

Mailing Date: NOV 01 2006

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 05-2624
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-320646
v. :
 : LID - 53333
JS5L INC :
26 GARRETT ROAD :
UPPER DARBY PA 19082-2303 :
 :
DELAWARE COUNTY :
LICENSE NO. R-AP-SS-EHF-20359 : BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on December 19, 2005. There are four counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on November 5, 2005, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one female minor, nineteen years of age.

The second count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on November 5, 2005, and on divers other occasions within the past year, by permitting two male minors and four female minors, eighteen to nineteen years of age, to frequent its licensed premises.

The third count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on November 5, 2005, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The fourth count alleges that Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), and §5.52 of the Liquor Control Board Regulations, 40 Pa. Code §5.52, on November 6 and 8, 2005, by failing to maintain coil cleaning records.

A hearing was held on Wednesday, August 23, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Justin Clarke arrived at the licensed premises at about 10:15 p.m. on November 5, 2005. He heard music emanating from it as far as fifty feet away, coming through an open door from loudspeakers inside the premises (N.T. 12-15).

2. On November 5, 2005, Officer Clarke saw a young-looking woman in the premises who had possession of an alcoholic beverage. He asked her how old she was. She said she was twenty-one. He asked what her birth date was, and she gave a date which was less than twenty-one years before November 5, 2005. He asked for permission to look in the woman's purse, and she gave it. Inside the purse he found her Pennsylvania Identification Card giving her date of birth as September 22, 1986 (N.T. 18-27, Exhibit B-3).

3. Liquor Enforcement Officer Ryan Burns inspected the licensed premises on November 6, 2005, and again on November 8, 2005. On both occasions no coil cleaning records could be found. It was later determined that the records were kept, but they were locked in an office to which no one in the premises had access (N.T. 4-8, 32-35, Exhibit L-1).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on November 5, 2005, by permitting the furnishing of alcoholic beverages to one female minor, nineteen years of age.

There was no evidence that Licensee permitted minors to frequent its licensed premises.

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on November 5, 2005, by permitting the use on the inside of the licensed premises of a loudspeaker whereby the sound of music could be heard outside.

The evidence that Licensee failed to maintain coil cleaning records was outweighed by evidence that such records were, in fact, maintained.

PRIOR RECORD:

Licensee has been licensed since August 27, 2004, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Count No. 1, any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in Count No. 3, any fine must be in the \$50.00 to \$1,000.00 range. Penalties are allocated as follows:

- Count No. 1 – a fine of \$1,250.00.
- Count No. 2 – dismissed.
- Count No. 3 – a fine of \$250.00.
- Count No. 4 – dismissed.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, JS5L, Inc., License No. R-AP-SS-EHF-20359, shall pay a fine of one thousand five hundred dollars (\$1,500.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction 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 to:

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

Dated this 25th day of October, 2006.

David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.