

Mailing Date: FEB 7 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0883C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-348961
	:	
v.	:	LID - 44039
	:	
GEORGE'S GEE'S INC	:	
300 W MARKET ST	:	
WEST CHESTER PA 19382-2805	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. R-SS-9365	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James Dailey, Esq.  
For Licensee: Dawson R. Muth, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 1, 2007. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on February 20, 2007, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

A hearing was held on December 6, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

On February 20, 2007, a man whose birth date was January 31, 1987, purchased malt liquor in the licensed premises. His age was not questioned (N.T. 6-8, 12-13, 28-29).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

The Bureau presented conflicting evidence in this case. Two liquor enforcement officers testified that one of them entered the premises one or two minutes before the minor entered, but the minor testified that the delay was forty-five minutes (N.T. 16). The minor's testimony in this

regard is clearly unbelievable and incorrect, but nevertheless I do believe, based on all the evidence, that he was twenty years old at the time and that he purchased the malt liquor.

Licensee's evidence would support a conclusion that its employee was concerned about the apparently suspicious behavior of the undercover officer in the premises, as well as the undercover officers who remained seated in vehicles outside the premises. The concern was that some type of criminal activity was afoot which might present a danger to Licensee's employees and customers.

Because of this circumstance, I am asked to believe that Licensee's employee's failure to request proof of age from the minor was justified by the more important goal of customer/employee safety. In other words, the presence of shady characters in and near the premises, made it imperative that the employee complete the transaction and get the customer out of the store quickly.

I know of no legal authority which would justify such a result, and the wiser course of action if safety were the goal would have been to refuse service and immediately evict the underage customer from the premises, without giving him a chance to prove his age. This would have been faster than what occurred, which was the tender of a ten dollar bill, the making of change, and the completion of the sale.

PRIOR RECORD:

Licensee has been licensed since May 24, 1999, and has had no prior violations.

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.

Although I have found that the evidence supports the citation in this case, the clumsy manner in which this undercover sting operation was conducted did provide reasonable cause for Licensee's employee to worry.

This, plus the absence of a prior record, are mitigating circumstances.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, George's, Gee's, Inc., License No. R-SS-9365, shall pay a fine of one thousand dollars (\$1,000.00) 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](http://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).

Dated this 23<sup>rd</sup> day of January, 2008.

---

David L. Shenke, 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  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg PA 17110-9661