

Mailing Date: SEP 14 2007

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0361
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-335912
	:	
HOSPITALITY GROUP SERVICES INC	:	
T/A RAMADA OF HISTORIC	:	LID-2010
LIGONIER	:	
216 W LOYALHANNA ST	:	
LIGONIER PA 15658	:	
	:	
WESTMORELAND COUNTY	:	
LICENSE NO. H-AP-SS-EHF-4613	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement
Michael C. Nickles, Esquire

For Licensee
Gregory T. Nichols, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 16, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Hospitality Group Services, Inc., T/A Ramada of Historic Ligonier, License Number HAP-SS-EHF-4613 (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 February 19, 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 (1) male minor, seventeen (17) years of age.

The investigation which gave rise to the citation began on July 10, 2006 and was completed on February 6, 2007. The notice of violation letter was mailed to Licensee on February 8, 2007. The citation was mailed to Licensee on February 16, 2007 and received on February 20, 2007. (N.T. 12, Exhibit C-4).

An evidentiary hearing was held on this matter on July 17, 2007, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Westmoreland County, Pennsylvania, and holds Hotel Liquor License Number H-AP-SS-EHF-4613. (N. T. 4)
2. On Sunday, February 19, 2006, S. N., was a seventeen year old male minor, with a date of birth of May 26, 1988. (By Stipulation N.T. 5)
3. The licensed premises is a hotel with a bistro bar area connected to a deli, several banquet rooms and a separate kitchen and dishwashing room. (N. T. 20-21, 78-82, Exhibit A)
4. On the evening of February 18-19, 2006, Licensee hosted a dinner banquet with alcoholic drinks in one of its dining rooms. (N.T. 54-60, 77)
5. On Sunday, February 19, 2006 at 1:15 a.m., Deborah Couch, the bartender in charge of the Bistro Bar, closed and locked it at the end of her shift and told two minor employees, S. N. and M. W. to leave. (N.T. 78-80)
6. Licensee's minor busboys, S. N. and M. W., had access to the Bistro Bar to wash glasses and clean up and obtain soft drinks. (N.T. 59, 62)
7. On Saturday, February 18, 2006, and continuing into the early morning hours of Sunday, February 19, 2006, S. N. was employed by Licensee as a busboy and dishwasher and obtained and consumed alcoholic beverages from the licensed premises while at work. (N.T. 63-65)

HOSPITALITY GROUP SERVICES, INC.
T/A RAMADA OF HISTORIC LIGONIER
Citation No. 07-0361

8. On July 10, 2006, the Bureau was notified of a one-vehicle accident involving the minor, S.N., which occurred during the early morning hours of February 19, 2006. (N.T. 12)
9. On July 13 and 14, 2006, an enforcement officer contacted officials of the Department of Labor and Industry and made an undercover visit to the licensed premises. (N. T. 13)
10. On July 20, 2006, the officer again contacted the Department of Labor and Industry and the Ligonier Township Police Department. (N. T. 14)
11. On August 22, 2006, the officer received records from the Department of Labor and Industry. (N. T. 14)
12. On August 30, 2006, the officer attended a District Magistrate hearing involving the Department of Labor and Industry and Licensee, and in September, 2006, conducted an internet search for the results of the hearing. (N.T. 14)
13. On September 6, 2006, the officer received statements from S.N.'s family attorney and investigator. (N.T. 14)
14. On October 3, 2006, the officer received additional statements from S.N.'s family attorney. (N.T. 14)
15. On November 6 and December 4, 2006, the officer attempted to contact S.N.'s minor co-worker, M.W. (N.T. 14)
16. On December 5, 2006, the officer received additional statements form S.N.'s family attorney. (N.T. 14)
17. Between December, 2006 and January, 2007, the officer unsuccessfully attempted to take M.W.'s statement on four separate occasions. (N.T. 18)
18. On February 6, 2007, the officer interviewed M.W. about this case. (N.T. 18)

CONCLUSION OF LAW:

Sustained only as to the dates of February 18 and 19, 2006.

DISCUSSION:

Counsels for the Bureau and Licensee submitted briefs in this case.

The Bureau argues that Licensee is strictly liable by failing to prevent the unsupervised minor, S. N., from obtaining and consuming alcoholic beverages while at work. Counsel cited several appellate court cases and Judge Shenkle's adjudication in support of his argument. B.L.C.E. v Nicola, Inc., T/A Café Europa, Citation No. 99-0284.

Licensee argues that the Bureau has not shown that the minor, S. N., obtained alcoholic beverages while at work, and if so, he took them without permission. In support, Counsel cited In Re:Appeal of Old Express Limited, 453, A.2d (Pa. Cmwlth. 1982).

