

Mailing Date: July 25, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-2283  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

SHUA LIA INC. : License No. D-3326  
t/a The New Paul Brothers :  
Beverage Mart :  
351 East Chew Avenue :  
Philadelphia, PA 19120-2504 :

Counsel for Licensee: Aely Lee, President  
Pro Se

Counsel for Bureau: James E. Dailey, Esquire  
PENNSYLVANIA STATE POLICE,  
Bureau of Liquor Control Enforcement  
6901 Woodland Avenue  
Philadelphia, PA 19142

OPINION

Shua Lia, Inc. t/a The New Paul Brothers Beverage Mart (“Licensee”) appealed from an Order issued in response to Licensee’s Petition For Reconsideration by Administrative Law Judge Tania E. Wright (“ALJ”), wherein the ALJ denied the Petition.

The citation charged that, on September 1 and 9, 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 two (2) male minors, seventeen (17) and nineteen (19) years of age.

The record in this matter reflects that, following a hearing, on April 18, 2007, the ALJ mailed her Adjudication and Order sustaining the citation and imposing a fine in the amount of one thousand one hundred (\$1,100.00) dollars. By Petition dated May 1, 2007, Licensee sought reconsideration of the ALJ's Adjudication and Order.

On May 15, 2007, the ALJ mailed a Response to Licensee's Petition For Reconsideration, denying same, stating that her opinion was unchanged regarding the application of the law to the facts presented, and further stating that Licensee's penalty of one thousand one hundred dollars (\$1,100.00) was clearly within the minimum range and should remain.

Licensee filed an appeal with the Board on June 7, 2007.

Inasmuch as section 17.21(b)(2) of the Board's Regulations [40 Pa. Code § 17.21(b)(2)] sets forth that appeals from decisions of the ALJ shall be filed or postmarked within thirty (30) calendar days of the mailing date of

the adjudication, Licensee's appeal must be considered untimely as an appeal of the ALJ Adjudication issued on April 18, 2007. However, Licensee appears to have fashioned its appeal as an appeal from the Response to Licensee's Petition For Reconsideration. As the ALJ's Order in response to the reconsideration request was mailed on May 15, 2007, Licensee's appeal of that Order is deemed timely.

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 his discretion, or if his 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 generally that the ALJ's conclusions that Licensee violated section 4-493(1) of the Liquor Code [47 P.S. § 4-493(1)] were not based upon substantial evidence.

The record reveals that, on September 1, 2005, at approximately 7:30 p.m., Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) Officer Burns, accompanied by Bureau Officer Clark, parked approximately thirty (30) feet across the street from the licensed premises in the course of conducting a general investigation. (N.T. 6-8). At approximately 8:10 p.m., the officers observed a vehicle with four (4) youthful-appearing occupants inside, pull into a parking spot in front of the licensed premises. (N.T. 9-10, 29-30). Three (3) of the four (4) occupants exited the vehicle and entered the premises, leaving the driver in the vehicle. (N.T. 9-10, 29-30). The three (3) individuals exited the premises approximately ten (10) minutes later, with one (1) male carrying a brown box of what appeared to be a case of forty (40)-ounce bottles of Hurricane malt liquor. (N.T. 11-12). The Bureau officers identified themselves and requested identification from each youthful-appearing male. (N.T. 12). The officer determined that the driver was a minor, that two (2) of the individuals carrying the malt liquor were minors, and the fourth individual, identified as Joseph Larry, was twenty-one (21) years of age. (N.T. 12-13).

According to the seventeen (17)-year-old minor, while inside Licensee's premises, he removed a case of Hurricane malt liquor from the refrigerator and placed it on the conveyor belt at the counter. (N.T. 30-31). Once Mr. Larry paid for the beer, the minor picked it up and carried it outside. (N.T. 32-33). While Mr. Larry's identification was requested by Licensee, the minor was never asked for identification, nor was he asked to sign anything before being permitted to carry the beer outside. (N.T. 32-35).

After citing the minors, the officers entered the licensed premises and observed two (2) employees; a white male was inside a cashier's booth, and an Asian male was seen standing outside and later inside the premises. (N.T. 14-16). Upon questioning, the white male stated that they were busy and the Eagles game was on. (N.T. 16). The officers determined that Licensee had a declaration of age card file, although there was none for the individual who purchased the malt liquor. (N.T. 16-17). The officers advised the employees about taking precautions with the start of school and who might be in possession of alcohol inside the store. (N.T. 17-18, 44-45).

