

Mailing Date: AUG 30 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0798
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-328411
	:	
MAD RIVER PHILLY LLC	:	
126 CHESTNUT ST.	:	LID - 53531
PHILADELPHIA PA 19106-3009	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-16306	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK SHMUKLER, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 11, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Mad River Philly, LLC, License Number R-AP-SS-16306 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, November 9, 2006, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation, and to a summary of the facts.

The citation contains two counts.

The first count charges Licensee with violation of Section 5.32(f)(3) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(f)(3), in that on February 25, 2006, Licensee, by its servants, agents or employees, held a contest, event or tournament on the licensed premises which involved the consumption of alcoholic beverages.

The second count charges Licensee with violation of Section 13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code Section 13.102(a)(3), in that on February 25, 2006, Licensee, by its servants, agents or employees, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited well drinks and domestic draft beers were served for the price of \$30.00.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Officer Dan Harris is employed by the Bureau of Enforcement and has been so employed for approximately six years. On Saturday, February 25, 2006 at approximately 9:00 p.m., he visited the licensed premises. He was assigned to investigate the report of an open bar and a tournament (N.T. 5).

2. As the officer approached the premises, he saw a male doorman asking for identification. After he showed him his identification, he was allowed to enter. To the officer's right, he saw a podium set up and he approached two attendants. One of the individuals behind the podium stated to him that there was a thirty-dollar open bar. The officer gave him forty dollars and he was given ten dollars in change. The individual behind the podium also mentioned that there was a tip or flip cup tournament upstairs (N.T. 7-8).

3. After the officer paid the thirty dollars, he was not questioned as to whether he was there as a part of a group or there for an event. No one checked the guest list for the officer's name (N.T. 8).

4. The officer approached the main bar. He was planning to order a drink but the bar was crowded, so he went to a smaller bar at the back. There was a male and female behind the bar. The officer ordered a draft beer and the gentleman told him that they only had liquor at that particular bar. The officer then returned to the main bar and ordered a Budweiser draft beer. The female bartender grabbed a pint glass, but noticed the officer's wristband and replaced the glass with a plastic cup and poured him a Budweiser beer. He was not charged for the beer (N.T. 8-9).

5. The officer proceeded to the bottom of some steps where a male attendant stopped him and asked him if he had a wristband. He showed him the wristband and he was allowed to proceed to the second floor. Once on the second floor, the officer observed four tables set up. There were people lined up across the table flipping and pouring beer into cups. The officer explained that a flip cup tournament was a drinking game with opposing teams. The cups are filled with beer and one of the team members drinks the cup of beer and when finished drinking the contents of the cup, the cup is turned upside down over the edge of the table. With their fingers the person attempts to flip the cup upright. Once they have completed that, the next person on their team will drink the contents of the cup, until the last person is done. When all team members have completed all steps before the other team, a winner is declared (N.T. 5-6).

6. The officer had a conversation with one of the participants of the tournament who explained to him that the winner would be the team who did the best out of seven games. The officer observed a white dry erase board on an easel, which contained the names of the different teams. Some of those team members had t-shirts with team names written on the t-shirts. Some of the names corresponded with the names on the dry erase board (N.T. 11).

7. While the officer was there on the premises, he ordered draft beers and mixed rum and coke from a female bartender. He was not charged for any of the alcoholic beverages (N.T. 11).

8. The officer found no food while he was upstairs (N.T. 12).

9. The officer did not take part in the tournament (N.T. 12).

10. The officer did not see any balloons or banners or any chafing dishes of food (N.T. 13).

11. The officer noted that some patrons had wristbands and others did not (N.T. 15).

12. Approximately two and a half hours of the officer's time was spent on the second floor of the premises (N.T. 16).

13. The officer looked to see if there was any food on the premises, but he did not attempt to order any food (N.T. 17).

14. There was no mention of food in the investigative report (N.T. 17).

15. The officer did not request the catering records. This was his only visit to the premises (N.T. 18).

16. The officer did not recall anyone on the second floor who did not have on a wristband (N.T. 19).

17. Maxwell Tucker is the general manager of the licensed premises and has held the position since October, 2004 (N.T. 22).

18. Mr. Tucker indicated that on February 25, 2006, there was a private party on the second floor. Mr. Tucker indicated that it was supposed to be pre-contracted by the teams and that that is why people had team t-shirts on. The tournament was not supposed to be open to the public. The only people who were supposed to go upstairs were people who were with this party. Mr. Tucker indicated that the wristband was for drinks and food and that supposedly there were two trays of pasta available (N.T. 24-25).

19. Mr. Tucker indicated that there is a menu with food to order downstairs (N.T. 25).

20. An agreement was presented which indicated that from 8:00 to 11:00 p.m. on February 25, 2006, Mile Marker 13 Productions was organizing the event in conjunction with Third Base Productions. The establishment would provide someone to collect money at the door and check the guest list. The agreement states that there would be pasta trays and unlimited amount of alcohol for the extent of the party. The agreement further indicates that the licensed premises would provide a straight commission of ten dollars per person to Mile Marker 13 Productions (N.T. 25=26 and Exhibit L-1).

21. The date of February 25, 2006 is referenced within the document. The document itself, however, is not dated (N.T. 27 and Exhibit L-1).

22. The officer testified that the agreement was entered into in November, 2005 (N.T. 29).

CONCLUSIONS OF LAW:

Count No. 1 - On February 25, 2006, Licensee, by its servants, agents or employes, held a contest, event or tournament on the licensed premises which involved the consumption of alcoholic beverages, in violation of Section 5.32(f)(3) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(f)(3).

Count No. 2 - On February 25, 2006, Licensee, by its servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited well drinks and domestic draft beers were served for the price of \$30.00, in violation of Section 13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code Section 13.102(a)(3).

PRIOR RECORD:

Licensee has been licensed since October 8, 2004, and has a record of prior violations as follows:

Citation No. 05-1377. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
April 12, 2005.

Citation No. 05-2176. \$300.00 fine.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price.
September 17, 2005.

DISCUSSION:

If there was in fact a formal agreement with regard to this event, it was not properly executed. The drinking game, which seemingly is potentially unhealthy and unlawful, and presents a danger of excessive consumption of alcoholic beverages offering unlimited or indefinite amount of alcoholic beverages for a fixed price also promotes an over consumption of alcoholic beverages. This event was in fact open to the public and all that was required was that the patron pay the thirty dollars for the wristband. Alcoholic beverages were available both upstairs and downstairs with no charge, simply by showing the wristband.

The officer saw no food of any kind on the second floor. There was no pasta available, as stated by Licensee and by the agreement. The event was no doubt pre-planned, but not a catered event such that the Liquor Code would permit alcoholic beverage service of this nature.

The citation history indicates that there is a prior violation in September, 2005 for service of an unlimited amount of alcoholic beverages. After careful consideration, an \$800.00 penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$400.00.
- Count No. 2 - \$400.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Mad River Philly, LLC, License Number R-AP-SS-16306, pay a fine of Eight Hundred Dollars (\$800.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Dated this 22nd day of August, 2007.

Tania E. Wright, J.

NOTE: 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.

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