

Mailing Date: MAY 22 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0519
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-323184
v.	:	
	:	LID - 55203
THE CORNER SPOT, INC.	:	
2253 E. CLEARFIELD STREET	:	
PHILADELPHIA, PA 19134-3748	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-PSS-PEHF-1140	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
James E. Dailey, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Philadelphia, PA 19142

For Licensee
Edward B. McHugh, Esquire
Two Greenwood Square
3331 Street Road
Suite 450
Bensalem, PA 19020

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 14, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Corner Spot, Inc. (Licensee), License Number R-PSS-PEHF-1140.

The citation¹ charges Licensee with violations of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on November 25 and 26, 2005, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, twenty (20) years of age.

An evidentiary hearing was conducted on April 23, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #1, Philadelphia, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on December 3, 2005 and completed it on January 27, 2006. (Commonwealth Exhibit No. B-1, N.T. 56)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on February 6, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 56)
3. On November 25, 2006, a twenty year old (born September 14, 1985) was at the licensed premises. She was not served any alcoholic beverages. (N.T. 14-15)
4. She was inside the premises looking for her boyfriend. She had been waiting outside for about ten minutes and wondered if her boyfriend might be inside. She was stopped by a Municipal Police Officer about five minutes after she walked into the premises. (N.T. 23)

1. Commonwealth Exhibit No. B-2, N.T. 56.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau has **failed to prove** that on November 25 and 26, 2005, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, twenty (20) years of age.

DISCUSSION:

After carefully reviewing the record and assessing witness demeanor, I am firmly convinced the Bureau's witness (a minor), was entirely truthful when she testified that she had no alcoholic beverages on the night in question.

It is true the young lady provided the Bureau Enforcement Officer a written statement (Commonwealth Exhibit No. B-3), indicating she was served two cans of beer. Nevertheless, I believe she was truthful when, at the hearing, she explained she signed that statement because she was nervous and scared (N.T. 20). Finally, as a general rule, I find testimony provided before me, under oath and subject to cross-examination, to have more value than statements made prior to the hearing.

I find the Municipal Police Officer's testimony to be untrustworthy. That Officer first explained he saw the young lady seated at the bar with a can of beer in front of her (N.T. 36). It was not too much later in that Officer's testimony that he saw the young lady sitting with a beer in her hand (N.T. 41).

As if that weren't enough, the Citation for underage drinking issued to the minor (Licensee's Exhibit No. L-1) describes the nature of the minor's offense in a different manner than that testified to by the Municipal Police Officer. The Citation alleges the minor purchased and consumed five bottles of beer. When questioned as to where the Municipal Police Officer got that information to put in the Citation, he remarked the young lady told him so (N.T. 51). The question in my mind is why that Officer needed to get any information from the minor regarding what she drank when he claims in this hearing, he saw her holding a can of beer?

Finally, I question why the inconsistency in what the minor supposedly drank as stated in the Citation (Licensee's Exhibit No. L-1), when compared to that of her statement (Commonwealth Exhibit No. B-3), did not raise a question of credibility with the investigating Bureau Enforcement Officer. Certainly, one might expect such a discrepancy would provoke deeper investigation.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 06-0519, issued against The Corner Spot, Inc., is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 15th day of May, 2007.

Felix Thau, A.L.J.

pm

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