

Mailing Date: FEB 20 2008

[Appeal 06-1925](#)

[Appeal 07-0686](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 06-1925
LIQUOR CONTROL ENFORCEMENT	:	07-0686
	:	(consolidated for adjudication only)
v.	:	
	:	
TIMMY'S CORPORATION	:	Incident Nos. W01-335439
5840 HARBISON AVE	:	W01-347437
PHILADELPHIA PA 19135-4046	:	
	:	LID - 54892
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-SS-2069	:	
	:	
	:	

BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq., and James E. Dailey, Esq. For Licensee: Stewart Berger, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued these citations on August 14, 2006, and March 27, 2007, respectively. The citations allege as follows:

CITATION NO. 06-1925

This citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4493(1), on June 28, 2006, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, nineteen years of age.

CITATION NO. 07-0686

This citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4493(1), on March 3, 2007, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

Hearings were scheduled for December 4, 2007, in Plymouth Meeting, Pennsylvania, for these two cases as well as Citation No. 06-1082. A necessary witness for the Bureau in the latter case failed to appear, so that matter was continued.

Prior to the hearing, counsel for Licensee moved to consolidate all three of these citations as one. The Bureau answered this motion, opposing it. For reasons explained more fully below, Licensee's motion to consolidate is denied. This adjudication disposes of both of the citations for which evidence was presented, but the citations remain separate.

The parties stipulated to the timely service of the notice letters and citations.

FINDINGS OF FACT:

CITATION NO. 06-1925

1. On June 28, 2006, a man whose birth date was April 16, 1987, entered the licensed premises at about 7:30 p.m. and purchased three cases of beer. He paid cash. His age was not questioned (N.T. 34-36).

2. Liquor enforcement officers apprehended this minor outside the premises and asked him for identification. In response he handed over his genuine identification card. Officers looked through his wallet and found that it also contained the expired Pennsylvania driver's license of a man whose birth date was October 31, 1980 (N.T. 37-38, Exhibit B-3).

3. The expired driver's license had been given to the minor by a friend of his, earlier on the same date. He did not have it in his possession before June 28, 2006, and he did not see it again until the date of the hearing, as it was confiscated by the officers. This minor did not use this expired license to induce Licensee to sell beer to him (N.T. 38-43).

CITATION NO. 07-0686

On March 3, 2007, a man whose birth date was September 18, 1986, visited Licensee's premises at about 8:50 p.m. He requested two cases of beer. Licensee's employee, Jian Liu, requested identification. In response, the man displayed a "Maryland Personal Identification Card" which bears his photograph and the birth date September 18, 1984. The employee looked at the card, looked at the man, and then handed the card back to the man and completed the requested sale (N.T. 29-33, 49-53 Exhibit B-3).

CONCLUSIONS OF LAW:

Both citations are sustained as charged.

DISCUSSION:

Licensee's motion to consolidate these citations requires consideration of the following noncontroversial facts, as reflected in the notice letters mailed to Licensee:

Citation No.	Date of Violation	Investigation Began	Investigation Ended	Notice Letter Sent
06-1925	June 28, 2006	June 30, 2006	June 30, 2006	July 27, 2006
07-0686	March 3, 2007	January 26, 2007	March 3, 2007	March 16, 2007

It may be seen that the violation dates are 248 days apart, and the first investigation ended 210 days before the second one began. Under these circumstances the Bureau was entirely within its prerogatives to file two separate citations, and there is no reason or authority in law to countermand the Bureau's decision to do so.

A great deal of evidence was presented in the hearing of these cases which is not reflected in the findings of fact because I have found that it was not relevant to the issues in the case. It may be that someone used the expired Pennsylvania driver's license of a man whose birth date was October 31, 1980, on a previous occasion, but I have found that it was not the person who purchased beer on June 28, 2006, who testified that he did not use it.

Even if I am wrong about this, the use of that card on any of the previous occasions suggested by Licensee's evidence was in all events inadequate to establish a defense, because the license was expired at all relevant times. The defense set forth in 47 P.S. §4-495 is available only when the identification is valid; i.e., when it has not expired.

By the same token the actual belief of Licensee's clerk as to the genuine nature of the "Maryland Personal Identification Card" is irrelevant. This document does not even pretend to be a valid identification issued by a government, as it expressly warns anyone who may see it that the information it contains was provided by the signatory, and that it does not comply with 47 P.S. §4-495. It is not possible for a licensee's employee to be possessed of legal "good faith" in these circumstances.

PRIOR RECORD:

Licensee has been licensed since July 8, 2005, and has had prior violations as follows:

Citation No. 05-2565. \$1,500.00 fine.

1. Sales to minors. October 15, 2005.

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 the type found in this cases. Penalties are assessed as follows:

Citation No. 06-1925 – a fine of \$1,750.00.

Citation No. 07-0686 – a fine of \$2,000.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Timmy's Corporation, License No. D-SS-2069, shall pay fines totaling three thousand seven hundred fifty dollars (\$3,750.00) within 20 days of the mailing date of this order. In the event the fines are 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) 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 23rd day of January, 2008.

David L. Shenkle, 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

The fines 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

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