

Mailing Date: JAN 31 2008

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0802
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-348240
	:	
v.	:	LID - 54136
	:	
NORTHEAST CONCESSIONS, L P	:	
1280 STATE HWY. RTE. 315	:	
WILKES-BARRE, PA 18702-7002	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-EHF-15046	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement	For Licensee
Craig A. Strong, Esquire	Curtis J. Rogers, Esquire
315	Pennsylvania State Police 1280 Highway
8320 Schantz Road, Second Floor	Wilkes-Barre, PA 18702
Breinigsville, PA 18031	

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 20, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Northeast Concessions, L P (Licensee), License Number R-AP-SS-EHF-15046.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on February 5, 2007, Licensee, by 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.

An evidentiary hearing was conducted on November 8, 2007 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on February 7, 2007 and completed it on March 9, 2007. (N.T. 7)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on March 13, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 07-0802, N.T. 7)
3. On February 5, 2007, a nineteen year old (born March 22, 1987), entered the premises with friends. They all went to the horse race betting section of the licensed premises. After returning from the bathroom, the minor noticed there was a bottle of beer on the bar. He took the bottle and drank from it. He subsequently entered the slots portion of the premises with beer in hand. A server came to the minor's location and asked if he wanted another beer. The minor responded that he did not. The server asked the minor for identification. The minor indicated that he had none. The minor attempted to leave the premises and was held by Licensee's Security Personnel awaiting arrival of State Police Troopers. (N.T. 35-37)
4. Licensee's Security Personnel reported to a State Police Trooper on duty at the subject premises they found an underage customer who had been drinking in the slots area of the premises.² Two Troopers stopped the individual who smelled of alcohol. (N.T. 22-23)

1. Commonwealth Exhibit No. C-2, 07-0802, N.T. 7.
2. The declaration by Licensee's Security Personnel to the State Police Trooper is an exception to the rule against hearsay regarding statements by agents. Pa. Rule of Evidence §803(25)(D); Ohlbaum on the Pennsylvania Rules of Evidence, Section 803.25[12].

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

This matter presents a rather standard and straight forward matter but not so claims Licensee. From the early stages, when Licensee sought discovery via depositions, an attempt which was opposed by the Bureau and recognized by me as unfounded, Licensee has interposed issues which unnecessarily complicate this matter.

Unquestionably, Licensee may exercise its legal muscle by raising any and all issues Licensee believes to have pertinence. Nonetheless, I have the obligation to address these issues in language I deem fairly and pointedly responsive, absent indirection and vague parlor room niceties.

Licensee suggested the Bureau's investigation was not thorough. I am one who has not been shy about expressing my opinion for greater investigative efforts when I believe so. There is, of course, a subjective component to the question of thoroughness. There is also an allocation of resources issue, i.e. how much investigative activity should the Bureau engage in given the facts, issues and burden of proof in a given case? Unquestionably, the Bureau did not conduct the perfect investigation. Even if such a concept exists, so what?

Licensee's response to my "so what" (a way of asking for relevance) is to claim the poor investigation deprived Licensee of Due Process (N.T. 15). I find this argument devoid of any merit whatsoever.

Licensee had access to the minor as well as one of the witnesses Licensee asserts the Bureau should have interviewed, i.e. the bartender on duty (N.T. 19). Moreover, Licensee's own video

surveillance equipment places the minor in the slots portion of the premises with a beer bottle in hand (N.T. 48-49)

Licensee's bartender admitted he was busy with other customers (N.T. 64-65). Licensee's Security Personnel affirmed the minor's presence on the premises (N.T. 67). Licensee also acknowledged the minor was able to enter the facility by avoiding an age check at entry (N.T. 56-57). The minor also smelled of alcohol (N.T. 22-23).

Licensee also argues that strict liability ought not to be applied as Licensee has a special duty to report the presence of minors in the slot machine area to the Pennsylvania Gaming Control Commission. In actuality, every licensee has legal obligations, rights and/or duties to multiple governmental agencies from the municipal, state and federal levels.

Significantly, our General Assembly saw fit to authorize the issuance of a restaurant liquor license to Licensee. Licensee is suggesting the Legislature's intent was to create a special class of restaurant liquor licensee with different obligations but failed to express that intent. Absent words to the contrary, I am obligated to conclude the Legislature intended for Licensee to be governed by the same standards as other restaurant liquor licensees.

Lastly, Licensee argues the Bureau's case must fail because of a lack of credible evidence. Licensee's brief asserts there is contradictory testimony in this record. I view a contradiction in testimony when one witness claims that "A" happened while a second witness claims that "A" never occurred. There is no contradicting evidence in this record. The credibility meter I read registers in favor of according the Bureau's witnesses full truth.

PRIOR RECORD:

Licensee has been licensed since January 25, 2005, and has had one prior violation:

Adjudication No. 07-0316. Fine \$250.00.

Permitted patrons to possess and/or remove
alcoholic beverages after 2:30 A.M.

November 28, 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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

I impose a \$1,250.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,250.00 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.

R.A.M.P. Requirements

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 is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 22nd day of January, 2008.

Felix Thau, A.L.J.

pm

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.

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
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Citation No. 07-0802