

Mailing Date: APR 18 2007

[Appeal](#)

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

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|----------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 05-2791 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W01-322389 |
| v. | : | |
| | : | LID - 50424 |
| PARTH CORPORATION | : | |
| 3218-20 RED LION RD | : | |
| PHILADELPHIA PA 19114-1109 | : | |
| | : | |
| | : | |
| | : | |
| PHILADELPHIA COUNTY | : | |
| LICENSE NO. E-SS-4125 | : | BEFORE: JUDGE SHENKLE |

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.
For Licensee: Edward A. Taraskus, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on January 9, 2006. There are two counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4493(1), on November 17, 2005, and on divers other occasions within the past year, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, nineteen years of age.

The second count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4493(14), on November 17, 2005, and on divers other occasions within the past year, by permitting one male minor, nineteen years of age, to frequent its licensed premises.

A hearing was held on February 15, 2007, in Plymouth Meeting, Pennsylvania.

FINDINGS OF FACT:

1. On November 17, 2005, a man whose birth date was August 9, 1986, purchased a 40ounce bottle of beer in the licensed premises. He was not accompanied by a parent or guardian, and his age was not questioned (N.T. 13-14).

2. During the year preceding November 17, 2005, this man had visited the premises fifteen or more times, not accompanied by his parent or guardian. On some of these occasions his age was questioned, and in response he displayed the expired Pennsylvania driver's license of an adult friend whom he resembles. The expired license had a hole punched in it (N.T. 15-17).

3. On November 18, 2005, the Bureau opened an investigation, which was closed on November 22, 2005. The Bureau sent notice to the licensed premises of the results of its investigation on December 9, 2005 (N.T. 8-9, Exhibit B-1).

4. This citation was filed on January 9, 2006, and a copy of it was mailed to Licensee on the same date (N.T. 10-11, Exhibit B-2).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Licensee presented evidence contrary to that presented by the Bureau, to the effect that this minor's card was run through a transaction scan device on every occasion and it was found to be valid. I resolved the discrepancy against Licensee, basing my judgment on the demeanor of the witnesses.

I do not understand what good a transaction scan device is if it does not produce a record which may be used to refute evidence such as that presented in this case. A photocopy machine, as authorized by 47 P.S. §4-495(f), would seem to be a better choice in these circumstances.

Since I have found, based on the minor's testimony, that the identification he used on previous occasions was an expired license (this fact made obvious by a punched hole), I must necessarily find that the identification used did not comply with 47 P.S. §4-495(a).

Licensee did pass an age compliance check conducted by the Bureau on June 22, 2006, so I recognize that Licensee's management takes this problem seriously; however, I find no evidence in the computer records of the PLCB that Licensee has complied with 47 P.S. §4-471.1 at any time.

Under the circumstances described below, I am required by law to order Licensee to become compliant with 47 P.S. §4-471.1 and to remain in that state for one year.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239 OF 2004

Section 479 of the Liquor Code, 47 P.S. §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 has been cited for a violation of §471 of the Liquor Code, 47 P.S. §4-471, on or after February 6,

2005, must have points assessed as of the date of the final adjudication. Points are in addition to other provisions of the Liquor Code regarding license transfer and renewal. Points are required to be assigned in addition to 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 §479.

Section 481(a), 47 P.S. §4-481(a) provides that when any license accumulates ten points or more, the administrative law judge must require the license holder to become compliant with and remain compliant with the provisions of §471.1, 47 P.S. §4-471.1, relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an order within ninety days will result in two additional points being assessed against the license record.

Section 481(b), 47 P.S. §4-481(b) provides that when any license accumulates fifteen points or more, the administrative law judge must 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 §471.1, two additional points will be removed from the license record.

Notwithstanding other provisions of the Act, §481(c), 47 P.S. §4-481(c), provides that when any license accumulates twenty or more points in more than one citation, the administrative law judge must revoke the license.

PRIOR RECORD:

Licensee has been licensed since December 5, 2002, 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 in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case. I will consolidate these two counts for penalty purposes and impose a fine of \$1,250.00. For the purpose of assessing points under Act 239, however, 47 P.S. §4479(b) requires that each count of this citation result in assessment of at least five points.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Parth Corporation, License No. ESS-4125, shall pay a fine of one thousand two hundred fifty dollars (\$1,250.00) 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.

IT IS FURTHER ORDERED that ten (10) points are hereby assessed against the record of Licensee, Parth Corporation, License No. E-SS-4125, as required by 47 P.S. §479(b)(1) & 479(b)(3).

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. Within thirty (30) days after the mailing date of this adjudication, Licensee shall contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; Web Site: www.lcb.state.pa.us) in order to receive assistance in the compliance process. Licensee must receive certification within ninety (90) days after 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. Section 4-471(d).

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 11th day of April, 2007.

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.