

Mailing Date: April 2, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 07-1107C
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

ERIE SPORTS BAR, INC. : License No. R-1845
t/a Coach's Sports Bar & Grill :
3804 Elmwood Avenue :
Erie, PA 16509-1345 :

Counsel for Licensee: James L. Moran, Esquire
2236 West 38th Street
Erie, PA 16506

Counsel for Bureau: Nadia L. Vargo, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
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OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") appealed from an Adjudication and Order of Administrative Law Judge Roderick Frisk ("ALJ"), wherein the ALJ dismissed the citation.¹

¹ On January 4, 2008, the Bureau requested reconsideration of the ALJ's decision. (Admin. Notice). On January 17, 2008, the ALJ issued a Supplemental Order denying the Bureau's request for reconsideration. (Admin. Notice). This appeal by the Bureau is, however, to the ALJ's Adjudication and Order issued December 21, 2007. (Bureau Appeal).

The citation charged that, on April 9, 2007, Licensee, by its servants, agents or employees, violated section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one (1) female minor, nineteen (19) years of age.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, the Bureau contends that the ALJ committed an error of law in dismissing the citation. Specifically, the Bureau contends that the charge should have been sustained because neither section 6308 or 6310 of the Crimes Code [18 Pa. C.S. §§ 6308, 6310], nor Title 37 of the

Pennsylvania Code, Chapter 23 [37 Pa. Code § 23.21-23.23] alter the Bureau's burden of proof in a citation charging Licensee with a violation of Liquor Code section 493(1). [47 P.S. § 4-493(1)].

The record reveals that, on April 9, 2007, at 5:56 p.m., Bureau Officer G. R. Weber entered Licensee's premises in an undercover capacity and observed a female bartender rendering service to one (1) patron. (N.T. 17, 20, 42).

As part of the Bureau's Age Compliance Check Program, at approximately 6:06 p.m., a nineteen (19)-year-old female, identified as Underage Buyer #163, entered Licensee's premises and approached the bar. (N.T. 20-21, 24, 39). Officer Weber observed Underage Buyer #163 request a twelve (12)-ounce bottle of Bud Light beer from the female bartender, who retrieved the bottle of beer from the cooler and served it to the minor without question relative to her age. (N.T. 20-21, 26, 37, 39-41). Underage Buyer #163 paid two dollars (\$2.00) for this purchase, placed her hand on the bottle, and turned the bottle so that it faced Officer Weber. (N.T. 21, 37, 40-41). No one asked Underage Buyer #163 for identification, and she was not asked to complete a Declaration of Age card. (N.T. 26, 41). Underage Buyer #163 departed Licensee's

premises at 6:07 p.m., without consuming any of the beer she purchased. (N.T. 21-22, 24, 40-41). Her date of birth is May 14, 1987. (N.T. 39).

At the conclusion of the Bureau's case in chief, counsel for Licensee moved for dismissal of the citation, stating that the Bureau failed to offer credible evidence that immediate verbal notification was provided to Licensee's Board-approved manager or person in charge of the premises once an alleged violation was established in accordance with the Bureau's Age Compliance Program regulations.

Section 493(1) of the Liquor Code makes it unlawful

[f]or any licensee or the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given . . . to any minor

[47 P.S. § 4-493(1)]. It is well settled that licensees are subject to strict liability for violations of the Liquor Code. Pennsylvania Liquor Control Bd. v. TLK, Inc., 518 Pa. 500, 544 A.2d 931 (1988). The only defense to a charge for violating section 493(1) is section 495 of the Liquor Code, which provides that a licensee who has provided alcohol to a minor may, nonetheless, escape liability if the licensee required the minor to provide

proper identification and if the licensee acted in good faith. [47 P.S. § 4-495(e), (f)]. Licensees are assured a defense only if they act in good faith, and also require execution of a declaration of age card, retain a photocopy or video presentation of the valid identification upon which they have relied, or use a card scanning device to test the validity of the identification presented. [47 P.S. § 4-495].

It is clear that Licensee took none of the aforementioned steps. Licensee is, therefore, strictly liable for serving a female minor alcohol on its licensed premises on April 9, 2007, in violation of Liquor Code section 493(1). [47 P.S. § 4-493(1)].

Section 6308(e) of the Crimes Code creates an “Exception for Compliance Checks” as to the criminal prosecution of minors for the purchase, consumption, possession or transportation of alcohol, and section 6310(c) creates an “Exception for Compliance Checks” as to the criminal prosecution of the Bureau for the inducement of minors to buy alcohol. [18 Pa. C.S. §§ 6308(e), 6310(c)]. Out of those sections was borne section 23.23(1) [37 Pa. Code § 23.23(1)] of the Age Compliance Program regulations cited by the ALJ to support his conclusion that a lack of evidence

that the Bureau complied with its regulations absolves Licensee from liability for its actions.

As the Bureau avers on appeal, the sole purpose of these sections to protect the underage buyer and the Bureau from criminal prosecution. The provisions of 6308(e) and 6310(c) do not amend or alter 493(1) or its intent in any manner. Had the General Assembly, when amending sections 6308 and 6310 of the Crimes Code, meant for those sections to create another defense for licensees' strict liability for violations of Liquor Code section 493(1), it would have at least cross-referenced that section.

The Board agrees that sections 6308(e) and 6310(c) of the Crimes Code and section 23.23 of the Bureau's Age Compliance Program regulations do not add to the Bureau's burden of proof in civil administrative hearings against Licensees for violations of section 493(1) of the Liquor Code.

Accordingly, the Board must conclude that the ALJ's dismissal of the citation was an error of law. The ALJ's decision is, therefore, reversed.

ORDER

The decision of the ALJ is reversed.

The appeal of the Bureau is granted.

It is hereby ordered that this matter is remanded to the ALJ in order to impose an appropriate penalty consistent with this Opinion and Order.

Board Secretary