The officers returned to Licensee's premises on September 9, 2005, arriving at approximately 8:15 p.m. (N.T. 18-19). While parked across the street, the officers observed a Chevy Blazer park in front of the licensed

premises. (N.T. 19). Two (2) male occupants exited the vehicle and entered the licensed premises. (N.T. 19-20). Approximately ten (10) minutes later, one (1) of the males was observed exiting the licensed premises carrying a half keg of beer. (N.T. 20). The other male, later identified as Jeff Laird, was observed to be carrying two (2) bags of ice and a thirty (30)-pack of Natural Light beer. (N.T. 20, 37). Upon questioning by the officers, it was determined that Mr. Laird was twenty-one (21) years old, and the other was nineteen (19) years of age, with a date of birth of May 31, 1986. (N.T. 21-22).

According to the nineteen (19)-year-old minor, he drove with a friend to the licensed premises on September 9, 2005. (N.T. 36). After Mr. Laird placed a keg of beer on a hand truck, the minor pushed the hand truck up to the cashier station. (N.T. 37-39). The beer was paid for by Mr. Laird and, thereafter, the minor wheeled the keg of beer out of the store and loaded it into his vehicle. (N.T. 39-40). While Mr. Laird's identification was requested by Licensee, the minor's identification was not. (N.T. 39)

After citing the minor, the officers entered the licensed premises and spoke with Licensee's president, Aeli Lee. (N.T. 23, 39-40). She appeared to be aware of the warning issued by the officers on September 1, 2005.

(N.T. 23-24). No declaration of age card file or age detection device was presented to them during their discussion with Ms. Lee. (N.T. 23-24).

Ms. Lee stated that there is an age identifying device in her office next to the cash register; however, the officer never came into the office to check it. (N.T. 27). She was aware of the September 1, 2005 incident at the licensed premises. (N.T. 42-43). She stated that she tries to check identifications of anyone making a purchase, but questioned whether or not she should check the identifications of everyone who enters the premises. (N.T. 45). Ms. Lee stated that she tries to be careful, as she recognizes that her store is near a university. (N.T. 46).

Section 493(1) of the Liquor Code provides that it shall be unlawful “[f]or any licensee, . . . or employe, servant or agent of such licensee . . . to sell, furnish or give any . . . malt or brewed beverages, or to permit any . . . 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)].

In the instant case, it is undisputed that on September 1 and 9, 2005, Licensee permitted minors to be in possession of malt or brewed beverages, in that they were permitted to carry alcohol without question as to their age. For the first instance, Licensee's employee was given a warning that Licensee should be extremely careful and conscientious about who is coming and going, and who is in possession of alcohol inside the premises. Licensee's corporate president admitted she was made aware of the officers' visit and their warning given on September 1, 2005.

Nevertheless, on September 9, 2005, a minor again had easy access to Licensee's beer refrigerator, and again was permitted to carry the keg out of the premises. This situation evidences the lack of attention Licensee's employees gave to the situation on September 1, 2005, when the Bureau's officers gave a stern warning and advised the employees to be more diligent and to be especially careful because of their proximity to a university. Licensee most likely would not be in the position it finds itself in if it had given serious attention to the warning given on September 1, 2005.

While the Board acknowledges that there are no specific restrictions on minors being present in distributor licensed premises, under no circumstances should an underage person be given tacit approval to carry and possess

alcohol even where the actual purchase is made by a person twenty-one (21) years of age or older. Licensee acted in total disregard of the warning given by Bureau officers a little more than a week earlier.

Section 493(1) of the Liquor Code is specific in prohibiting licensees from furnishing directly or permitting alcohol or brewed beverages from being furnished or given to any minor. Licensee has clearly violated that portion of section 493(1), and ignored a golden opportunity to escape liability by permitting such behavior to occur after being warned to be more diligent.

Because Licensee failed to prevent the circumstances which allowed two (2) minors to be furnished and given beer while on the licensed premises, the Board finds that the ALJ's decision is supported by substantial evidence.

The decision of the ALJ is, therefore, affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee is hereby ordered to pay the fine in the amount of one thousand one hundred dollars (\$1,100.00). Failure to pay the fine within twenty (20) days of the mailing date of this Order will result in license suspension and/or revocation.

Licensee must adhere to all conditions set forth in the ALJ's Orders in this matter.

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Board Secretary