Section 471 of the Liquor Code provides for a one year statute of limitations and requires the Bureau to issue a citation within one year of the date of violation. Malios v. Pa. State Police, 633 A.2d 1163 (Pa. 1993). Because the citation was mailed to Licensee on February 16, 2007, I cannot find a violation for any divers other occasions prior to February 16, 2006. (Exhibit C-4). Testimony about the minor, S.N., obtaining alcoholic beverages on other prior occasions was permitted as being relevant under the "Habit, Routine Practice" evidentiary rule. (Pa. Rules of Evidence, 406).

At the hearing held on the matter, counsels for the Bureau and Licensee stipulated that the date of birth of the male minor, S. N., was May 26, 1988, and that he was 17 years old on February 19, 2006, (N.T. 5).

The enforcement officer for the Bureau testified in detail as to the dates and scope of his investigation, which I find to be continuing and on-going throughout the investigation.

A male minor, K. B., testified that he was S. N.'s best friend and received beer from him on Friday, February 17, 2006, and drank alcoholic beverages with him in the past, including one time at the licensed premises in December, 2005, where he tasted S. N.'s drink which contained rum and cola. S. N. showed him the liquor bottle in the Bistro Bar.

S. N.'s minor co-worker, M.W., testified that on Saturday, February 18, 2006, and continuing in to the early morning Sunday, February 19, 2006, he worked cleaning tables with S. N. at the licensed premises and tasted S.N.'s drink which was an alcoholic beverage containing rum or whiskey. (N.T. 63-65). They had permission to be in and obtain soft drinks from the Bistro Bar. (N.T. 57, 62).

A female minor, K. M., testified that she was a co-worker with S. N. and mixed alcoholic beverages at the bar if the bartender was unavailable. (N.T. 40). She never saw S.N. drink alcoholic beverages but had smelled it on his breath. (N. T. 50). Around Christmas, 2005, she cautioned Deborah Couch, the Bistro bartender, to watch her bar. (N. T. 46).

HOSPITALITY GROUP SERVICES, INC.
T/A RAMADA OF HISTORIC LIGONIER
Citation No. 07-0361

Licensee's counsel called Licensee's bartender, Deborah Couch to testify in defense and introduced a floor plan of the licensed premises. (Exhibit A). Ms. Couch testified that she worked the evening of February 18 to 19, 2006, and told the two minors, S. N. and M. W., to leave work when she locked the bistro bar doors and left at 1:15 a.m. (N.T. 78-80).

I find the testimony of each witness to be credible.

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d (Pa. Cmwlth. 1982). The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. Black's Law Dictionary, Fifth Edition, West Publishing Company, Copyright 1979, Page 1064.

A licensee is strictly liable if it permits a minor to be furnished alcoholic beverages on the licensed premises. "Permit" has been defined as acquiesce in by failing to prevent. PLCB v. Margaret Abraham, 541 A.2d 1161 (Pa. Cmwlth. 1988), Banks Liquor License Case, 467 A.2d 85 (Pa. Cmwlth. 1983).

I find that the Bureau has met its burden of proof in that on February 18 and 19, 2006, Licensee's minor employee, S. N., more likely than not obtained and consumed alcoholic beverages while at work. Because Licensee is strictly liable by failing to prevent S. N. from obtaining and consuming alcoholic beverages at work, Licensee is deemed to have furnished them to him. Therefore, I am constrained to sustain the citation as to the dates of February 18 and 19, 2006.

PRIOR RECORD:

Licensee has been licensed since April 1, 1993, and has 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 this case.

After due consideration of the circumstances giving rise to the citation and Licensee's status as a first time offender, a fine of \$1,200.00 and R.A.M.P. training will be imposed as the penalty in this case.

HOSPITALITY GROUP SERVICES, INC.
T/A RAMADA OF HISTORIC LIGONIER
Citation No. 07-0361

ORDER:

THEREFORE, it is hereby ordered that Licensee, Hospitality Group Services, Inc., T/A Ramada of Historic Ligonier, pay a fine of \$1,200.00 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, Hospitality Group Services, Inc., T/A Ramada of Historic Ligonier, shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcoholic Management in the following manner. Licensee is directed to initiate contact with the Bureau of Alcohol Education (Telephone 1-866-275-8237; Web Site: www.lcb.state.pa.us within 30 days of the mailing date of this Adjudication. 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.

Failure to comply with this Order will be grounds for modification of penalty in this case, and for that purpose jurisdiction is retained. Failure to comply may also constitute ground for issuance of a new citation as authorized by 47 P.S. §4-471(d).

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 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

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 6th day of September, 2007.

Robert F. Skwaryk, J.

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.

HOSPITALITY GROUP SERVICES, INC.
T/A RAMADA OF HISTORIC LIGONIER
Citation No. 07-0361