

Mailing Date: JAN 15 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0684
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-344627
	:	
METEORA CORPORATION	:	
T/A SAMS PIZZA ISLAND	:	LID - 56218
445 HANNUM AVE.	:	
WEST CHESTER PA 19380-2524	:	
	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. E-SS-1642	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

MARY LOU HOGAN, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 3, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Meteora Corporation, t/a Sams Pizza Island, License Number E-SS-1642 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 22, 2008, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on November 30, 2006, 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.

FINDINGS OF FACT:

1. Officer Edward Gartland is employed by the Bureau of Enforcement and was assigned to conduct and investigation of the licensed premises in West Chester, Pennsylvania. The Bureau conducted that investigation based upon a complaint from the West Chester Police Department. The officer made undercover visits to the premises, but, on two occasions, he identified himself (N.T. 5-6).

2. The West Chester Police complained that on November 30, 2006, a minor, M. S., went into the premises and purchased beer (N.T. 7).

3. Officer Gartland interviewed M. S. in February of 2007, based upon the report of the activity of November 30, 2006 (N.T. 7-8).

4. On Friday, March 2, 2007, the officer went to the premises and spoke with the Licensee, told him the date and the name of the minor claiming to have been served on the premises. The Licensee showed the officer their identification check system. She printed him out a copy of a surveillance photo and also a copy of a Pennsylvania identification card belonging to R. S. who had the same last name as M. S. (N.T. 8-9 and Exhibit B-3).

5. The surveillance photo appears to be M. S. and the documentation in the nature of an identification identified him as R. S., who is his older brother (N.T. 9 and Exhibit B-3).

6. According to the identification card, R. S. is 6'2". The officer recalled M. S. being approximately 5'9" (N.T. 9-10).

7. The officer compared the printout of the identification card with the J-Net file on R. S. and determined that it was a valid identification card. However, it did not belong to M. S. (N.T. 10 and Exhibit B-3).

8. Based upon the information from M. S., Officer Gartland brought the citation in that M. S. alleged that he never was required to show identification on the premises (N.T. 11).

9. According to West Chester Police Officer Craig, when M. S. was stopped in his vehicle the officer asked for identification and M. S. identified himself as R. S. Officer Craig then ran a request for a J-Net photo and after receding a question, M. S. further answered his real identity (N.T. 15-17).

10. No identification was taken from M. S. on that night (N.T. 17-18).

11. The officer had been outside the licensed premises on November 30, 2006 conducting an investigation. The officer witnessed a minor being served. The officer went inside and Licensee provided him with a surveillance photo and identification printout. The format was different than the one provided to the Bureau for M. S. in that the identification card was below the photo of the individual and appeared to be smaller than the surveillance photo of M. S. In the surveillance photo of M. S., the picture and the identification was a 5" by 5" and the identification card appears to be somewhat larger. The officer did not cite the Licensee under those circumstances (N.T. 18-19 and Exhibits B-3 and B-4).

12. M. S. was born February 27, 1987 and on the date of hearing, was twenty-one years of age. He was nineteen years of age on November 30, 2006. He recalls going to the licensed premises at approximately 9:00 p.m. He was driven there by a friend. He arrived at the premises and entered through the front door. There was another youth outside the premises who asked M. S. to purchase beer for him. M. S. indicated that he bought food and beer. When he entered the premises, he went to the counter and asked for two six packs of Miller Lite beer. The beer was served to him in cans and placed in two brown paper bags. M. S. indicated that they asked for his name and he gave them his last name. He looked up toward the camera, they brought up a name and sold him the beer (N.T. 22-25).

13. M. S. indicated that he had no identification or driver's license on him (N.T. 25-26).

14. M. S. paid for the purchases with cash and took possession of the beer. He gave beer to the young man outside who gave him money for the purchase. Shortly thereafter, the West Chester police pulled his card over, he stepped out of the vehicle and was searched and then questioned with regard to the his identity. He stated that he lied and said that his name was R. S. The officer went back to his car, came back and questioned him further. Finally, he told them his name was M. S. The officer took the beer, uncuffed M. S. and told him that his fine would be in the mail (N.T. 27).

15. The officer did not take M. S. back inside the place where he brought the beer (N.T. 27-28).

16. M. S. stated that R. S. is 6'3" and that he is 5'9" – 5'10". M. S. stated that he had never used his brother's identification on the premises. M. S. further stated that he had been at the licensed premises to eat, but had never purchased alcoholic beverages on the premises. His brother is twenty-six years of age (N.T. 28-29).

17. The Chester Police Officer did not believe that the J-Net photo, which is the same photo that appears on the identification card, looks like M. S. According to M. S., the officer indicated that the person on the identification was 6'2". The policeman indicated his own height was 6 feet and that M. S. was shorter than he was (N.T. 29-30).

18. Janette Vargas is employed by the licensed premises and was so employed on November 30, 2006. She is also employed with the Chester County Bail Agency, a division of the Chester County Court system. Ms. Vargas indicated that she asked M. S. for identification and that she took his identification and looked it up in the computer system. She goes to the computer and types the individual's name and if it doesn't come up, she scans it. There is a wall camera next to the computer. Once the identification is scanned, the picture is taken on the webcam. One is then able to look at the pictures side by side (N.T. 32-34).

