

Mailing Date: MAY 29 2008

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

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| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 06-1492C |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | |
| v. | : | Incident No. W01-332915 |
| | : | |
| 3000 RORER INC. | : | |
| 3000 RORER ST. | : | LID - 54430 |
| PHILADELPHIA PA 19134-3023 | : | |
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| | : | |
| PHILADELPHIA COUNTY | : | |
| LICENSE NO. R-AP-SS-OPS-570 | : | |

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 21, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 3000 Rorer, Inc., License Number R-AP-SS-OPS-570 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 24, 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 contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on May 18, 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) female minor, twenty (20) years of age.

The second count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on May 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.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Enforcement Officer L. Hess visited the licensed premises on May 18, 2006 as part of the age compliance detail. She was in undercover capacity at that time. Officer Hess arrived at the premises at approximately 9:00 p.m. along with the other members of the detail. They were accompanied by Underage Buyer No. 82 (N.T. 8-9).

2. Officer Hess entered the premises and took a seat at the bar. She noted that there were fifteen to twenty patrons and a female bartender on duty (N.T. 9).

3. The Underage Buyer went to the bar directly to the officer's left. She asked the bartender for a Corona beer. The bartender asked her how old she was. The Underage Buyer stated that she was twenty-one and showed her identification which stated her real age and showed her identification. The officer was able to see the identification card, which stated that the person was underage (N.T. 10-11).

4. The bartender looked at the identification and served the Underage Buyer a bottle of Corona beer. She was charged three dollars for the beer. The Underage Buyer immediately departed the premises with the beer (N.T. 11).

5. The detail entered the premises and identified themselves to the bartender, who directed them to the corporate officer, who the officer believed to be a Mr. Casul. He informed Mr. Casul that the individual who had been served was underage (N.T. 12).

6. Underage Buyer No. 82 testified that she was born February 10, 1986 and that on May 18, 2006, she was twenty years of age. At 9:15 p.m., she entered the premises as part of the age compliance program and went directly to the bar. She was asked for identification and presented a state identification. She gave the bartender her identification and was asked if she was twenty-one. She stated that she was and the bartender gave her the beer (N.T. 14-15).

7. The identification presented had her real date of birth, February 10, 1986. The only thing that had been changed on the license was her name and driver's license number. The bartender glanced at it for approximately two seconds before serving her the beer (N.T. 16).

8. The Underage Buyer handed the female bartender money and exited the premises and presented the beer to Officer Spera (N.T. 16-17).

9. The Underage Buyer paid three dollars for the beer (N.T. 17).

10. Officer Suppin was part of the age compliance program. He was outside the premises waiting to come into the premises after the purchase of alcohol by the Underage Buyer. While outside the premises, he heard rapper's style music which was electronically amplified. While outside the premises, the officer paced off 180 feet on Indiana Street and 69 feet on North Royers Street. At these distances, he could still hear music coming from inside the premises. When he entered the premises, he noted that it was the same music that he had heard while outside the premises (N.T. 18-19).

11. The officer noted that there were four speakers inside the premises (N.T. 19).

12. He could not determine the source of music but did know that music was amplified through loudspeakers (N.T. 20).

CONCLUSIONS OF LAW:

Count No. 1 - On May 18, 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) female minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

Count No. 2 - On May 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a).

PRIOR RECORD:

Licensee has been licensed since January 17, 2006, and has no record of prior violations.

DISCUSSION:

An Amendment to the original Act permits Underage Buyers to orally misrepresent their age, but are not permitted to present false identification. The Licensee will be required to attend the Responsible Alcohol Management Program (R.A.M.P.), which will lend assistance in detecting and deterring minors.

In addition to the sales to minors violation, Licensee was charged with using loudspeakers on the inside of the premises whereby the sound of music could be heard outside the premises. In this instance, music could be heard up to a distance of 168 feet outside the premises. Licensee is warned that music played inside the premises must be contained within the walls of the premises.

Under the circumstances, a monetary penalty shall be imposed.

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 \$50.00 or more than \$1,000.00, or both, for violations of the type found in Count No. 2 of this case.

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 Count No. 1 of this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,2500.00.
Count No. 2 - \$250.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 3000 Rorer, Inc., License Number R-AP-SS-OPS-570, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) 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.

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) 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 22nd day of May, 2008.

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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3000 Rorer, Inc.
Citation No. 06-1492C

Detach Here and Return Stub with Payment

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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