

Mailing Date: JUN 23 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0042
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-345062
v.	:	
	:	LID - 55750
JFB HOSPITALITY INC	:	
1401 E CARSON STREET	:	
PITTSBURGH PA 15203-1151	:	
	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-9794	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Nadia Vargo, Esquire

For Licensee
Jay Vetere,
Corporate Officer, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 29, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against JFB Hospitality, Inc., License Number R-AP-SS-9794 (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on December 14, 2006, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two female minors, 19 years of age.

An administrative hearing was conducted on May 6, 2008, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Sole Corporate Officer and Shareholder Jay Vetere appeared on behalf of Licensee corporation.

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:

1. The Bureau commenced its investigation of Licensee's premises on December 14, 2006, and completed its investigation on December 15, 2006. The notice of violation letter was timely mailed and received by Licensee. (Exhibit C-1, Stipulated, N.T. 6)
2. The citation was issued on January 29, 2007, and was timely mailed and received by Licensee. (Exhibit C-2, Stipulated, N.T. 6)
3. On December 14, 2006 at approximately 11:00 p.m., Dayna J. and Amy W. entered Licensee's premises where a doorman was stationed, at which time identification was requested from each individual. (N.T. 59-60, 71-72, 76-77)
4. Dayna J. produced a Pennsylvania photo driver's license to the doorman which belonged to a friend thereby representing her age to be over 21 years. (N.T. 11, Ex. C-3)
5. Amy W. produced a Pennsylvania photo driver's license to the doorman which belonged to her sister thereby representing her age to be over 21 years. (N.T. 14, Ex. C-4)
6. Upon presentation of each of the aforementioned Pennsylvania photo driver's licenses, Licensee's doorman briefly examined the identification card and immediately returned it to Dayna J. and Amy W., respectively, without requiring that either individual complete a Declaration of Age card and without Licensee making any video or photographic representation of these cards or verification through a transaction scanning device. (N.T. 60-63, 65-68, 72-73)
7. Following the brief examination of the Pennsylvania photo driver's licenses presented by Dayna J. and Amy W., Licensee's doorman permitted them to enter the premises. (N.T. 63, 73)
8. Upon entering the barroom area of Licensee's premises, Dayna J., Amy W. and an adult friend took seats at a table. Initially, Dayna J. approached the bar and purchased a mixed drink alcoholic beverage from a bartender without question relative to her age. Dayna J. shared this mixed drink alcoholic beverage with Amy W. and her adult friend. (N.T. 63-64, 73)

9. Shortly before 11:45 p.m., Dayna J. and Amy W. each approached the bar and independently purchased a 12-ounce bottle of Miller Lite beer for themselves and returned to their table, each in possession of their purchase. (N.T. 64, 73-74)

10. At 11:35 p.m., Liquor Enforcement Officer Tyrrivea J. Flood entered Licensee's premises initially in an undercover capacity after being required to provide identification to the doorman and observed alcoholic beverages being served to approximately 90 to 100 patrons. The doorman briefly inspected the identification provided and immediately returned it to Officer Flood without any other electronic verification and did not require her to complete a Declaration of Age card. Liquor Enforcement Officers Faith Morros, Benjamin Brallier and Zimmerman entered behind Officer Flood after identifying themselves as Liquor Enforcement officers. (N.T. 9-10, 19, 32-33)

11. Upon entering the barroom area of Licensee's premises, the Enforcement officers approached the table where youthful appearing females were seated each in possession of a 12-ounce bottle of Miller Lite beer. Two of these females were identified as Dayna J. and Amy W. (N.T. 10, 15-16, 35)

12. Officer Flood requested that Dayna J. produce proper identification at which time she provided the Pennsylvania photo driver's license belonging to her friend which she had provided to the doorman upon her entry to the premises. Upon inspection of this photo driver's license, Officer Flood believed that the person depicted on that card was not Dayna J. Upon further questioning, Dayna J. produced her true Pennsylvania photo driver's license to Officer Flood. (N.T. 10-12, 16-17, Ex. C-3)

