

Mailing Date: July 25, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-0476
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

6233 HUYNH, INC. : License No. R-5419
6233 Lancaster Avenue :
Philadelphia, PA 19151-2619 :

Counsel for Licensee: Edward A. Taraskus, Esquire
The Philadelphia Building
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Counsel for Bureau: James E. Dailey, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue
Philadelphia, PA 19142

OPINION

6233 Huynh, Inc. (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Tania E. Wright (“ALJ”), wherein the ALJ sustained the citation, imposed a one thousand two hundred and fifty dollar (\$1,250.00) fine and assessed five (5) points against the record of Licensee.

The first count of the citation charged that, on December 9, 2005, and divers other occasions within the past year, 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 and four (4) female minors, eighteen (18) to twenty (20) years of age.

The second count of the citation charged that, on December 9, 2005, and divers other occasions within the past year, Licensee, by its servants, agents or employees, violated section 493(14) of the Liquor Code [47 P.S. § 4-493(14)] by permitting two (2) male minors and four (4) female minors, eighteen (18) to twenty (20) years of age, to frequent the licensed premises.

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 that the decision of the ALJ was not based on substantial evidence. Specifically, Licensee asserts that the assessment of points pursuant to Act 239 of 2004, section 479 of the Liquor Code [47 P.S. § 4-479], violates the Constitution of the United States, in that it violates due process and the equal protection of laws, since it only applies to retail licensees in Philadelphia County.

The parties stipulated that, on Friday, December 9, 2005, two (2) Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) officers took up surveillance outside the licensed premises. (Ex. B-3). During the surveillance the officers observed two (2) youthful appearing patrons, one (1) male and one (1) female, enter the licensed premises. (Ex. B-3). After following behind the two (2) youthful appearing patrons as they entered and then departed the premises, each officer identified themselves and asked the two (2) individuals to provide identification. (Ex. B-3). The identification provided showed each of the two (2) individuals questioned to be twenty (20) years old. (Ex. B-3).

Also on December 9, 2005, three (3) other youthful appearing females entered the licensed premises and were permitted to purchase Miller Lite, Coors Light and Natural Light Beer. (Ex. B-3). After being questioned by the Bureau officers, the three (3) youthful appearing patrons presented identification which showed two (2) of the females to be eighteen (18) years of age and the third female to be nineteen (19) years of age. (Ex. B-3). While citing the three (3) females for underage possession, one (1) of the Bureau officers observed a male patron purchase a six (6)-pack of Victory Monkey Beer. (Ex. B-3). Upon request for identification, the male patron produced identification which showed him to be twenty (20) years of age. (Ex. B-3).

At the hearing before the ALJ, both parties agreed that the Bureau had insufficient evidence on the day of hearing to support the second count of the citation.¹

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

¹ The ALJ sustained only the first count of the citation and dismissed the second count for lack of evidence.

liquor or malt or brewed beverages to be sold, furnished or given . . . to any minor . . .”. [47 P.S. § 4-493(1)].

Licensee raises no issues on appeal relative to the ALJ’s conclusions that, on December 9, 2005, and divers other occasions within the past year, Licensee furnished or gave alcoholic beverages to two (2) male minors and four (4) female minors, eighteen (18) to twenty (20) years of age, in violation of section 493(1) of the Liquor Code.

Relative to Licensee’s contentions that the assessment of points pursuant to Liquor Code section 479 [47 P.S. § 4-479] is unconstitutional, the Board is without authority to rule on the constitutionality of its enabling legislation, or the constitutionality of its own regulations. Bunch v. Bd. of Auctioneer Examiners, 620 A.2d 578 (Pa. Cmwlth. 1993).²

Based upon the foregoing, the Board finds that the ALJ’s decision is supported by substantial evidence and is, therefore, affirmed.

² As of the date of issuance of this Opinion, the Board acknowledges that the legislation instituting the point assessment system [47 P.S. § 4-479] passed out of existence on its sunset date of June 30, 2007. However, in as much as the points assessed against Licensee were as a result of a violation occurring on December 9, 2005, they were valid and in accordance with the statute existing at the time. Therefore, the Board has no basis upon which to change or modify the ALJ’s decision.

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 fifty (\$1,250.00) dollars.

The five (5) points assessed against Licensee's license remains in effect pursuant to section 479 of the Liquor Code [47 P.S. § 4-479].

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

Board Secretary