

Mailing Date: APR 27 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2290
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-338942
v.	:	
	:	LID - 52808
RANSIL INC	:	
608 WASHINGTON AVENUE	:	
BRIDGEVILLE PA 15017-2012	:	
	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-EHF-16470	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Michael Nickles, Esquire

For Licensee
Charles Caputo, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 3, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Ransil, Inc., License Number R-AP-SS-EHF-16470 (hereinafter Licensee).

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on August 29, 2006, and divers other occasions within the past year, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one female minor, 20 years of age.

The second count charges Licensee with violation of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)], in that on August 29, 2006, and divers other occasions within the past year, Licensee, by its servants, agents or employees, permitted one female minor, 20 years of age, to frequent its licensed premises.

An administrative hearing was conducted on March 27, 2007, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee was represented by Charles Caputo, Esquire.

The Bureau began its investigation of this matter on August 29, 2006, and completed its investigation on August 30, 2006. Thereafter, Licensee was notified of the nature of the violation(s) disclosed by the investigation by letter sent by certified mail on September 13, 2006. Counsel for Licensee stipulates that the notice provisions of Section 471 of the Liquor Code have been satisfied.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

COUNTS 1 AND 2

1. On August 29, 2006 at 8:50 p.m., Liquor Enforcement Officers D. L. Beckey and G. N. Schroeder entered Licensee's premises and observed a female bartender later identified as Mary Brown rendering service of alcoholic beverages to approximately 11 patrons. (N.T. 8-10)
2. Officers Beckey and Schroeder observed a group of four youthful appearing individuals seated at the bar at which time the officers identified themselves and requested proof of age. (N.T. 8-9)
3. One of the youthful appearing individuals was a female who was observed at the bar consuming from a 12-ounce bottle of Bud Light beer. Upon questioning, this female later identified as Pamela S. advised the officers that she did not have proof of age. However, upon further questioning, Pamela S. admitted to the officers that she was under 21 years of age. (N.T. 10-11, 15-16, 20)
4. Pamela S. was born on May 31, 1986, and was 20 years of age on August 29, 2006. (N.T. 17)

5. Pamela S. also visited Licensee's premises with her adult boyfriend, but unaccompanied by a parent or legal guardian on approximately ten occasions within several months prior to August 29, 2006, after presenting a false Pennsylvania photo driver's license, which displayed her photograph, but was altered to represent her date of birth as May 31, 1985. Pamela S. further testified that the magnetic strip on her driver's license had been changed to represent the identity of an unknown individual over 21 years of age. Pamela S. further represented to this court that this false photo Pennsylvania driver's license appeared authentic upon reasonable inspection. (N.T. 21-25)

6. Pamela S. testified that on approximately five or more visits to the premises prior to August 29, 2006, Licensee's bartenders including Mary Brown and Andrew Taube successfully scanned her false Pennsylvania photo driver's license providing verification that she was over 21 years of age. (N.T. 23, 31-33)

7. Licensee's bartender Mary Brown who admitted serving Pamela S. the 12-ounce bottle of Bud Light beer on August 29, 2006, stated that she did not find it necessary to request proof of age from Pamela S. on August 29, 2006, as she recalled scanning her Pennsylvania photo driver's license on numerous occasions during the past several months. Ms. Brown further believed that Pamela S. was referred to as "Rachel" during her visits to the premises. (N.T. 68-71)

8. Licensee's bartender Andrew Taube testified that he was familiar with Pamela S., but also thought her name was "Rachel." Mr. Taube recalls requiring proof of age of Pamela S. on several occasions prior to August 29, 2006. On each occasion, Mr. Taube scanned the photo driver's license provided by Pamela S. and recalled that it had indicated that her age was over 21 years. (N.T. 55-56)

9. Licensee's bartenders Mary Brown and Andrew Taube could not recall the specific name printed and signed on the photo driver's license provided by Pamela S. and could not recall any reason why it would have been different from that which appeared on the scanning device. (N.T. 56-57, 70-72)

10. Pamela S. testified that the false photo Pennsylvania driver's license which she had utilized to successfully gain entrance to Licensee's establishment as well as other liquor establishments had been lost, and therefore could not be produced as evidence. (N.T. 23-24, 30)

DISCUSSION:

This court notes at the onset it is well established that the Bureau must prove its case by a fair preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

It has been further established that it is for this court to decide the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robison*, 561 A.2d 82 (Pa. Cmwlth. 1989). Further, this court may accept or reject, in whole or in part, the testimony of any witness. *Kubler v. Yeager*, 150 A.2d 383 (Pa. Super 1959). It is with these principles in mind that further analysis of this case is conducted.

