

Mailing Date: OCT 28 2008

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

|                            |   |                                |
|----------------------------|---|--------------------------------|
| PENNSYLVANIA STATE         | : |                                |
| POLICE, BUREAU OF          | : | Citation Nos. 06-0080C         |
| LIQUOR CONTROL ENFORCEMENT | : | & 06-1012                      |
|                            | : | (Consolidated as No. 06-0080C) |
| v.                         | : |                                |
|                            | : | Incident Nos. W09-323179       |
| SNK SUBURBAN CORPORATION   | : | & W09-322683                   |
| T/A FUJI MOUNTAIN WEST     | : |                                |
| 14 N MERION AVE            | : | LID - 45322                    |
| BRYN MAWR PA 19010-3013    | : |                                |
|                            | : |                                |
| MONTGOMERY COUNTY          | : |                                |
| LICENSE NO. R-SS-9216      | : | BEFORE: JUDGE SHENKLE          |

APPEARANCES:

For Bureau of Enforcement: Roy Harkavy, Esq.  
For Licensee: John J. McCreesh, III, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued these citations on January 24 and May 3, 2006, respectively.

Citation No. 06-0080C

This citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on November 30, 2005, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one female and two male minors, nineteen to twenty years of age.

Citation No. 06-1012

There are two counts in this citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on October 21, 2005, January 19, 2006, and on divers other occasions within the past year, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to eighteen male minors and twenty-one female minors, eighteen to twenty years of age.

The second count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on October 21, 2005, January 19, 2006, and on divers other occasions within the past year, by permitting eighteen male minors and twenty-one female minors, eighteen to twenty years of age, to frequent its licensed premises.

A hearing was held on May 7, 2008, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letters and citations.

FINDINGS OF FACT:

1. The investigation which resulted in the issuance of Citation No. 06-0080C began on November 30, 2005, and was completed on December 8, 2005 (Exhibit C-1).

2. On November 30, 2005, a man whose birth date was June 25, 1986, entered the licensed premises at about 8:55 p.m. and ordered a bottle of Asahi beer from the bartender. The bartender asked the man for ID, and the man handed over his valid Pennsylvania Junior Driver's License, proving that he was a minor. The bartender looked at it and then served the beer requested (N.T. 10-12, Exhibit C-3).

3. The investigation which resulted in the issuance of Citation No. 06-1012 began on October 31, 2005, and was completed on March 9, 2006 (Exhibit C-1).

4. The parties stipulated that seven witnesses identified in the Bureau's prehearing memorandum were present at the hearing and prepared to testify in pertinent part as follows:

| Witness Birth Date | Witness Age on Date Charged | Witness Gender | Witness Activity in the Licensed Premises | Prior Frequenting?          |
|--------------------|-----------------------------|----------------|---|-----------------------------|
| 12/13/86           | 18 on 10/21/05              | Male           | Possessed alcoholic beverages on 10/21/05 | No                          |
| 8/25/86            | 19 on 10/21/05              | Female         | Possessed alcoholic beverages on 10/21/05 | No                          |
| 5/18/86            | 19 on 10/21/05              | Male           | Possessed alcoholic beverages on 10/21/05 | No                          |
| 5/14/86            | 19 on 10/21/05              | Male           | Possessed alcoholic beverages on 10/21/05 | No                          |
| 12/14/84           | 20 on 10/21/05              | Male           | Possessed alcoholic beverages on 10/21/05 | No                          |
| 1/17/86            | 20 on 1/19/06               | Male           | Possessed alcoholic beverages on 1/19/06  | 3-4 times in preceding year |
| 10/5/85            | 20 on 1/19/06               | Male           | Possessed alcoholic beverages on 1/19/06  | No                          |

(N.T. 25-26)

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on October 21, November 30, 2005, and January 19, 2006, by selling alcoholic beverages to seven male minors and one female minor, eighteen to twenty years of age.

Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on January 19, 2006, and on divers other occasions within the preceding year, by permitting one male minor to frequent its licensed premises.

DISCUSSION:

Counsel for Licensee argued that these citations should be combined as one, based on the fact that the investigation period for Citation No. 06-0080C was November 30, 2005, through December 8, 2005, and the investigation period for Citation No. 06-1012 was October 31, 2005, through March 9, 2006.

There is no question that there was already an investigation open at the time the Bureau initiated a second investigation, and that the second investigation came to an end while the first one was still going on. The second investigation occupied eight days, which were entirely overlapped by the four month period during which the first investigation was pending.

It appears that the Bureau opened the first investigation in response to a complaint from Lower Merion Township Police Department regarding sales to minors (N.T. 17). The second investigation was an age compliance check, a procedure authorized by Act 141 of December 3, 2002, 18 Pa. C.S.A. §6308(e). Different officers were involved in each of these investigations, and I have no reason to believe that either investigating officer knew of the pendency of the other's investigation.

The Bureau opposed the Licensee's request to combine the two citations as one (N.T. 28) and the question presented is whether it is appropriate or lawful for me to do so.

In *Case Beer & Soda Outlet, Inc.*, 2 Sel. Op. ALJ 124, a panel of administrative law judges considered a licensee's motion to consolidate three citations as one, on the theory of "consolidation or merger." The opinion writer, the Honorable Felix Thau, found these terms problematic. The authority cited, 1 Pa. Code §35.122, was held applicable only to consolidation for hearing purposes. The panel found that the regulation provided no support for an order of consolidation for all purposes, which would treat the separate citation matters as if they had been stated in one citation initially.

The judges noted their obligation under *PLCB v. The Gatling Saloon and Dance Hall Corp.*, 511 A.2d 272 (Pa. Cmwlth Ct. 1986) to determine the beginning and ending dates of the Bureau's investigation as a factual matter. The elements which led the judges to conclude in the *Case Beer & Soda* decision that there was a single continuing investigation included the identity of legal issues and conduct in all of the cases and the assignment of officers in all of the cases who were overseen by one Bureau official.

In *DBA, Inc.*, Citation Nos. 98-0644, 98-0825, 98-1050, 98-1217 and 98-1741, Judge Thau applied *Case Beer & Soda* to conclude that the first two of these citations constituted one investigation and the last three constituted another.

Thus it appears on the basis of this authority that investigations will be considered continuous, so as to result in a single citation, whenever there is more than one investigation involving the same subject, initiated in the same District Office of the Bureau of Liquor Control Enforcement, at the same time.

This analysis applies to the present set of facts, and the two citations will therefore be consolidated as Citation No. 06-0080C for all purposes.

PRIOR RECORD:

Licensee has been licensed since June 26, 2000, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of this type. The charge of minors frequenting will be considered to have merged with the charge of sales to minors for penalty purposes. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

ORDER

THEREFORE, it is hereby ORDERED that Citation Nos. 06-0080C & 06-1012 are hereby consolidated for all purposes as Citation No. 06-0080C.

IT IS FURTHER ORDERED that Licensee, SNK Suburban Corporation, t/a Fuji Mountain West, License No. R-SS-9216, shall pay a fine of one thousand two hundred fifty dollars (\$1,250.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

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: 1-866-275-8237; [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).

Dated this 22<sup>nd</sup> day of October, 2008.

  
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David L. Shenle, J.

jb

**NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.**

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 to:

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