

Mailing Date: APR 17 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1960C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-336145
v.	:	
	:	LID - 52236
4004 SPRUCE STREET CORP.	:	
4000-04 SPRUCE ST	:	
PHILADELPHIA PA 19104-4117	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-OPS-13584	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik Shmukler, Esq.
For Licensee: Edward Taraskus, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 22, 2006. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on July 13, 2006, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one female minor, twenty years of age.

A hearing was held on Thursday, February 1, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

On July 13, 2006, a woman whose birth date was February 10, 1986, entered the licensed premises and ordered a strawberry daiquiri. The bartender asked for identification, and she displayed her genuine Pennsylvania identification card, proving that she was twenty years old. The bartender looked at it and then served the alcoholic beverage she had requested (N.T. 5-7).

CONCLUSIONS OF LAW:

Sustained as charged.

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 of 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 will 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.

PRIOR RECORD:

Licensee has been licensed since June 2, 2004, 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 in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case.

Act 26 of 2006, enacted April 13, 2006, and effective June 12, 2006, amends 47 P.S. §4-471(d) so that it now requires administrative law judges to order compliance with 47 P.S. §4-471.1 if “a licensee has been cited and found to have violated section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated person...”

Since the incident which resulted in this citation occurred after this statute had become effective, and since this violation involves the sale of alcoholic beverages to a minor and constitutes Licensee’s first offense, I am required to enter the following order.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 4004 Spruce Street Corp., License No. R-AP-SS-EHF-OPS-13584, shall pay a fine of one thousand two hundred fifty dollars (\$1,250.00) within 20 days of the mailing date of this order. In the event the fine is 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. Within thirty (30) days after the mailing date of this adjudication, Licensee shall contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; Web Site: www.lcb.state.pa.us) in order to receive assistance in the compliance process. Licensee must receive certification within ninety (90) days after the mailing date of this adjudication. Licensee must remain in compliance for a period of one year from the date such certification is issued.

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of Licensee, 4004 Spruce Street Corp., License No. R-AP-SS-EHF-OPS-13584, as required by 47 P.S. §479(b)(1).

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).

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 PA 17110-9661

Dated this 22nd day of March, 2007.

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.