In the case before this court, it is undisputed that Pamela S., a 20-year-old minor, visited Licensee's premises on August 29, 2006, and on approximately ten prior occasions only after producing what appeared to be a valid Pennsylvania photo driver's license verified via Licensee's scanning device authenticating her age to be over 21 years. It is undisputed that Pamela S. was observed by Officers Beckey and Schroeder seated at the bar consuming from a 12-ounce bottle of Bud Light beer on August 29, 2006. Pamela S. further testified that she visited Licensee's premises on approximately ten occasions prior to August 29, 2006, and believes that she was served alcoholic beverages on approximately half of those visits after being required by Licensee's bartenders to produce a Pennsylvania photo driver's license, which license was scanned on each occasion and provided verification of her age. However, Pamela S. testified that the Pennsylvania photo driver's license which she had used to gain entrance and service of alcoholic beverages to Licensee's establishment as well as other liquor establishments contained her actual photograph but had been altered to reflect her date of birth as May 31, 1985. Pamela S. represented to this court that this false Pennsylvania photo driver's license, which she had presented to Licensee's bartenders on numerous occasions prior to August 29, 2006, appeared valid upon reasonable inspection. Perhaps of even greater significance, Pamela S. testified that the magnetic strip or bar code had been changed to represent the identity of an unknown individual causing any scanning device to verify the information on this false driver's license. Pamela S. testified that her true name appeared on this false driver's license.

Licensee offered the testimony of two of its bartenders Mary Brown and Andrew Taube who recall visually inspecting the false photo driver's license provided by Pamela S. and scanning this false driver's license on several occasions prior to her visit on August 29, 2006. During each of the prior visits where the age of Pamela S. was called into question, the aforementioned bartenders were unable to recall anything unusual about the information that they were provided on the scanning device when compared to the driver's license. Bartenders Mary Brown and Andrew Taube each believe that Pamela S. went by the name "Rachel," but had no specific recollection as to the name which appeared on the photo driver's license and scanning device. Cynthia Ransil Licensee's corporate officer and shareholder testified that she reviewed some 10,000 to 12,000 identification cards, which had been scanned at Licensee's premises for approximately a year prior to August 29, 2006, and was unable to locate the name Pamela S.

Section 495(g) of the Liquor Code provides, in part as follows: “In addition to the defenses set forth in subsections (e) and (f), no penalty shall be imposed on a licensee, licensee’s employe or Pennsylvania Liquor Store employe serving alcohol to a minor if the licensee or employe can establish that the minor was required to produce an identification card as set forth in subsection (a), the identification card is identified as a valid card by a transaction scan device and the identification card and transaction scan results were relied upon in good faith.”

The facts are clear that Pamela S. took extreme measures to deceive Licensee’s employees into believing that she was over the age of 21 years. This deceitfulness and trickery accelerated to the point where she admittedly substituted the magnetic strip or bar code to reflect the identity of an individual bearing an age of majority. Additionally, Pamela S. conveniently lost this false Pennsylvania photo driver’s license successfully used to gain entrance and the service of alcoholic beverages at Licensee’s as well as other liquor establishments.

Upon thorough analysis of the testimony offered by Licensee’s corporate officer/shareholder and the two bartenders involved, it is clear to this court that Licensee implemented the latest technology in its use of transaction scanning devices to verify the age of its perspective patrons, including the Pennsylvania photo driver’s license which proved to be false presented on several occasions by Pamela S. Moreover, this court finds that Licensee’s bartenders exercised good faith in properly questioning and verifying that Pamela S. was over 21 years of age. It is the conclusion of this court that the reason Licensee is unable to produce the name Pamela S. through its scanning records is simply because the false photo Pennsylvania driver’s license did not bear the printed name Pamela S., contrary to what Pamela S. testified to at the hearing. This court further believes that it is more likely than not that the name printed and signed on this false driver’s license matched the name of the unidentified individual from whom the magnetic strip had been taken. Accordingly, this court views the uncorroborated portion of the testimony of Pamela S. specifically involving her testimony relating to the name appearing on the false photo driver’s license presented to Licensee’s employees to be unreliable. Thus, the name, which Licensee may be looking for in its scanning devices will never be known due to the trickery and deceitfulness of Pamela S.

This court concludes that Licensee’s employees exercised good faith in determining and verifying the age represented by Pamela S. during her visits to Licensee’s premises prior to August 29, 2006, and had no further reason to question her age on the date the Enforcement officers visited Licensee’s premises on August 29, 2006. Accordingly, Licensee has complied with the provisions of Section 495(g) of the Liquor Code.

RANSIL, INC.
Citation Number 06-2290

ORDER:

THEREFORE, it is hereby ordered that Citation Number 06-2290 be DISMISSED.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 18th day of April, 2007.

Roderick Frisk, J.

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