

Mailing Date: MAY 16 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1927C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-334678
v.	:	
	:	LID - 43444
BRIGGS OF PHILADELPHIA, INC.	:	
T/A FAT TUESDAY	:	
431 SOUTH ST.	:	
STORE NOS. 5 & 6	:	
PHILADELPHIA, PA 19147-1532	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-3540	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
James E. Dailey, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Philadelphia, PA 19142

For Licensee
Stanley J. Wolowski, Esq.
1100 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 14, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Briggs of Philadelphia, Inc., t/a Fat Tuesday (Licensee), License Number R-AP-SS-EHF-3540.

This citation¹ contains four counts.

The first count charges Licensee with violations of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on June 15, 16 and 18, 2006, Licensee, by servants, agents or employes, used, or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on July 10, 2006, Licensee, by servants, agents or employes, failed to maintain coil cleaning records.

The third count charges Licensee with a violation of Section 493(6) of the Liquor Code [47 P.S. §4-493(6)]. The charge is that on July 10, 2006, Licensee, by servants, agents or employes, identified Natural Ice beer with taps labeled Budweiser and Bud Light beer.

The fourth 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 July 13, 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) female minor, twenty (20) years of age.

An evidentiary hearing was conducted on April 9, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #1, Philadelphia, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on June 15, 2006 and completed it on July 19, 2006. (Commonwealth Exhibit No. B-1, N.T. 5)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 24, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 5)

1. Commonwealth Exhibit No. B-2.

Count No. 1:

3. On June 15 and 16, 2006, representing one visit extending beyond midnight and June 18, 2006, a Bureau Enforcement Officer heard amplified music escaping the premises. (N.T. 8-11)

Count No. 2:

4. Pursuant to an administrative inspection conducted on July 10, 2006, Licensee had no coil cleaning records on the premises. (N.T. 11)

Count No. 3:

5. The Officers discovered a beer tap labeled as Bud Light beer was actually connected to a Natural Ice beer keg. (N.T. 12-15)

Count No. 4:

6. Pursuant to the Bureau's Age Compliance Check Program, a twenty year old entered the premises and purchased a bottle of beer without question relative to age. (N.T. 17-18)

Mitigation

7. Licensee is a corporation based in New Orleans having approximately 60 stores throughout the country. Licensee has a policy of requesting proof of age for anyone who appears to be under 30 years old. (N.T. 20-23)

8. Licensee maintained a video showing that a doortender was checking identification. When the underage buyer entered the premises, the doortender was distracted as he was putting wrist bands on other patrons. (N.T. 28)

9. In order to make sure there is not a repeat, Licensee now requires patrons to enter single file. Any identification will be verified by the use of a laptop computer and a camera. (N.T. 30-31)

10. Licensee now also has an I.D. checker. (N.T. 32-33)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2, 3 and 4 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since August 11, 1999, and has had two prior violations (Commonwealth Exhibit No. B-3):

Adjudication No. 01-2540. Fine \$50.00.
Purchased malt or brewed beverages on credit.
Between December 28, 2000 and March 29, 2001.

Adjudication No. 05-1685. Fine \$100.00 and 1 point assessed.
Used loudspeakers or devices whereby music could
be heard outside.
July 28, 2005.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Count Nos. 1, 2 and 3 and 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 Count No. 4 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.

I also adopt the jointly recommended penalty as follows:

- Count No. 1 – \$100.00 fine.
- Count No. 2 – \$100.00 fine.
- Count No. 3 – \$100.00 fine.
- Count No. 4 – \$1,200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,500.00 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

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 Briggs of Philadelphia, Inc., t/a Fat Tuesday, License No. R-AP-SS-EHF-3540, as required by 47 P.S. §4-479(b)(1).

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 9th day of May, 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.