

Mailing Date: August 8, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-1942
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

ORIGINAL CASEY'S OF DREXEL : License No. R-15402
HILL, INC. :
812 Lansdowne Avenue :
Drexel Hill, PA 19026-1526 :

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PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
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OPINION

Original Casey's of Drexel Hill, Inc. ("Licensee") appealed from the
Adjudication and Order of Administrative Law Judge Tania E. Wright

("ALJ"), wherein the ALJ sustained the citation and imposed a one thousand two hundred fifty dollar (\$1,250.00) fine.

The citation charged that, on August 24, 2005, Licensee, by its servants, agents, or employees, violated section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] by selling, furnishing and/or giving, or permitting such sale, furnishing or giving of alcoholic beverages to one (1) female minor and one (1) male minor, both twenty (20) years of age.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in 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 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. Workers' 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's findings of fact are not based on substantial evidence.

The record reveals that, on August 24, 2005, Officer John Bernesky, from the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) arrived at the premises at approximately 10:20 p.m., as a result of a detail of six (6) officers working with two (2) undercover officers. (N.T. 5, 7-8).

During the inspection of the licensed premises, Bureau Officers Spera and Keisling observed what they deemed to be an underage male and female consuming Miller Lite beer in Licensee’s outside serving area. (N.T. 9-10, 19-20, 22).

Officer Spera asked the male for identification, in response to which he produced a New Jersey personal identification card, and another identification card Officer Spera recognized as not being a New Jersey identification card, containing photographs that resembled the male, but did not reflect his true identity or date of birth. (N.T. 9-18; Exs. B-3, B-4). The male used the New Jersey identification card to gain access to Licensee’s premises. (N.T. 11, 14). Bureau Officer Bernesky confiscated both of the male’s identification cards, and issued the male a citation for carrying false identification and misrepresenting his age to purchase alcohol. (N.T. 9-12).

Officer Keisling asked the female for identification, in response to which she produced her actual Pennsylvania driver's license, which reflected a date of birth making her twenty (20) years of age. (N.T. 23). Later, she also produced a New Jersey personal identification card with her photograph on it, which, based upon his experience, Officer Keisling knew was false. (N.T. 23-26; Ex. B-5). Officer Keisling issued the female a citation for underage drinking, misrepresentation of age, and carrying false identification. (N.T. 13-14, 25).

The male's date of birth is March 3, 1985. (N.T. 27). On August 24, 2005, he was twenty (20) years of age and visited the licensed premises with his girlfriend, the female. (N.T. 27-28). Licensee's doorman requested identification, and the male showed him the false New Jersey identification card, which the doorman looked at for a few seconds. (N.T. 28-30, 38; Ex. B-3). The card contained incorrect information with regard to the male's address, city, state, zip code, and year of birth. (N.T. 29-30, 36). The back of the card was scratched up, which the male stated was its condition when he took possession of it. (N.T. 12, 29-30; Ex. B-3). On August 24, 2005, the identification card was not scanned, nor did the doorman make a photocopy of the identification. (N.T. 30-31). After entering the bar, the

male and female purchased a bucket of Miller Lite beer, which consisted of four (4) or five (5) bottles of beer, and sat down at a table. (N.T. 31, 43). The bartender did not ask for identification. (N.T. 31-32). He had finished approximately one (1) and one-half (1/2) beers before the officers entered Licensee's premises. (N.T. 31). When Officer Spera asked the male for identification, he simply handed the officer his wallet, which contained his actual Pennsylvania driver's license and the two (2) false identifications. (N.T. 32-36; Exs. B-3, B-4). The male stated that, on other occasions at Licensee's premises, he signed something acknowledging his age to be twenty-one (21); however, he never consumed alcoholic beverages there before August 24, 2005. (N.T. 30, 32).

