

Mailing Date: NOV 09 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0690C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-325854
v.	:	
	:	LID - 46704
OLD BLUE STAR, INC.	:	
602 W. KING ST.	:	
LANCASTER, PA 17603-3633	:	
	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. H-AP-SS-EHF-1159	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Thomas M. Ballaron, Esquire

For Licensee  
Matthew A. Grosh, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on April 6, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against OLD BLUE STAR, INC., License Number H-AP-SS-EHF-1159 (hereinafter "Licensee").

The citation contains three 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 January 29, 2006, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one female minor, twenty years of age.

The second count charges Licensee with violation of Section 493(2) of the Liquor Code [47 P.S. §4-493(2)] and Sections 11.192 and 11.193 of the Liquor Control Board Regulations [40 Pa. Code §§11.192 and 11.193] in that on February 13, 2006, Licensee, by its servants, agents or employes, sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.

The third count charges Licensee with violation of Sections 102 and 461(c) of the Liquor Code [47 P.S. §§1-102 and 4-461(c)] in that on January 29, February 13, 2006 and divers other occasions during the previous thirty days, the licensed premises was not a bona fide hotel in that bedrooms maintained for the accommodation of guests were insufficient in number and/or inadequately equipped.

The investigation which gave rise to the citation began on January 13, 2006 and was completed on February 13, 2006; and notice of the violation was sent to Licensee by Certified Mail on March 8, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 23, 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:

COUNT 1

1. On January 29, 2006 a 20 year old female patron entered the take out portion of the licensed premises (Stipulation N.T. 9).
2. The aforementioned minor requested a 40 ounce bottle of Miller Lite beer from the employe of Licensee. The employe retrieved a 40 ounce bottle of Miller Lite beer, and provided it to the minor. The minor tendered a \$20.00 bill for payment and received \$17.00 in change (Stipulation N.T. 9).
3. The minor immediately left the licensed premises (Stipulation N.T. 9).

COUNT 2

4. On February 13, 2006 two officers of the Bureau conducted an open inspection of the licensed premises (Stipulation N.T. 10).
5. During the inspection one of the officers observed credit slips behind the bar (Stipulation N.T. 10).

6. The officer inquired of Licensee's corporate principal concerning the credit slips. The principal, Mr. Papadopoulos admitted that they were credit slips for three individual patrons who were "running tabs." (Stipulation N.T. 10).

COUNT 3

7. During the inspection on February 13, 2006 the officers asked Licensee's corporate principal to take them on a tour of the rooms which were supposed to be available to the public (Stipulation N.T. 11-12).

8. During the aforementioned inspection the officers found that none of the hotel rooms had furnishings. There were damages to the walls and ceilings caused by water. One room had extensive floor damage caused by water. The door jams and locks were broken on most of the rooms. Several lacked window glass with the glass being broken (Stipulation N.T. 11-12).

9. On May 26, 2006 Licensee applied for an exemption pursuant to Section 461(c)(9) of the Liquor Code [47 P.S. §4-461(c)(9)] providing an exemption for grandfathered hotel licensees to be able to continue to operate without having rooms habitable for the public. The application was in good form, and as of the date of the hearing had not been addressed by the Board (Stipulation N.T. 12-13).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

DISCUSSION:

At the hearing in this matter, counsel for the Bureau and counsel for Licensee stipulated to the facts establishing the violations in this case.

PRIOR RECORD:

Licensee has been licensed since September 1, 2000, and has had six prior violations:

Citation No. 02-0617. Fine \$250.00.

1. Sold an unlimited or indefinite amount of alcoholic beverages for a fixed price. December 20, 2001.

Citation No. 04-0254. Fine \$3,750.00.

1. Sales to visibly intoxicated persons. May 17, 2003.
2. Used loudspeakers or devices whereby music could be heard outside. February 20, 26, March 5, 12, April 3, 9, 23 and May 8, 2003.

3. Noisy and/or disorderly operation. February 20, 26, March 5, 12, April 3, 9, 23 and May 8, 2003.
4. Sales between 2:00 a.m. and 7:00 a.m. December 27, 2003.
5. Engaged in unlawful discrimination in that you admitted female patrons free of charge while charging an admission fee to male patrons. October 16 and November 13, 2003.

Citation No. 04-2041. Fine \$2,000.00.

1. Sales to visibly intoxicated persons. September 4, 2004.

Citation No. 05-0435. Fine \$1,100.00.

1. Sold liquor for consumption off premises. January 19 and 22, 2005.
2. Failed to constantly and conspicuously expose your license under a transparent substance. November 24, December 6, 7, 2004 and January 19, 2005.
3. Discounted the price of alcoholic beverages in excess of 2 hours in a business day. January 19, 2005.
4. Used loudspeakers or devices whereby music could be heard outside. December 23, 2004.

Citation No. 05-0998. Fine \$1,200.00 and 1 day suspension.

1. Sales to a minor. April 14, 2005.

Citation No. 05-2550. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. August 10, 2005.

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 Count 1 of this case. Further, Section 471(c) requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Counts 2 and 3 of this case.

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

- Count 1 - \$2,500.00 and one day suspension and RAMP training
- Count 2 - \$250.00 fine
- Count 3 - \$250.00 fine and one day suspension.

### ORDER

THEREFORE, it is hereby ordered that Licensee OLD BLUE STAR, INC., pay a fine of \$3,000.00 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.

THEREFORE, IT IS HEREBY ORDERED that the hotel liquor license of OLD BLUE STAR, INC., License No. H-AP-SS-EHF-1159 be suspended for a period of two days. However, the suspension period is deferred pending reactivation of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing notify the Office of Administrative Law Judge of the reactivation of Licensee's license so an Order may be entered fixing the dates for suspension.

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](http://www.lcb.state.pa.us); Email Address: [LBEducation@state.pa.us](mailto: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 was issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

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)].

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

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

Dated this 26<sup>th</sup> day of October, 2006.

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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.**