

Mailing Date: MAY 18 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2198C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-337037
v.	:	
	:	LID - 51754
7226 A F S, INC.	:	
7226 FRANKFORD AVE.	:	
PHILADELPHIA, PA 19135-1016	:	
	:	
	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-11502	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Erik S. Shmukler, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Philadelphia, PA 19142

For Licensee
Edward A. Taraskus, Esquire
1315 Walnut Street
Suite 1002
Philadelphia, PA 19107

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 18, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against 7226 A F S, Inc. (Licensee), License Number R-AP-SS-OPS-11502.

The citation¹ 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 27, 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) male minor, nineteen (19) years of age.

An evidentiary hearing was conducted on April 23, 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 July 27, 2006 and completed it on July 31, 2006. (Commonwealth Exhibit No. B-1, N.T. 11)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on August 25, 2006. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 11)
3. Pursuant to the Bureau's Age Compliance Program, a Bureau Enforcement Officer entered the subject premises on July 27, 2006 at approximately 8:15 p.m. The Officer observed the underage buyer enter the premises and order a bottle of beer. The minor was in the Officer's sight at all times. The minor completed the requisite training. (N.T. 11-14)
4. The bartender never requested any identification from the underage buyer. The underage buyer never drank any of the beer. (N.T. 15-16)
5. The underage buyer was born on November 28, 1986 (Commonwealth Exhibit No. B-3).
7. A notification of non-compliance was sent to Licensee within ten days of the incident (Commonwealth Exhibit No. B-4).
8. A second Bureau Enforcement Officer entered the premises after the sale to the underage buyer. That Officer notified the server of the unlawful sale. (N.T. 32-33)

1. Commonwealth Exhibit No. B-2, N.T. 11.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since February 23, 2004, and has had two prior violations:

Adjudication No. 04-1007. Fine \$300.00.

Used loudspeakers or devices whereby music
could be heard outside.
April 18 and May 15, 2004.

Adjudication No. 06-1617. Fine \$500.00.

Used loudspeakers or devices whereby music
could be heard outside.
April 15, 16 and June 11, 2006.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

However, if at the time of violation, the licensee was in compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to Responsible Alcohol Management and the licensee had not sold to minors in the previous four years, Liquor Code Section 471(b) [47 P.S. §4-471(b)] provides for a fine structure of \$50.00 to \$1,000.00.

Liquor Code Section 471(d) [47 P.S. §4-471(d)] imposes the mandate upon me to require a licensee to become R.A.M.P. compliant where, as here, the violation is the first of this type. I am authorized to require such compliance for a period up to one year.

As Licensee has voluntarily complied with Liquor Code Section 471.1 [47 P.S. §4-471.1] relating to R.A.M.P. and has been certified effective October 31, 2006 for a period of two years, I now order Licensee to remain in compliance for one year from the mailing date of this Adjudication.

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 of a \$500.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$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 must remain in compliance for one year from the mailing date of this Adjudication.

Assessment of Points

IT IS FURTHER ORDERED that five (5) points are hereby assessed against the record of 7226 A F S, Inc., License No. R-AP-SS-OPS-11502, as required by 47 P.S. §4-479(b)(1).

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 14th 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.