

Mailing Date: DEC 29 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0751
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-345639
	:	
FINACARO-MAGLIO INC.	:	
T/A NOAH'S ARK	:	LID - 16212
1548-50 MCKEAN STREET	:	
PHILADELPHIA PA 19145	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-13575	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 10, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Finacaro-Maglio, Inc., t/a Noah's Ark, License Number R-AP-SS-13575 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, February 13, 2008, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on December 23, 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) female minor, twenty (20) years of age.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on December 28, 2006 and ended March 2, 2007. A notice of violation letter was sent to the licensed premises on March 16, 2007 by certified mail, return receipt requested. The mailing was signed as received. A citation was issued by the Bureau of Enforcement on April 10, 2007. The receipt for certified mail was signed as received on April 12, 2007. A hearing was scheduled for February 13, 2008. Notice of that hearing was sent by certified mail, return receipt requested, as well as by first class mail. The certified mailing was returned unclaimed (N.T. 7-10 and Exhibits B-1 and B-2).

2. At the time of hearing, Officer J. Suppin had been employed by the Bureau for approximately two years. He visited the licensed premises on December 28, 2006, to investigate sales with an expired license. The officer made his first visit to the premises on January 11, 2007, but found no violations. He again visited the premises on Saturday, February 10, 2007, but found no violations (N.T. 5-6).

3. During his February 10, 2007 visit, the officer noticed that the 2005-2006 license was posted on the wall. He contacted the Liquor Control Board who advised him that they had granted temporary authority to the Licensee to operate (N.T. 6).

4. On February 7, 2007, the Bureau received a report from the Philadelphia Police Department with regard to underage drinking at the licensed premises. Based upon that report, the Bureau went out on March 2, 2007, interviewed a minor patron and took a statement from her (N.T. 6-7).

5. Sgt. Ramon Addison, Badge #8659, is assigned to the First District of the Philadelphia Police Department. At the time of hearing, he had been employed as a police officer for about seventeen and a half years. He has been assigned to the First District for approximately five years (N.T. 11-12).

6. On or about December 16, 2006 at approximately 1:45 a.m., the officer visited the licensed premises. He made an unannounced check of the premises because he had been getting calls for loud music and drinking outside the bar and possible underage drinking. He observed people coming out of the bar with open beverages and noted that the music was loud. The officer saw a number of people at the bar, but it was not overly crowded (N.T. 13).

7. As Officer Addison walked in, he saw Mr. Maglio, whom he knew from prior contacts with the premises. He saw that he was placing a drink on the bar in front of a patron. The officer spoke to Mr. Maglio and told him the reason that he was there. The officer walked through the bar up a flight of steps to a pool table. When he came down the steps, he passed a female, stopped and went back to her and asked her how old she was. He explained to her that she appeared to him to be underage and he asked her to produce some valid identification (N.T. 13-14).

8. Officer Addison indicated that the female produced a Pennsylvania identification. Based upon the information contained on that identification, the officer determined that she was under twenty-one years of age. He reached over and smelled the drink that was placed in front of her and it clearly smelled of alcohol. He informed her that she was under arrest for underage drinking. He also arrested Mr. Maglio (N.T. 13-14).

9. The officer explained to Mr. Maglio that he had seen him serving the patron (N.T. 14).

10. The officer continued to survey the bar and then transported the underage drinker and Mr. Maglio to the First Division Police District in Philadelphia (N.T.14-15).

11. According to the J-net file, the underage drinker who he arrested inside the premises is T. S. She was born Mach 17, 1986 and would not be twenty-one years of age until March 17, 2007 (N.T. 15-20 and Exhibit B -3).

12. The officer interviewed T. S. on March 2, 2007 (N.T. 21).

13. Officer Suppin obtained a statement questionnaire from T.S. which indicated that while in the premises, she was served one alcoholic beverage by a friend (N.T. 21).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On December 23, 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) female minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

PRIOR RECORD:

Licensee has been licensed since November 20, 1975, and has a record of prior violations as follows:

Citation No. 04-0848. \$500.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
April 7, 2004.
2. Operated the licensed establishment without a valid health permit or license.
February 25, March 20 and April 7, 2004.

Citation No. 05-2135. \$900.00 fine.

1. Sold liquor for consumption off premises.
July 8 and August 13, 2005.
2. Used loudspeakers or devices whereby music could be heard outside.
July 8 and August 5, 2005.
3. Not a bona fide restaurant in that food items were insufficient.
August 24, 2005.

Citation No. 06-0345. \$300.00 fine.

1. Aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises.
October 8 and December 12, 2005.
2. Sold liquor for consumption off premises.
October 8, 2005.

DISCUSSION:

The evidence was sufficient to show that there was an underage individual on the premises who was served an alcoholic beverage. The service of the alcoholic beverage by the Licensee was witnessed by a Philadelphia Police officer. The officer determined her age by the driver's license produced by the minor. The J-net file confirmed that the individual was not yet twenty-one years of age.

Licensee's prior record includes a number of serious violations, however, there are no prior violations relative to sales to minors.

Finacaro-Maglio, Inc.
t/a Noah's Ark
Citation No. 07-0751

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, pertaining to Responsible Alcohol Management when, as in this matter, 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.

Accordingly, we issue the following

ORDER:

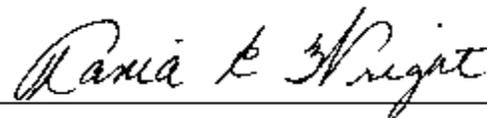
THEREFORE, it is hereby Ordered that Licensee, Finacaro-Maglio, Inc., t/a Noah's Ark, License Number R-AP-SS-13575, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) 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. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: 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).

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 17TH day of DECEMBER, 2008.



Tania E. Wright, J.

Finacaro-Maglio, Inc.
t/a Noah's Ark
Citation No. 07-0751

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.

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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Citation No. 07-0751
Finacaro-Maglio, Inc.