

Mailing Date: SEP 5 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1010C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-327382
	:	
VESUVIO RESTAURANT & BAR INC.	:	
736-738 S. 8 <sup>TH</sup> ST.	:	LID - 46689
PHILADELPHIA PA 19147-2839	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-11131	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EDWARD TARASKUS, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 2, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Vesuvio Restaurant & Bar, Inc., License Number R-AP-SS-OPS-11131 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, May 2, 2007, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on March 22, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

FINDINGS OF FACT:

1. Officer Clarke is employed by the Bureau of Enforcement and has been so employed since January, 2005. On March 22, 2006, he was working as the part of an age compliance detail. The detail of officers visited the licensed premises at 9:35 p.m. At the main entrance, the officer noted a white female bartender rendering service to approximately ten patrons (N.T. 7-8).

2. The bartender was later identified as Christy Giballa. At approximately 9:45 p.m., Underage Buyer No. 81 entered the premises. Officer Clarke was seated at the far end of the bar and watched the Underage Buyer approach. The bartender came up to him and asked him what he wanted to drink. The Underage Buyer responded that he wanted the Heineken and she served him a twelve ounce bottle of Heineken. He gave her a five dollar bill and returned with his change (N.T. 8-9).

3. The Underage Buyer remained in the officer's sight at all times (N.T. 9).

4. The bartender never asked the Underage Buyer for his name or any identification. After the Underage Buyer departed the premises, the officer remained inside (N.T. 9).

5. Approximately ten minutes after the Underage Buyer departed, officers from the Bureau of Enforcement entered the premises and approached the bartender notifying her that she had served a minor who was participating in the age compliance detail (N.T. 9-10).

6. The Underage Buyer did not consume any alcoholic beverage while at the licensed premises (N.T. 10).

7. Officer Clarke had visited the licensed premises on prior occasions and found no violations (N.T. 10-11).

8. Underage Buyer No. 81 was born January 31, 1987 and was twenty years of age at the time of the March 22, 2006 visit to the licensed premises. He entered the premises at 9:40 p.m., went to the bar and asked the female bartender for a Heineken beer. He gave her five dollars and she gave him fifty cents back. She did not ask for identification nor did he present any identification. She gave him the Heineken, he opened it and left the Heineken in his hand and went outside to meet the other officers. He handed the beer over to the officer and reported the transaction inside. He consumed no alcoholic beverages during his visit (N.T. 13-14).

9. Jerry D'Addesi is the secretary and treasurer of the licensed premises. He indicated that he terminated his bartender based upon the selling of alcoholic beverages to the underage buyer (N.T. 17).

10. He also indicated that it is their policy to card all youthful appearing patrons (N.T. 17).

CONCLUSIONS OF LAW:

On March 22, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

PRIOR RECORD:

Licensee has been licensed since September 12, 2000, and has no record of prior violations.

DISCUSSION:

The Licensee, through their bartender, served alcoholic beverages to an underage buyer. The Licensee must become certified through R.A.M.P. and remain so certified for a period of one year. In that the premises has been licensed since September 12, 2000 and has no history of prior violations, a \$1,250.00 fine shall be imposed along with mandatory participation in the R.A.M.P. program.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Vesuvio Restaurant & Bar, Inc., License Number R-AP-SS-OPS-11131, pay a fine of One Thousand Two Hundred Fifty Dollars (\$1,250.00) 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.

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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. The Licensee is directed to contact 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)) within thirty (30) days of the mailing date of this Adjudication in order to receive assistance in the compliance process. Licensee must receive Certification within ninety (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 is 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. Section 4-471(d).

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

Dated this 27th day of August, 2008.

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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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Detach Here and Return Stub with Payment

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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

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