

Mailing Date: NOV 07 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0981C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-351213
v.	:	
	:	LID - 38517
RON-FRED, INC.	:	
T/A BAILEY'S II STEAKHOUSE	:	
604 POCONO BLVD.	:	
MOUNT POCONO, PA 18344-1012	:	
	:	
	:	
MONROE COUNTY	:	
LICENSE NO. R-AP-SS-21177	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
David L. Horvath, Esquire
P.O. Box 511
712 Monroe Street
Stroudsburg, PA 18360-0511

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 14, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Ron-Fred, Inc., t/a Bailey's II Steakhouse (Licensee), License Number R-AP-SS-21177.

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 March 29, 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 October 3, 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 March 29, 2007 and completed it on April 4, 2007. (N.T. 12)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on April 11, 2007. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)
3. Pursuant to the Bureau's Age Compliance Check program, a nineteen year old (born May 16, 1987) was served a bottle of beer. Prior to service, the underage buyer was required to show identification. She displayed her true and valid Pennsylvania Photo Driver's license which showed her to be under twenty-one years of age. The bartender took the Photo Driver's license to the end of the bar and looked at it under a light and then served the minor. (N.T. 10-20)

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.

1. Commonwealth Exhibit No. C-2, N.T. 7.

DISCUSSION:

Licensee interposes the “good faith” defense. In order to do so however, Licensee must have taken any one of three actions: completion of a Declaration of Age Card; use of an ID checker; photostat or other visual representation of the identification card employed. Even if one of these three conditions were not required, I cannot conclude Licensee sold the beer to the minor in good faith. Calculating a purchaser’s age incorrectly is not good faith. On the contrary, I find that action to be more in the category of negligence. Mistakes do happen, but some mistakes cause the legal system to respond.

PRIOR RECORD:

Licensee has been licensed since October 1, 1996, 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 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 violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

As Licensee has had an unblemished record, I impose the minimum allowable fine of \$1,000.00.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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.

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 26th day of October, 2007.

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