Mailing Date: DEC 13 2006

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 06-0981
	:	Incident No. W05-329549
v.	:	
	:	LID - 20536
ALL AMERICAN RATHSKELLER, INC. T/A ALL AMERICAN RATHSKELLER 108 S. PUGH ST. & 142 E. COLLEGE AVE. STATE COLLEGE, PA 16801-4708	:	
CENTRE COUNTY LICENSE NO. R-AP-SS-EHF-19800	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Michael C. Nickles, Esquire
Governor's Office of General Counsel
Pennsylvania State Police
313 Mt. Nebo Road
Pittsburgh, PA 15237

For Licensee
Karen G. Muir, Esquire
1315 W. College Avenue
Suite 300
State College, PA 16801

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 26, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against All American Rathskeller, Inc., t/a All American Rathskeller (Licensee), License Number R-AP-SS-EHF-19800.

The citation[1] charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on March 17, 2006, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age.

An evidentiary hearing was conducted on October 26, 2006 at the Hampton Inn, 180 Charlotte Drive, Altoona, 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 and completed its investigation on March 17, 2006. (Commonwealth Exhibit No. C-1, N.T. 10)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on March 31, 2006. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 10)

3. On March 17, 2006, a twenty year old entered the premises using false identification. The identification was false in the sense that it was a legitimate Pennsylvania Photo Driver's license issued to another individual. The twenty year old subsequently drank beer. (N.T. 10-12)

4. Licensee's Manager was given an informational booklet (PLCB-89, dated April, 2005), during the Owner/Manager RAMP Training, both before and after the events in question. The Manager was particularly influenced by the information on page 16, which states that Licensees "may" use several systems listed therein as additional proof of age. The Manager interpreted that information to mean Licensee was not required to use any of the three alternatives listed as a matter of law. Licensee would therefore be able to defend against a citation such as this without the need to employ any of the three methods. (N.T. 22-24)

1. Commonwealth Exhibit No. C-2, N.T. 10.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. The citation is **sustained** as charged.

DISCUSSION:

Licensee first argues that ***CSC Enterprises v. State Police,*** 782 A.2d 57 (Pa.Cmwlth. 2001), mandates that I dismiss this matter as Licensee complied with the statutory requirements of the affirmative defense as more fully set forth in Liquor Code Section 495. Because of the reasoning I expressed in ***The Penalty Box Tavern, Inc.***, Citation No. 06-0944C (www.lcb.state.pa.us/webapp/Legal/PublicAdjudicationSrch.asp.), I cannot agree. Licensee did not take any of the three alternative measures required by Liquor Code Section 495.

Licensee next interposes what amounts to an estoppel defense by arguing that the information provided by Owner/Manager RAMP Training, more particularly page 16 of informational booklet PLCB-89, is misleading. So too, Licensee argues, is the response to the last question appearing on page 7 of a series of questions entitled: RAMP Frequently Asked Questions, found at: www.lcb.state.pa.us/webapp/edu/RAMP/Faqs2.asp?idnum=51.

After carefully evaluating Licensee's position, I conclude Licensee is not entitled to an estoppel defense. Critical to this determination is the accuracy of the information provided in the informational booklet as well as the link to the Pennsylvania Liquor Control Board's website, above referenced. The contents of the informational booklet, when taken as a whole, are entirely accurate. So too is the relevant information provided at the Pennsylvania Liquor Control Board's website.

Licensees are not required to employ any of the three methods listed in the informational booklet and as repeated at the above link. Thus, the use of the word "may" is wholly appropriate. However, as both the informational booklet and the link indicate, if a licensee wishes to avail itself of the statutory affirmative defense embodied in Liquor Code Section 495, one of the three methods must be employed.

Certainly, these written materials provided licensees are not the paradigm of clarity. However, our legal system does not mandate that rules be written in the clearest format possible. In fact, such a requirement would render every document, every rule, every regulation, every statute unenforceable as, in reality, clarity is but an ideal. No matter how transparent a writing may be to legions of rational individuals, there will inevitably be one for whom that writing is befuddling.

PRIOR RECORD:

Licensee has been licensed since June 25, 1980, and has had one prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication No. 92-0589. Fine $100.00.

1. Failed to have a sufficient quantity on hand of a particular brand of malt or brewed beverages as advertised for sale.
2. Failed to label beer taps properly.

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 this case.

However, if at the time of violation, the licensee was in compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to Responsible Alcohol Management and the licensee had not sold to minors in the previous four years, Liquor Code Section 471(b) [47 P.S. §4-471(b)] provides for a fine structure of $50.00 to $1,000.00.

I expressed at the hearing, I find Licensee to be highly responsible and driven by the goal of excellence in its adherence to the Liquor Code. As Licensee was R.A.M.P. certified on November 1, 2004, I impose a $300.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of $300.00 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.

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, Pennsylvania 17110-9661

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this __5th__ day of December, 2006.

_____
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.