

Mailing Date: OCT 30 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2668
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-341928
v.	:	
	:	LID - 57085
OPI GROUP, LLC	:	
900 OAK ST.	:	
PITTSTON TOWNSHIP, PA 18640-3729	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-1638	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Ex- Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 22, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against OPI Group, LLC (Licensee), License Number R-AP-SS-1638.

This citation¹ contains two counts.

The first 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 October 22, 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.

The second count charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 5101 and 5105 of the Crimes Code [18 Pa. C.S. §5101 and §5105]. The charge is that on October 22, 2006, Licensee, by servants, agents or employes, interfered with a Liquor Control Enforcement Officer in the performance of his duties.

An evidentiary hearing was conducted on May 16, 2007. The hearing was continued and rescheduled for July 25, 2007. The hearing was continued and rescheduled for October 3, 2007 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have representation.

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 October 20, 2006 and completed it on October 22, 2006. (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 October 24, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

Count No. 1:

3. A Bureau Enforcement Officer entered the licensed premises on October 22, 2006 at approximately 12:45 a.m. The Officer noticed a young lady who was known to him from prior investigations as she participated in the Age Compliance Check Program as an underage buyer. The Officer knew her to be twenty years of age. She was drinking from a bottle of beer. The Officer watched her from a distance. He saw her being served a shot of an unknown beverage as well as another bottle of beer. (N.T. 7-9)

1. Commonwealth Exhibit No. C-2, N.T. 6.

4. The young lady was born on April 24, 1986, thus making her twenty years old on the date in question. She arrived at the premises around midnight. She was served a shot of liquor and a beer immediately after entry. (N.T. 22-24)

5. She displayed false identification when she was questioned by the bar staff. (N.T. 29-30)

Count No. 2:

6. While the Officer was discussing her purchases with the minor, she bolted out the door. The Officer displayed his credentials to the doortender explaining that the Officer needed to talk to him. The Officer went outside to stop the minor. The doortender followed the Officer outside. The Officer was holding the bottle of beer that the minor had in her possession at the time he initially questioned her. The doortender told him that he could not leave with the bottle of beer. The doortender repeated this several times even though the Officer continued to display his credentials. The minor was trying to get away from the Officer and the doortender was attempting to stop the Officer from leaving. Two bouncers came over as well as Licensee's Manager, Mike Columbo. On each occasion when one of the individuals approached the Officer, he identified himself and explained his purpose. The Officer inquired of Mr. Columbo. He asked Mr. Columbo to step over to his car where he could discuss what was going on. As the Officer attempted to walk away, Mr. Columbo grabbed the Officer and pulled him into a semi-circle comprised of Mr. Columbo, the bouncers and the doortender. The Officer was again told that he could not leave with the bottle of beer. The Officer advised Mr. Columbo that if he touched him again, Mr. Columbo would be arrested. Mr. Columbo grabbed the Officer again. The Officer was in fear that he might be hurt. During this time, the Officer held on to the minor. He let her go. In a matter of seconds, Mr. Columbo and his employees went inside. No one stopped him from leaving with the beer.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. Count Nos. 1 and 2 are **sustained** as charged.

DISCUSSION:

This matter was originally scheduled and partially heard on May 16, 2007. Licensee appeared **pro se**. Because there were charges pending against Licensee which charges are related to Count No. 2, I heard testimony regarding Count No. 1 only and continued the matter. The case was rescheduled for July 25, 2007. No one appeared on behalf of Licensee. Because there was a possibility Licensee did not receive appropriate notice, I continued the matter again. The continued matter was scheduled for October 3, 2007 at which time no one appeared on behalf of Licensee. Having been satisfied that the notice of this hearing was appropriately sent the hearing was conducted ex parte.

PRIOR RECORD:

Licensee has been licensed since September 1, 2006, 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 of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 1 and 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 No. 2 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.

I impose:

Count No. 1 - \$1,250.00 fine.

Count No. 2 - \$1,000.00 fine and 30 days suspension.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,250.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant liquor license (including all permits) of OPI Group, LLC, License No. R-AP-SS-1638, be suspended for a period of thirty days. However, the suspension period is deferred pending reactivation of Licensee's license from safekeeping, at which time the suspension period will be fixed by further Order.

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 is issued.

However, since the license is in safekeeping so much of this Adjudication as it relates to mandatory compliance with Liquor Code Section 471.1, pertaining to Responsible Alcohol Management, is deferred pending reactivation of Licensee's license from safekeeping at which time, I will review the Adjudication for further appropriate action.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 26th day of October, 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.

Detach Here and Return Stub with Payment

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

Citation No. 06-2668