13. Dayna J. was born on August 1, 1987 and was 19 years of age on December 14, 2006. (N.T. 58)

14. Officer Morros requested that Amy W. produce proper identification at which time she provided the Pennsylvania photo driver's license belonging to her sister which she had provided to the doorman upon her entry to the premises. Upon inspection of this photo driver's license, Officer Morros believed that the person depicted on that card was not Amy W. Upon further questioning, Amy W. produced her true Pennsylvania photo driver's license to Officer Morros. (N.T. 15, 37, 45, Ex. C-4)

15. Amy W. was born on March 25, 1987 and was 19 years of age on December 14, 2006. (N.T. 70)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On December 14, 2006, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two female minors, 19 years of age, in violation of Section 493(1) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that on the evening of December 14, 2006, two 19-year-old females identified as Dayna J. and Amy W. each presented Pennsylvania photo driver's licenses to Licensee's doorman who briefly inspected each card and promptly return that card to the respective female. The record in this case lacks any credible evidence to support a finding that Licensee utilized a transaction scanning device to verify the authenticity of each of these two Pennsylvania photo driver's licenses in question. A significant portion of the hearing focused on whether or not the photographs on the Pennsylvania photo driver's licenses provided to Licensee's doorman reasonably depicted the individuals who presented those cards.

This court agrees with the testimony of Liquor Enforcement Officers Flood, Morros and Brallier as well as the 19-year-old minors themselves, that the photographs on the Pennsylvania photo driver's licenses presented to Licensee's doorman were not a fair and reasonable depiction of the actual minors in question. However, the issue of good faith relative to the acceptance of the false I.D.'s is material to this case only if Licensee can establish that it complied with one of the affirmative defenses.

Section 495 of the Liquor Code requires that a licensee take additional measures in order to use good faith acceptance of this identification card as an affirmative defense. Section 495 Subsections (a), (b), (c), (e), (f) and (g) require that in order for a licensee to escape liability from selling alcoholic beverages to a minor, certain procedures must be followed. These procedures include in addition to accepting in good faith what appears to be a valid identification card as set forth in Subsection (a), a completed and signed Declaration of Age card as set forth in Subsection (c), a photograph, photocopy or other visual video presentation of the identification card accepted in Subsection (f) or that the identification card is identified as a valid card by a transaction scan device set forth in Subsection (g).

In this case, the record is clear that Licensee's doorman or other personnel did not require either of the 19-year-old females to sign Declaration of Age cards, did not make photocopies or video representations of the identification cards upon which Licensee relied upon and failed to utilize a transaction scanning device to verify the authenticity of these cards. However, it is significant that Licensee be reminded that these defenses shall only be recognized upon initial good faith acceptance of the identification card presented.

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.

Licensee's restaurant liquor license was issued on January 18, 2006, and there are no prior violations.

Moreover, Section 471(d) of the Liquor Code [47 P.S. §4-471(d)] 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 case, 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.

The record discloses that Licensee was R.A.M.P. certified on July 19, 2007.

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,600.00 and Licensee must remain in compliance with the requirements of Section 471.1 of the Liquor Code pertaining to responsible alcohol management for a period of one year from the mailing date of this Order.

ORDER:

THEREFORE, it is hereby ordered that JFB Hospitality Inc., License Number R-AP-SS-9794, pay a fine of \$1,600.00 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.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Section 471.1 of the Liquor Code [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management and must remain in compliance 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) or (e) of the Liquor Code [47 P.S. §4-471(d) or §4-471(e)].

JFB HOSPITALITY, INC.
Citation Number 07-0042

Jurisdiction is retained to ensure compliance with this Order.

Dated this 10TH day of JUNE, 2008.

Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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 PA 17110-9661

Citation No. 07-0042, JFB Hospitality, Inc.