The female's date of birth is May 28, 1985. (N.T. 40). She was twenty (20) years old on August 24, 2005 when she visited Licensee's premises. (N.T. 40). In response to the doorman's request for identification, she produced a New Jersey personal identification card, which containing an incorrect address and birth year. (N.T. 41-42; Ex. B-5). Like the male's card, the back of the identification card was scratched up. (N.T. 42; Ex. B-5). The doorman looked at it for a few seconds, and did not request additional identification. (N.T. 42-43). She was consuming the beer

when the officers entered the premises. (N.T. 43, 45). The female produced her Pennsylvania driver's license when the officers requested her identification. (N.T. 44). Approximately one-half (1/2) hour later, she produced her false New Jersey identification for the officers. (N.T. 47). On August 24, 2005, her identification card was not scanned, nor was a photocopy made of it. (N.T. 44-45). The bartender did not ask for identification. (N.T. 45). She was never asked to sign anything acknowledging her age to be twenty-one (21). (N.T. 44). The female has visited Licensee's premises in the past for dinner, never to drink. (N.T. 44).

Matthew Melvin has been employed at the licensed premises full-time for the past thirteen (13) months. (N.T. 49, 59). Prior to that, he worked there part-time when he was in college at the University of Pennsylvania. (N.T. 49). He has gone through several trainings, and he is T.I.P.S. certified. (N.T. 50, 58).

On the night of August 24, 2005, Mr. Melvin was managing the licensed premises and working the door. (N.T. 50, 59). He indicated that Wednesday is a busy night, although not as crowded as Friday or Saturday. There are two (2) bartenders on duty. (N.T. 49-50). Mr. Melvin indicated that on August 24, 2005, there was a third bartender at the bar, and one

(1) employee who was floating and carding individuals. (N.T. 50). Mr. Melvin indicated that there were approximately one hundred twenty (120) people in the premises when the officers entered. (N.T. 51). The premises maintains a declaration of age card file, and maintained it on August 24, 2005. (N.T. 51-52).

Mr. Melvin carded the male and female in question. (N.T. 51). He indicated that the male and female showed him New Jersey identification cards. (N.T. 52). When he questioned them, the male and female told him that they were new licenses. (N.T. 52). When asked if they were twenty-one (21), they indicated that they were. (N.T. 52). He notified them that if they were not, they would be in real trouble. (N.T. 52).

Mr. Melvin indicated that he cards pretty much everyone who comes into Licensee's premises. (N.T. 53). Videotape of the subject transaction presented by Licensee depicts two (2) individuals walking into the building at 9:12 p.m. (N.T. 54-55). The doorman viewed the identification, then apparently called the male and female back. (N.T. 57). After approximately twenty (20) seconds, the male and female proceeded into the premises. (N.T. 55-58).

Mr. Melvin has been a bartender for about two (2) years and has been in the business since he was sixteen (16) or seventeen (17) years old. (N.T. 59). He stated that he checks identifications by looking at the birth dates and making sure that there is a picture of the individual who is bearing the card. (N.T. 58). He also asks the presenter if he or she is twenty-one (21), and makes sure that they know it is illegal otherwise. (N.T. 60-61).

Section 493(1) of the Liquor Code provides that it shall be unlawful “[f]or any licensee, ...or employee, servant or agent of such licensee . . . 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)]. Section 495 of the Liquor Code also provides that a licensee who has provided alcohol to a minor may, nonetheless, escape liability if the licensee required the minor to provide proper identification, and if the licensee acted in good faith. [47 P.S. § 4-495(e), (f)].

Licensees are assured a defense only if they act in good faith, and also require execution of a declaration of age card, retain a photocopy or video presentation of the valid identification upon which they have relied, or use a

card scanning device to test the validity of the identification presented. [47 P.S. § 4-495].

In the instant matter, there is no dispute that the male and female observed consuming alcohol on Licensee's premises on August 24, 2005 were twenty (20) years of age. Licensee's employee requested and viewed identification cards presented by these individuals; however, despite the scratched appearance of both cards, he failed to request additional identification or require that they complete a declaration of age card or photocopy of the cards. He simply asked the individuals if they were twenty-one (21) and told them they would be in trouble if they were not. The video presentation was of the transaction and not of the identification cards, as is required for section 495 protection.

Based upon the facts on the records, the Board finds that the ALJ's decision is supported by substantial evidence and is without error of law.

The decision of the ALJ 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 one thousand two hundred and fifty dollars (\$1,250.00).

Licensee must adhere to all other conditions set forth in the ALJ's Order dated May 22, 2007.

Board Secretary