

Mailing Date: NOV 06 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2658
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-321035
v.	:	
	:	LID - 48878
HP JOINT VENTURE	:	
2600 E. MARKET STREET	:	
YORK, PA 17402-2411	:	
	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. H-AP-SS-4576	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Cherylona R.S.
Mirchandani, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 29, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against HP JOINT VENTURE, License Number H-AP-SS-4576 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on November 5, 2005, and one occasion between August 7 and 14, 2005, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to four female minors, nineteen to twenty years of age.

The second count charges Licensee with violation of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)] in that on November 5, 2005, and one occasion between August 7 and 14, 2005, Licensee, by its servants, agents or employes, permitted four female minors, nineteen to twenty years of age, to frequent the licensed premises.

The investigation which gave rise to the citation began on October 27, 2005 and was completed on November 16, 2005; and notice of the violation was sent to Licensee by Certified Mail on November 29, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on May 9, 2006 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1 AND 2

1. J.M.B. was born on February 25, 1985, and, in November of 2005, she was 20 years old (N.T. 18-19).
2. On November 5, 2005 she entered the licensed premises where she was served a pitcher of Miller Lite beer. She was not questioned as to age nor was she requested to produce identification. She drank two sips of the beer before she was approached by officers of the Bureau (N.T. 19-20).
3. T.R.B. was born on December 15, 1984, and on November 5, 2005, she was 20 years old (N.T. 22-23).
4. On November 5, 2005 T.R.B. was on the licensed premises where she was served a mixed drink containing Southern Comfort and Coca Cola. On this evening she had two or three of these mixed drinks. She was not questioned as to age nor was she asked to produce any form of identification.
5. T.L.H. was born on November 13, 1985, and on November 5, 2005, she was 19 years old (N.T. 26-27).
6. On November 5, 2005 T.L.H. was on the licensed premises where she was served a mixed drink of Southern Comfort and diet soda. She was not questioned as to age nor was she required to produce identification (N.T. 27-28).

7. S.M.M. was born on July 24, 1985, and in November of 2005, she was 20 years old (N.T. 30).

8. On November 5, 2005, S.M.M. entered the licensed premises where she was served and consumed a glass of Southern Comfort and Coca Cola. She was not questioned as to age nor was she required to produce any identification (N.T. 30-31).

9. S.M.M. had been on the licensed premises in the second week of August, 2005 when she went to the premises with her boyfriend to eat dinner. On this occasion she did not consume any alcohol (N.T. 31-32).

CONCLUSIONS OF LAW:

1. Count 1 of the citation is **sustained**.
2. Count 2 of the citation is **dismissed**.

DISCUSSION:

The record contains ample evidence to sustain Count 1 of the citation.

As to Count 2 the record contains evidence that only one of the minors had been on the licensed premises more than once. With respect to that minor, she had only been on the premises on one additional occasion. There were therefore, not enough visits to the licensed premises by any of the minors to sustain a charge of frequenting. Consequently, therefore, Count 2 of the citation is dismissed.

PRIOR RECORD:

Licensee has been licensed since January 14, 2002, and has had two prior violations:

Citation No. 04-2222. Fine \$700.00.

1. Issued worthless checks in payment for malt or brewed beverages. June 28, 2004.
2. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store. August 18, 2004.
3. Refilled liquor bottles. August 18, 2004.

Citation No. 05-2087. Fine \$2,000.00 and 3 days suspension with thereafter conditions.

1. Sales after the hotel liquor license expired and had not been renewed. August 15, 2005.
2. Licensed corporation was not the only one pecuniarily interested in the operation of the licensed business. December 2003 through August 22, 2005.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years immediately preceding August 22, 2005.
4. Failed to keep records on the licensed premises. August 22 and 29, 2005.
5. Failed to notify the Board within 15 days of a change of officers. December, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Under the circumstances of this case, the penalty imposed shall be as follows:

- Count 1 - \$1,250.00 and mandatory RAMP training
- Count 2 – dismissed

ORDER

THEREFORE, it is hereby ordered that Licensee HP JOINT VENTURE, pay a fine of \$1,250.00 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.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us) within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued.

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the liquor Code [47 P.S. §4-471(d)].

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 24th day of October, 2007.

Daniel T. Flaherty, Jr., J.

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MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

Detach here and submit stub with payment

The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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

Citation No. 05-2658