

Mailing Date: MAY 12 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0388
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-347480
v.	:	
	:	LID - 41644
T S I INTERNATIONAL CORP INC	:	
T/A BEER CENTER	:	
BLVD PLAZA STORE #250	:	
ROOSEVELT BLVD & HALDEMAN AVE	:	
PHILADELPHIA PA 19115	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-SS-2053	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: Frank H. Morgan, Jr., Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on March 7, 2007. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on January 27, 2007, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, eighteen years of age.

A hearing was held on Tuesday, February 26, 2008, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On January 27, 2007, a man whose birth date was May 23, 1988, entered Licensee's premises at about 8:00 p.m. in order to buy beverages. He retrieved two 24-packs of Rolling Rock bottled beer and one 30-pack of Twisted Tea brewed alcoholic beverage from the cooler and wheeled them to the counter on a dolly (N.T. 11-13).

2. Licensee's cashier asked for identification. The man handed him his brother's Pennsylvania junior driver's license, which states on its face that the brother's birth date is December 26, 1983, and that the license expired on December 27, 2005. The license also states in conspicuous type that the person to whom it was issued would be "**UNDER 21 until 12/26/2004**" (N.T. 13, Exhibit B-3).

3. Licensee's cashier at the time of this sale was its president, Yefim Tsirelson. Mr. Tsirelson looked at the photo on the license and compared it with the appearance of the customer. He then scanned the license in a lottery machine scanner, which reported that the age of the person to whom the license had been issued was 23 years and 32 days (N.T. 20-21).

4. Mr. Tsirelson believed that the photograph on the license was that of the customer in front of him, and therefore he believed that this customer was an adult. Acting on this belief, Mr. Tsirelson completed the sale (N.T. 8-9, 20-22).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Licensee's counsel argued that Licensee had made every good faith effort possible under the circumstances, and that he should not be punished as though he had just blatantly made a sale to an underage person.

I believe Licensee's president did, in fact, believe this customer was an adult. As a result, it must be said that the sale was negligent rather than intentional.

Licensee's president's state of mind may be relevant to an assessment of the appropriate penalty in this case, but it cannot constitute a defense to the charge. Selling, furnishing or giving alcoholic beverages to a minor is an absolute liability violation, and the only defenses available are the ones enumerated in 47 P.S. §4-495.

The first sentence of that statute makes it clear that only a valid photo driver's license may be accepted as identification. Since the license in this case was expired, it was not valid.

PRIOR RECORD:

Licensee has been licensed since January 30, 1998, and has had two prior violations:

Citation No. 99-0066. \$1,500.00 fine.

1. Sales to minors. October 24 and November 6, 1998.

Citation No. 01-0423. \$1,800.00 fine.

1. Sales to minors. February 18, 2001.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, T S I International Corp., Inc., t/a Beer Center, License No. D-SS-2053, shall pay a fine of two thousand dollars (\$2,000.00) within

20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

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. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; www.lcb.state.pa.us) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (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. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

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).

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

Dated this 5th day of May, 2008.

David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 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
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