

Mailing Date: April 23, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-1925
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :
 :
 :
 vs. :
 :
 :
 TIMMY'S CORPORATION : License No. D-2069
5840 Harbison Avenue :
Philadelphia, PA 19135-4046 :
 :

Counsel for Licensee: Stewart Berger, Esquire
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Philadelphia PA 19111

Counsel for Bureau: Erik Shmukler, Esquire
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OPINION

Timmy's Corporation ("Licensee") appealed from the Adjudication and Order of Administrative Law Judge David L. Shenkle ("ALJ"), wherein the ALJ sustained the citation and imposed a one thousand seven hundred fifty dollar (\$1,750.00) fine.

The citation charged that, on June 28, 2006, Licensee, by its servants, agents or employees, violated section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, Licensee contends that the decision of the ALJ should be reversed based upon its good faith effort to meet the requirements of section 495(f) of the Liquor Code [47 P.S. § 4-495(f)].

The record reveals that, on June 28, 2006, John Bernesky, an officer with the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"), together with Bureau Officers Sutton and Clarke, arrived in the area of Licensee's premises at approximately 7:25 p.m. in order to conduct a minor patrol. (N.T. 8-9, 25). At approximately 7:35 p.m., Officers Bernesky and Clarke observed a vehicle carrying four (4) males pull up in front of Licensee's premises. (N.T. 10, 25, 34-35). The officers observed the driver exit the vehicle and enter Licensee's premises. (N.T. 10, 26). They then observed the male exit Licensee's premises carrying two (2) thirty (30)-pack cases of Coors Light beer, and Stephen Whonson, an employee of Licensee carrying a thirty (30)-pack case of Milwaukee's Best Light beer, and watched them approach the subject vehicle. (N.T. 10-11, 19, 26, 30-31, 35-36).

The officers approached the male and Mr. Whonson, identified themselves, and obtained the male's identification ("ID"). (N.T. 11-12, 17-18, 26, 36). The male told Officer Clarke he was not twenty-one (21) years old, and he handed the officer an ID that reflected a date of birth of April 16, 1987. (N.T. 27, 32, 37). The officers found that the male also possessed an expired ID card, for someone named Jason Scholl, which was

expired, and which reflected a date of birth of October 31, 1980. (N.T. 20, 23, 26-27, 38-39, 43; Ex. B-3). The male completed a patron questionnaire, and he was cited for underage possession and carrying false identification. (N.T. 12-14, 18, 20, 45).

The male minor purchased the beer from Licensee with cash. (N.T. 35). His age was not questioned relative to his age, and he was not asked to sign a declaration of age card. (N.T. 15-16, 35-36, 39, 55, 70). The male stated, and Licensee's representative, Jian Liu agreed, that the male purchased beer at Licensee's establishment previously. (N.T. 46-45, 55-56, 60). The male stated that he never presented his false identification on those occasions. (N.T. 46, 55-56).

Mr. Liu was on duty on June 28, 2006. (N.T. 60). He identified tapes from Licensee's ID scanner for May 4 and May 15, 2006, which he claims is the same male identified by the Bureau Officers on June 28, 2006, who possessed an expired license bearing the name Jason Scholl. (N.T. 61-68). He believed the male to be twenty-five (25) years of age. (N.T.64). Mr. Liu did not ask the male minor for identification on June 28, 2006. (N.T. 70).

Section 493(1) of the Liquor Code provides that it shall be unlawful “[f]or any license . . ., or any employee, servant or agent of such licensee. . ., to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given . . . to any minor” [47 P.S. § 4-493(1)]. Section 495(f) of the Liquor Code provides that a licensee who has provided alcohol to a minor may, nonetheless, escape liability if the licensee required the minor to provide proper identification and if the licensee acted in good faith. [47 P.S. § 4-495(f)].

The facts reveal that, on June 28, 2006, a minor was permitted to purchase three (3) cases of beer at Licensee’s establishment without question as to his age. Licensee argues, however, that it should escape liability because, its employee believed the person to be over twenty-one (21) years of age based upon the information on a previously-scanned, expired driver’s license. Licensee equates his perceptions with an act of good faith because he chose to believe the information on the ID to be true and, therefore, valid.

Licensee, however, has failed to set forth an affirmative defense under the requirements Liquor Code section 495 because the minor was not asked for identification on his visit of June 28, 2006. Subsection (a) of Liquor

Code section 495 states that a valid photo driver's license shall be accepted as an identification card. [47 P.S. § 4-495(a)]. The license confiscated from the male minor in question was expired at all times relevant to the event in question. While Licensee suggests that an expired license owned by another individual, showing that individual's photo and evidencing a date of birth showing the holder to be at least twenty-one (21) years old should be deemed valid, the Board cannot agree.

The Merriam-Webster Online Dictionary defines "valid" as "having legal efficacy or force; especially: executed with the proper legal authority and formalities." [Merriam-Webster Online Dictionary, www.m-w.com/dictionary/valid]. The dictionary defines "expire" to mean "to come to an end." [Merriam-Webster Online Dictionary, www.m-w.com/dictionary/expire]. In light of the definitions set forth above, it is reasonable to conclude that an expired driver's license cannot be deemed valid because, once expired, it is no longer effective as a legal document.

Licensee further asserts that the mere fact that a transaction scan device was used in the past to determine the validity of the proof of age card showed good faith on its part. The ALJ chose to resolve the obvious discrepancies between the testimony of the minor witness and Licensee's witness in favor of

the Bureau. In reaching this conclusion, the ALJ relied on his judgment on the demeanor of the witnesses.

It is well-settled that matters of witness credibility are the sole prerogative of the ALJ, and the ALJ's findings on credibility will not be disturbed absent a showing of insufficient evidence. Borough of Ridgway v. Pennsylvania Public Utility Comm'n, 83 Pa. Cmwlth. 379, 480 A.2d 1253 (1984). In the instant case, the ALJ found the testimony of the male minor to be more credible and adequate to support the charge in the citation.

Because Licensee failed to provide proof that it requested identification from a minor who purchased beer at the premises on June 28, 2006 in violation of the Liquor Code, the Board finds that the ALJ's decision is supported by substantial evidence and shall not be disturbed.

The decision of the ALJ is, therefore, affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid the fine in the amount of one thousand seven hundred fifty (\$1,750.00) dollars.

Licensee must adhere to all conditions set forth in the ALJ's Order dated January 23, 2008.

Board Secretary