19. The employee types in the last name and the device indicates if the individual is a prior customer (N.T. 34).

20. Ms. Vargas indicated that when given a driver's license, she always asked the person to verify the date of birth (N.T. 34-35).

21. From the fact that M. S.'s head is somewhat cut off in the photo and the position of the camera, which Ms. Vargas claims is six feet, they concluded that M. S. was near six feet tall (N.T. 35-36).

22. Ms. Vargas stated that prior to November 30, 2006. She had some training with regard to identifying minors. She had a Pennsylvania book, which identified licenses from various states. She was also taught to use the scanner and the computer to read the black strip on the back of the licenses (N.T. 37).

23. Ms. Vargas indicated that she knew how to check for names, but not for the date of purchase (N.T. 39).

24. Vasillos Adamos is the owner of the licensed premises. He was present on November 30, 2006 when M. S. came to purchase the beer (N.T. 41-42).

25. Mr. Adamos stated that M. S. gave Ms. Vargas a Pennsylvania identification. She went to the computer and scanned it, but it did not go through. She then found the name, scanned the identification card and took a photograph of M. S. (N.T. 42-43).

26. According to Mr. Adamos, when they ran the card, it did not indicate that this individual was a prior customer (N.T. 44).

27. Mr. Adamos explained the difference and the reason of the photo identification in the officer's investigation and the presentation with M. S. The fax machine was broken and it somehow had to be printed in a different format (N.T. 45-46).

CONCLUSIONS OF LAW:

On November 30, 2006, 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. However, no penalty shall be imposed in that Licensee established a good faith defense under Section 495 of the Liquor Code, 47 P.S. Section 4-495.

DISCUSSION:

In order to establish a defense under Section 495 of the Liquor Code, 47 P.S. Section 4-495, a valid photo driver's license or identification card issued by a state of the United States, a valid armed forces identification or passport must be presented. Section 495 indicates that no penalty shall be imposed on the Licensee if the Licensee or its employee establishes that the minor was required to produce an identification card and that some visual presentation of the identification card was made and these documents were relied upon in good faith. Or if the Licensee can establish that the minor was required to present identification and that it was scanned as valid and that the transaction was relied upon in good faith.

This case turns on credibility. And in this instance, the Court finds the Licensee to be credible. It is well settled law that the ALJ, as fact finder, determines the weight and sufficiency to be accorded to all testimonial evidence. Matters of witness credibility are the sole prerogative of the ALJ. Borough of Ridgway v. Pennsylvania Public Utility Comm'n, 83 Pa. Cmwlth. 739, 480 A.2d 1253, 1258 (1984).

Notwithstanding the difference in the height of the Licensee, as compared to the identification card, the Court finds that the Licensee met all of these requirements to establish a defense under Section 495. The Court believes that Licensee relied upon the identification in good faith. The employee's version of the transaction was corroborated by Licensee, who was also present. The employee was prudent in that she questioned M. S. about the information on the identification card, in addition to scanning the card and taking a photo of M. S.

The identification card belonging to R. S., which is juxtaposed next to the picture of M. S. is not a driver's license, but is a Pennsylvania identification card. This card scanned as being valid, but it did not belong to the bearer. The picture on the identification card was very similar to M. S.

It would have been very helpful if the Chester police officer, who was in fact subpoenaed for this hearing, had appeared and testified in this matter. The officer may have questioned the photo. It seems that the officer primarily questioned the minor's height. The identification card indicated that the bearer was 6 feet 2 inches tall. The officer had a clear basis of comparison, which was his own height. According to the testimony of M.S., the officer stated that he was 6 feet tall and that M.S. was shorter than he was. The officer could have also verified whether or not an identification was found on M.S.

Meteora Corporation
t/a Sams Pizza Island
Citation No. 07-0684

M.S.'s explanation sounds very reasonable. He states that he gave his last name and was identified as a prior purchaser, had his photo taken and was allowed to purchase the beer. According to the minor, the identification card was already in the system and that card was then juxtaposed next to his photo at the time of his current transaction. He claims that his brother must have used the identification card at that location at some earlier point in time. However, under the circumstances, it is difficult to find this witness credible. He is before the Court because of his attempt to be deceptive. He presented himself to the Licensee as a person over the age of 21. He clearly lied to the police officer when stopped and questioned. If he offered the name of R.S. when stopped by the police, there is little reason to believe that he had not done so earlier that night while purchasing beer. The minor purchased beer for himself and another minor who approached him outside the premises. He apparently did not even know the other minor.

If any of what the minor says is true, i.e. that he was identified by last name only as a prior customer, the system may be sophisticated, but there are too many opportunities for error, confusion and/or deception with regard to the detection of minors. When asked to pull up the information by the Bureau, Licensee did so by name, but could not tell the date of the transaction. This could be problematic, unless the police requests the data immediately after the sale as was the case with another minor who purchased beer at this premises during the course of the officer's investigation.

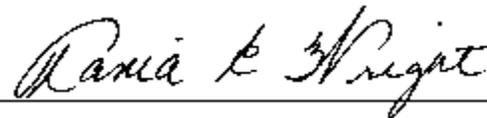
Despite the ruling in this case, Licensee could benefit from R.A.M.P. training and is strongly advised to do so.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Citation Number 07-0684 is DISMISSED.

Dated this 13th day of January, 2008.



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.

mm