

Mailing Date: JUN 26 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0486C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-343556
v.	:	
	:	LID - 11130
2054 JOES INTERNATIONAL BAR INC	:	
2054 DENNIE STREET	:	
PHILADELPHIA PA 19140-1723	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-3776	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Erik Shmukler, Esquire

For Licensee
Paul L. Herron, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 13, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 2054 JOE'S INTERNATIONAL BAR, INC., License Number R-AP-SS-3776 (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 January 25, 2007, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

The investigation which gave rise to the citation began on November 20, 2006 and was completed on February 8, 2007; and notice of the violation was sent to Licensee by Certified Mail on February 12, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 10, 2007 in the Office of Administrative Law Judge, 140 West Germantown Pike, Plymouth Meeting, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. T.D. was born on November 28, 1986, and on January 25, 2007, he was under the age of 21 years (N.T. Exhibit B-3).
2. On January 25, 2007 at approximately 7:33 p.m. T.D. entered the licensed premises (N.T. 8).
3. Upon entry T.D. asked the bartender for a bottle of Coors Light beer. He paid the bartender \$5.00. The bartender brought T.D. his change and put the bottle of beer in a bag. T.D. then left the licensed premises and handed the bottle to a compliance agent outside the premises (N.T. 13-16).
4. T.D. was not asked for identification at any point (N.T. 15).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

EVIDENTIARY QUESTION

At the hearing in this matter, counsel for the Licensee objected to the use by the Bureau of a document referred to as a "JNET" certification. This document is basically a certified document from the Department of Transportation containing driver's license information of a particular individual. This document contains the seal of the Pennsylvania Department of Transportation as a certification. This document is, therefore, admissible to prove the contents thereof which includes the age of the driver's license holder [42 Pa. C.S.A. §6103]. The document in question is, therefore, admissible to prove the age of the individual in question. Thus Licensee's objection to the use of the document in question is overruled.

SUBSTANTIVE CHARGE

In the instant case, the minor ordered and was served a bottle of beer without question as to age. This is clear violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge in the citation is, therefore, sustained.

PRIOR RECORD:

Licensee has been licensed since May 5, 1986, and has had seven prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 92-2115. Fine \$400.00.

1. Unlawfully possessed and/or transported liquor within this Commonwealth.
2. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store.

Citation No. 93-0245. Fine \$900.00 and revocation of Sunday Sales Permit.

1. Not a bona fide restaurant in that food items, eating utensils and chairs at tables were insufficient.
2. Stored alcoholic beverages on premises not covered by the license.
3. Furnished false information in obtaining a Sunday Sales Permit.
4. Failed to maintain complete and truthful records for a period of 2 years immediately preceding November 5, 1992.
5. Fortified, adulterated and/or contaminated liquor.

Citation No. 97-1743. Fine \$300.00 and verification conditions corrected. Fine not paid, verification not submitted and license suspended for 1 day. Licensee did not respond and license revoked with bond forfeiture. Fine paid, ALJ reconsidered and imposed a 3 days suspension.

1. Not a bona fide restaurant in that food items, eating utensils and dishes were insufficient.

Citation No. 97-2078. Fine \$850.00.

1. Sold an increased volume of one drink without a corresponding and proportionate increase in the price of the drink.

2. Sold liquor for consumption off premises.
3. Sales to a visibly intoxicated person.

Citation No. 99-0678. 7 days suspension.

1. Sold alcoholic beverages after the restaurant liquor license expired and had not been renewed and/or validated.

Citation No. 02-1554. Fine \$400.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine). July 24, 2002.

Citation No. 06-1133. Fine \$1,250.00 and RAMP training required.

1. Sales to a minor. March 2, 2006.
2. Sold malt or brewed beverages for consumption off premises. March 2, 2006.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$2,000.00 and Licensee must remain in compliance up to **June 10, 2009**.

ORDER

THEREFORE, it is hereby ordered that Licensee 2054 JOES INTERNATIONAL BAR, INC., pay a fine of \$2,000.00 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 Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee must remain in compliance up to **June 10, 2009**.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 12th day of June, 2008.

Daniel T. Flaherty, Jr., J.

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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 submit stub with payment

The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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

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