

Mailing Date: OCT 26 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1100
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-330381
v.	:	
	:	LID - 54239
CFM MANAGEMENT CORP.	:	
101 S. VALLEY AVE.	:	
OLYPHANT, PA 18447-1952	:	
	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-SS-2464	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Craig Strong, Esquire

For Licensee  
Sal Cognetti, Jr., Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 17, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against CFM MANAGEMENT CORP., License Number R-SS-2464 (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 March 31, 2006, and ten unknown dates within the past year, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, eighteen years of age.

The second count charges Licensee with violation of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)] in that on March 31, 2006, and ten unknown dates within the past year, Licensee, by its servants, agents or employes, permitted one male minor, eighteen years of age, to frequent in the licensed premises.

The investigation which gave rise to the citation began on March 31, 2006 and was completed on April 3, 2006; and notice of the violation was sent to Licensee by Certified Mail on April 5, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 10, 2007 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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:

COUNTS 1 AND 2

1. M.J.S. was born on April 15, 1987, and, in March of 2006, he was 18 years old (N.T. 19-20).
2. On March 31, 2006 M.J.S. went to the licensed premises. He went inside by himself and went to the cooler where he obtained a six pack of Miller Lite beer which he took to the counter (N.T. 20-21).
3. The female counterperson asked M.J.S. for identification. M.J.S. produced an expired driver's license belonging to Mark Joseph Kulakowski showing a date of birth of August 30, 1984 (N.T. 10 and 21).
4. The female clerk took the identification presented by the minor and punched the date of birth on it into a device on the cash register. The cash register contained a device which required the service personnel to punch in the date of birth found on the identification presented. If the date of birth shown on the identification presented was not more than 21 years prior to the date of sale, the cash register would not open (N.T. 21-22 and 31-33).
5. The device used does not actually show whether the identification provided the purchaser is valid (N.T. 32-33).
6. M.J.S. had been on the licensed premises seven to ten times in the year prior to March 31, 2006. Each time he was on the premises he purchased alcohol using the ID used on March 31, 2006 (N.T. 22-23 and 26).

CONCLUSIONS OF LAW:

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

DISCUSSION:

The record in this case establishes that a minor, eighteen years of age, purchased alcoholic beverages on the licensed premises on the evening in question. Further, the record fails to establish a defense for Licensee.

The only valid defenses that a licensee may present to serving alcoholic beverages to a minor are found in Section 495 of the Liquor Code [47 P.S. §4-495]. These defenses require that the licensee be provided with a valid ID of the type enumerated in Section 495 of the Liquor Code (supra).

The three defenses found in Section 495 (supra) all require that Licensee present a valid identification as enumerated in that Section. The first defense requires that the suspected minor fill out a Declaration of Age Card containing the information required in Section 495. The second defense requires that the licensee make a photostatic copy of the identification in question and keep it on file. The third defense requires that licensee pass the identification card through a scanning device which verifies the validity of the card. The device is referred to in Section 495 (supra) as a “transaction scan device” which is defined as follows:

...A device capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of an identification card...

In the case in question there is no evidence to indicate that Licensee did any of the three things enumerated above. Consequently, I must conclude that no valid defense has been established, and the charge in the citation must be sustained.

PRIOR RECORD:

Licensee has been licensed since March 16, 2005, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00 and mandatory RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee CFM MANAGEMENT CORP., pay a fine of \$1,250.00 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 11<sup>th</sup> day of October, 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

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