

Mailing Date: JAN 16 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1293C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-328981
v.	:	
	:	LID - 46278
MMR, INC.	:	
T/A FANTI'S PIZZA	:	
6615 MARTINS MILL RD.	:	
PHILADELPHIA, PA 19111-4640	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. E-SS-OPS-632	:	
(OPS PERMIT ISSUED APRIL 12, 2006)	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Erik S. Shmukler, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Philadelphia, PA 19142

For Licensee
Michael J. McAllister, Esq.
12800 Townsend Road
Philadelphia, PA 19114

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 2, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against MMR, Inc., t/a Fanti's Pizza (Licensee), License Number E-SS-OPS-632.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on April 5, 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, nineteen (19) years of age.

The second count charges Licensee with violations of Section 442(a) of the Liquor Code [47 P.S. §4-442(a)]. The charge is that on March 22, April 1 and 5, 2006, Licensee, by servants, agents or employes, sold malt or brewed beverages for consumption off premises.²

An evidentiary hearing was conducted on November 30, 2006 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #1, Philadelphia, Pennsylvania.

The parties agreed to a series of Stipulations as follows:

FINDINGS OF FACT:

1. The Bureau began its investigation on April 5, 2006 and completed it on April 6, 2006. (Commonwealth Exhibit No. B-1, N.T. 6)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on May 5, 2006, as amended. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 6)

Count No. 1 and 2:

3. Pursuant to the Bureau's Age Compliance Check Program, a nineteen year old purchased a bottle of beer without question as to age.

1. Commonwealth Exhibit No. B-2, N.T. 6.

2. The Bureau moved to withdraw Count No. 2 of the Citation. I granted said Motion.

CONCLUSIONS OF LAW:

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

Count No. 1

2. **Sustained** as charged.

Count No. 2:

3. **Withdrawn.**

PRIOR RECORD:

Licensee has been licensed since December 6, 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 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.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239 OF 2004

Section 479 of the Liquor Code [47 P.S. §4-479], establishes a numerical system for use in cities of the first class. Every restaurant and eating place licensee in cities of the first class who has been cited for a violation of §471 of the Liquor Code [47 P.S. §4-471], on or after February 6, 2005, must have points assessed as of the date of the final adjudication. Points are in addition to other provisions of the Liquor Code regarding license transfer and renewal. Points are required to be assigned in addition to a monetary penalty and/or suspension and/or revocation the license by the administrative law judge.

An enhanced penalty violation requires that the Administrative Law Judge assign five to ten points, depending upon the circumstances surrounding the violation, to a license record for each and every enhanced penalty violation. The Board has by regulation established a point system ranging from one to five points for other violations of the Liquor Code and Regulations not specifically set forth in §479.

Section 481(a) [47 P.S. §4-481(a)], provides that when any license accumulates ten points or more, the administrative law judge must require the license holder to become compliant with and remain compliant with the provisions of §471.1 [47 P.S. §4-471.1], relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an order within ninety days shall result in two additional points being assessed against the license record.

Section 481(b) [47 P.S. §4-481(b)], provides that when any license accumulates fifteen points or more, the administrative law judge must place the license in safekeeping. The license can only be removed from safekeeping upon approval by the board of a transfer to a disinterested third party. Upon completion of the transfer, the points assigned to it will be reduced to ten. If, within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of 471.1, two additional points will be removed from the license record.

Notwithstanding other provisions of the Act, §481(c) [47 P.S. §4-481(c)], provides that when any license accumulates twenty or more points in more than one citation, the Administrative Law Judge must revoke the license.

Accordingly, you are hereby notified that five points have been assigned to your record.

As this is Licensee's first violation and Licensee has demonstrated a sufficient level of contrition, I impose a \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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

Withdrawal of Count No. 2:

IT IS FURTHER ORDERED THAT Count No. 2 of Citation No. 06-1293C, issued against MMR, Inc., t/a Fanti's Pizza, is hereby WITHDRAWN.

R.A.M.P. Requirements

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; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. 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 was issued.

Assessment of Points

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of MMR, Inc., t/a Fanti's Pizza, License No. E-SS-OPS-632, as required by 47 P.S. §4-479(b)(1).

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 8th day of January, 2007.

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.