question one of the individuals sitting at the table who appeared youthful in appearance. He questioned her age and she produced an Ohio driver's license indicating her date of birth as January 13, 1984. He noticed that the picture on the driver's license did not look like the patron he was speaking to regarding height, weight or color of eyes. The driver's license indicated that she had blue eyes and he noticed that she had green eyes. He told her that he didn't think the picture resembled her and asked her for another form of identification. She produced a Pennsylvania driver's license with a different date of birth on it (N.T. 19-20).

10. The officer observed the minor consuming a twelve-ounce bottle of Ace Perry Cider, an alcoholic beverage. When she finished one bottle, she was furnished another (N.T. 20).

11. The identification that the female patron provided was an Ohio driver's license with a date of birth of January 13, 1984. The name N. F. appears on it. The height of the individual is 5'1", weighing approximately 120 lbs. with red hair and blue eyes (N.T. 21 and Exhibit B-3).

12. K.W. appeared to be approximately 5'5" tall with blond hair and green eyes (N.T. 23).

13. The officer completed a statement questionnaire for minors (Exhibit B-4).

14. The officer obtained K.W.'s real address and age from a Pennsylvania driver's license, which she eventually presented to him (N.T. 26).

15. A Jnet photograph and driver information for K.W. indicates her date of birth as May 22, 1985 (N.T. 27 and Exhibit B-5).

16. Jnet photographs were obtained from PennDOT from the Department of Transportation files. The officer is trained in the procedure and has the password to access that information as a law enforcement tool (N.T. 28-29 and Exhibit B-5).

17. The officers recognized the person on the Jnet file by way of information and photograph as K.W. who he had seen in the licensed establishment on August 5, 2005 (N.T. 30 and Exhibit B-5).

18. The officer was not able to say whether the Ohio driver's license was valid, but it did not belong to K.W. (N.T. 35).

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19. The information recorded on the patron questionnaire matched the information taken from the Jnet file (N.T. 40-41).

20. Officer Gall retrieved the Jnet file on July 22, 2006 (N.T. 42 and Exhibit B-5).

21. The Jnet files gave him a certified copy of the driver's license that was taken from K.W. on that night (N.T. 42-43 and Exhibit B-5).

22. John Longacre is the owner of the licensed premises. He is the sole corporate officer, director and shareholder. On August 5, 2005 at 11:00 p.m., he was at the licensed establishment having dinner. After having dinner, he left the establishment but received a phone call twenty minutes after he left to say that the officers had come in and carded a number of individuals. He was asked to return to the premises N.T. 55).

23. Mr. Longacre indicated the officers never asked him to provide them with the scanning device. They did, however, ask him to provide an age declaration card (N.T. 56).

24. Mr. Longacre indicated that they have a scanner that they put identifications through showing him that the identification is valid or invalid. He claims to have had the scanner since the day that he opened. Everyone is carded and he asks for backup identification and they do not get served if they do not have backup identification (N.T. 56-57).

25. According to an employee on the premises, the identification was scanned and was determined to be valid. This particular scanner does not produce a printout (N.T. 58-59).

26. K.W. was not asked to complete a declaration of age card, supposedly because she had two forms of valid identification in addition to the Ohio driver's license (N.T. 59).

CONCLUSIONS OF LAW:

On August 5, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

PRIOR RECORD:

Licensee has been licensed since October 18, 1999, and has no record of prior violations.

DISCUSSION:

Section 6328 of the Pennsylvania Vehicle Code, 75 Pa.C.S. Section 6328 states that PennDOT can electronically certify documents to authorized users, such as state and local police. Further, documents that are electronically certified by Penndot may be admissible into evidence in any proceeding before the Courts or administrative bodies of the Commonwealth. The Bureau of Enforcement presented a Jnet Certification indicating that K.W. was born on May 22, 1985. K.W. was a minor and could not lawfully purchase or consume alcoholic beverages on August 5, 2005. That Certification sufficiently identified K.W. in that it contained a photograph, a description of the individual, and her Pennsylvania driver's license number.

On August 5, 2005, officers from the Bureau of Enforcement entered the licensed premises and observed youthful appearing individuals seated at a table, consuming alcoholic beverages. When the officers asked the patrons for identification, all but one of those individuals had valid identification indicating that they were twenty-one years of age or older. The one person who remained suspect was a female who produced an Ohio driver's license. The photo on the Ohio driver's license looked only vaguely like the individual. A closer examination of the card indicated that the individual was born January 13, 1984, was 5'1" tall, weighed 120 lbs. and had red hair and blue eyes. The officer indicated that the woman bearing the Ohio driver's license was several inches taller, weighed more than the 120 lbs. and had green eyes. The officer eventually identified the patron by her own Pennsylvania driver's license. The officer issued the patron a citation for carrying false identification, as well as for consuming and possessing alcoholic beverages.

Licensee attempts to assert an affirmative defense based upon 47 P.S. Section 4-495(g) which provides that no penalty shall be imposed on a Licensee if the Licensee can establish that the minor was required to produce valid identification cards set forth in Subsection (a) that the identification card was identified as a valid card by a scanner device and the identification card and results were relied upon in good faith. Licensee indicates that they scanned the Ohio driver's license and that it registered as valid. They then claimed to have two other forms of identification, which the minor allegedly produced. The scanning device allegedly used by the Licensee had no printout, which would have verified or supported their statements. The officers saw no scanning device on the premises and no scanning device was presented to the Court.

The Court would no doubt have been more impressed if the Licensee had presented evidence that the device existed or demonstrated the use of the scanning device. However, the Court also considered that the individual who was bearing the identification card had green eyes, not blue, and was considerably taller than the 5'1" indicated on the identification card. Had the Court had some demonstrative evidence of the existence of the scanning device or a proof that it was utilized, it would be more inclined to find the Licensee's testimony credible and sufficient to show that Licensee acted in good faith.

The evidence was not sufficient to establish an affirmative defense. In that Licensee has no prior history, a \$1,200.00 monetary penalty shall be imposed.

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NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239, 2004

Section 479 of the Liquor Code, 47 P.S. Section 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 have been cited for a violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, on or after February 6, 2005, shall have points assessed as of the date of the final Adjudication. Points are in addition to other provisions of this Act for license transfer and renewal. Points shall be assigned in addition to the imposition of 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 Section 479.

Section 481(a), 47 P.S. Section 4-481(a) provides that when any license accumulates ten points or more, the Administrative Law Judge shall require the license holder to become compliant with and remain compliant with the provisions of Section 471.1, 47 P.S. Section 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. Section 4-481(b) provides that when any license accumulates fifteen points or more, the Administrative Law Judge shall 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 section 471.1, two additional points shall be removed from the license record.

Notwithstanding other provisions of this Act, Section 481(c), 47 P.S. Section 4-481(c), provides that when any license accumulates twenty or more points in more than one citation, the Administrative Law Judge shall revoke the license.

POINTS ASSESSED:

Accordingly, you are hereby notified that five points have been assigned to your record.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

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Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, The American Sardine Bar, Inc., t/a South Philly Tap Room, License Number R-SS-1675, pay a fine of One Thousand Two Hundred Dollars (\$1,200.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of Licensee, The American Sardine Bar, Inc., t/a South Philly Tap Room, License Number R-SS-1675, as required by 47 P.S. Section 4-479(b)(1).

In order to insure compliance with this Order, jurisdiction of this matter is retained.

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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Dated this 27th day of June, 2007.

Tania E. Wright, J.

NOTE: 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.

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