

Mailing Date: APR 24 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2915
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-343087
	:	
MUY LIM INC.	:	
2400 E. ALLEGHENY AVE.	:	LID - 52520
PHILADELPHIA PA 19134-4403	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-EHF-OPS-362	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 27,2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Muy Lim, Inc., License Number R-SS-EHF-OPS-362 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, August 1, 2007, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on November 17, 2006, and one unknown date within the past year, Licensee, by its 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.

The second count charges Licensee with violation of Sections 401(a) and 407 of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-407, in that on November 17, 2006, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

#### COUNT NOS. 1 AND 2

#### FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began November 9, 2006 and ended November 21, 2006. A notice of violation letter was sent to the licensed premises on December 5, 2006 by certified mail and was signed as received at the licensed premises. A citation hearing notice was issued by the Bureau to the licensed premises on December 27, 2006. That mailing was sent by certified mail, return receipt requested and was signed as received at the licensed premises. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises dated July 5, 2007 by certified mail, return receipt requested. That mailing was signed as received at the licensed premises (N.T. 9-11 and Exhibits B-1 and B-2).

2. Ed Gartland is employed by the Bureau of Enforcement. On November 17, 2006, he conducted an investigation of the licensed premises. The officer arrived at approximately 10:05 p.m. The premises is broken up into two sections, i.e., a take-out portion and a regular bar area through a connecting door. At the time of this visit, there were approximately twenty patrons and an Asian male bartender. From the restaurant area, the officer could see the take out portion of the premises by way of a security camera (N.T. 5-6).

3. At approximately 10:20 p.m., the officer observed a white male who appeared to be of questionable drinking age. The male entered the premises and spoke with the Asian female clerk. The officer then observed him make two trips from the premises, each time with bags containing beer. After the second trip, the officer followed the individual outside and identified himself and requested proof of age from the buyer. The buyer handed him a Pennsylvania identification card, which had expired two years ago (N.T. 6-7).

4. When the individual was inside the premises, the officer could not be certain, but he believed he did show identification to the clerk (N.T. 7).

5. The individual was nineteen years of age and was born March 24, 1987. The officer was able to ascertain this information from the individual's Pennsylvania Driver's License. The Bureau was able to verify the information through the Pennsylvania Department of Transportation J-Net system (N.T. 7-9 and Exhibit B-3).

6. The individual who was stopped by the officer was in possession of twenty-four ounce bottles of Heineken beer and twenty-four ounce bottles of Smirnoff Twisted Green Apple malt beverage (N.T. 9).

7. The office brought the underage buyer back into the premises and spoke with the female clerk. The clerk confirmed that she had made the sale, but stated that she had checked his identification. The identification was the Pennsylvania identification, which expired July 31, 2004. The officer confiscated the identification card (N.T. 9-10 and Exhibit B-4).

8. The officer confiscated a total of 240 ounces, ten twenty-four ounce bottles of beer which was above the 192 ounces which was permissible in a single purchase (N.T. 12-13).

#### CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On November 17, 2006, and one unknown date within the past year, Licensee, by its 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, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

Count No. 2 - On November 17, 2006, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises, in violation of Sections 401(a) and 407 of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-407.

#### PRIOR RECORD:

Licensee has been licensed since March 12, 2002, and has a record of prior violations as follows:

Citation No. 06-0539. \$1,500.00 fine.

1. Sales to a minor.  
January 27, 2006.
2. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.  
January 27, 2006.
3. Failed to constantly and conspicuously expose the licensed under a transparent substance.  
January 27, 2006.

DISCUSSION:

It is noted that Licensee was certified by the R.A.M.P. Program on June 4, 2007. This is Licensee's second violation for sales to minors over a relatively short period of time. Under the circumstances, a \$1,800.00 penalty shall be imposed. It is noted that the expired identification card appeared to be otherwise a valid card, and the photo on it looked very much like the holder of the card. It was determined that the identification card belonged to an older brother of the underage buyer. In that the card was expired and no copy of it maintained nor did Licensee ask the patron to complete a declaration of age card, the good faith defense is not available to the Licensee.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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 of this case.

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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 of this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,500.00.  
Count No. 2 - \$300.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Muy Lim, Inc., License Number R-Ss-EHF-OPS-362, pay a fine of One Thousand Eight Hundred Dollars (\$1,800.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

Muy Lim, Inc.  
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IT IS FURTHER ORDERED that Licensee shall remain in compliance with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management for a period of one year from the mailing date of this Order.

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).

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 18th day of April, 2008.

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Tania E. Wright, J.

**NOTE:** 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.

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Detach Here and Return Stub with Payment

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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg, PA 17110-9661

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