

Mailing Date: DEC 13 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1061C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-321065
v.	:	
	:	LID - 33831
WATERING TROUGH, INC.	:	
T/A WATERING TROUGH	:	
905 W. MAIN ST.	:	
MOUNT JOY, PA 17552-1811	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-AP-SS-12572	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Andrew J. Lovette, Esquire

For Licensee  
Frank C. Sluzis, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 11, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against WATERING TROUGH, INC., License Number R-AP-SS-12572 (hereinafter "Licensee").

The citation contains two 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 February 12, 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 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on February 25, March 4 and 18, 2006, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The investigation which gave rise to the citation began on October 27, 2005 and was completed on March 27, 2006; and notice of the violation was sent to Licensee by Certified Mail on April 6, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 30, 2007 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. A.R.C. was born on September 14, 1985, and on February 12, 2006 she was 20 years of age (N.T. 24-25).
2. On February 12, 2006 A.R.C. walked into the licensed premises. She walked up to the bartender and asked for a 6-pack of Miller Lite beer in 12 ounce bottles (N.T. 25).
3. The bartender asked A.R.C. for identification and she presented her valid Pennsylvania Driver's license showing her date of birth to be September 14, 1985. The bartender looked at it and handed it back to her. She then went to the cooler, got the beverage, came back and told A.R.C. that the price was \$7.00. A.R.C. handed her a \$10.00 bill, and the bartender gave her \$3.00 in change (N.T. 25). A.R.C. then took the 6-pack and left the licensed premises.
4. Although Licensee has an electronic scanning device, the bartender did not scan the license presented by A.R.C. Further, the bartender did not ask A.R.C. to fill out a Declaration of Age Card, nor did she make a photostatic copy of the license (N.T. 43-44).

COUNT 2

5. On February 25, 2006 an officer of the Bureau arrived in the vicinity of the licensed premises. As soon as he arrived he immediately heard music emanating from the premises. He walked to the front door to verify that the music was coming from the licensed premises. He then conducted a sound check and could hear music emanating from the licensed premises at distances up to 190 feet (N.T. 14).

6. The officer returned to the licensed premises on February 25, 2006 and went inside where he observed that there was a band performing on that evening. The music from the band was amplified through loudspeakers (N.T. 14-15).

7. On March 4, 2006 the officer again arrived in the vicinity of the licensed premises and again heard music emanating from the licensed premises. He conducted a sound check and could hear music emanating from the licensed premises at distances up to 112 feet. He entered the licensed premises and observed that a band was playing music that was amplified through loudspeakers (N.T. 15).

8. On March 18, 2006 the officer again arrived at the licensed premises. He entered the premises and observed that a DJ was playing music for the entertainment of patrons. The music was amplified through loudspeakers. The officer exited the licensed premises at 1:20 a.m. where he heard music emanating from the licensed premises at distances up to 92 feet (N.T. 15-16).

CONCLUSIONS OF LAW:

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

DISCUSSION:

COUNT 1

The preponderance of the credible evidence establishes that the minor, acting as part of a compliance check, entered the licensed, ordered beer and showed her valid Pennsylvania Driver's license showing her to be under 21 years of age. Further, the bartender on duty in the licensed premises did not use an electronic swipe machine to check the ID presented by the minor. Further, she did not have the minor fill out a Declaration of Age Card nor did she photostat the ID presented by the minor. Under these circumstances, the charge in Count 1 of the citation is sustained.

In a liquor license case, the burden is on the Commonwealth to establish a violation by a clear preponderance of the evidence. *In re Omicron Enterprises*, 449 A.2d 857 (Pa.CmwltH 1982).

The phrase “preponderance of evidence” has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. *Black’s Law Dictionary, Fifth Edition*, West Publishing Company, Copyright 1979, Page 1064.

It is within my province, and is part of my responsibility to determine the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robinson*, 561 A.2d 82 (Pa.Cmwltth 1989). I may give testimony such consideration as it may deserve, and accept it or reject it in whole or in part. *McFarland Landscape Service v. Workmen’s Comp. Bd. Of Appeal*, 557 A.2d 816, 817-18 (Pa.Cmwltth 1989); *Hollenbach v. North Wales Foundry Co.*, 136 A.2d 148, 150 (Pa.Super 1957).

I find the testimony of the witnesses presented by the Bureau of Enforcement to be highly credible and I give that testimony great weight. The cumulative testimony of these witnesses establishes that the minor in question presented her valid Pennsylvania Driver’s license showing her to be under the age of 21 years.

In any event, even if the minor had shown another driver’s license showing her to be 21 years of age as alleged by Licensee’s bartender, it has been established that the only defense to serving a minor is by complying with the provisions of Section 495 of the Liquor Code [47 P.S. §4-495]. That Section requires that a licensee must either use an electronic swipe machine, or require the suspected individual to fill out a Declaration of Age card and sign it, or to make a photocopy of the license in question. None of these things was done in this case. Therefore, even if the minor had presented a photo identification showing her to be over the age of 21 years, Licensee did not comply with any of the options provided in Section 495 of the Liquor Code (supra).

Based on the foregoing, I conclude that the Bureau has met its burden and Count 1 of the Citation is sustained.

#### COUNT 2

The record clearly establishes that on the dates set forth in Count 2 of the citation the officer heard music amplified through loudspeakers emanating from the licensed premises. Under these circumstances, it is clear that a violation on each of these dates has been established, and Count 2 of the citation is sustained.

#### PRIOR RECORD:

Licensee has been licensed since April 28, 1994, and has had one prior violation:

Citation No. 96-0213. Fine \$1,000.00.

1. Sales to visibly intoxicated persons.

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.

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 Count 2 of this case.

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

Count 1 - \$1,250.00 fine and RAMP training  
Count 2 - \$ 350.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee WATERING TROUGH, INC., pay a fine of \$1,600.00 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.

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 is issued.

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)].

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

Dated this 29<sup>th</sup> day of November, 2007.

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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.**

**Detach here and submit stub with payment**

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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

Citation No. 06-1061C