

Mailing Date: JAN 4 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1122
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-346131
v.	:	
	:	LID - 56239
SOUTH SIDE ENTERTAINMENT	:	
COMPANY INC	:	
1601-05 CARSON STREET	:	
PITTSBURGH PA 15203-1703	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-12729	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement  
Emily Gustave, Esquire

For Licensee  
Patrick Desimone,  
Corporate President, Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 25, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against South Side Entertainment Company, Inc., License Number R-AP-SS-12729 (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on March 29 and 30, 2007, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, 19 years of age.

SOUTH SIDE ENTERTAINMENT  
COMPANY, INC.  
Citation Number 07-1122

An administrative hearing was conducted on November 27, 2007, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee's Corporate President Patrick Desimone appeared on behalf of Licensee corporation.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on January 4, 2007, and completed its investigation on March 30, 2007. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated April 13, 2007, which was sent by certified mail and received by Licensee on. (Exhibit C-2, N.T. 8-9)
3. The citation was issued on May 25, 2007, and was sent by certified mail and received by Licensee on May 31, 2007. (Exhibits C-3, C-4)
4. On March 29, 2007 at approximately 11:30 p.m., Ryan T. accompanied by a friend entered Licensee's premises without question relative to his age. (N.T. 19)
5. From the time of his arrival at the premises until approximately 12:15 a.m., then being March 30, 2007, Ryan T. possessed and consumed two or three 12-ounce bottles of Miller Lite beer purchased and served to him by his friend. (N.T. 19-21)
6. At 12:15 a.m. on March 30, 2007, Liquor Enforcement Officer Faith Morros accompanied by fellow Enforcement Officers Zimmerman and Brallier entered Licensee's premises in an undercover capacity and observed two female bartenders rendering service of alcoholic beverages to approximately 75 patrons on the first floor of the premises. (N.T. 11-12, 16-17)
7. After observing no youthful appearing patrons on the first floor of the premises, the officers proceeded to the second floor where a male bartender was rendering service of alcoholic beverages to approximately ten patrons. (N.T. 16)
8. While on the second floor, Officer Morros approached a youthful appearing male who was observed in possession of and consuming from a 12-ounce bottle of Miller Lite beer. Upon questioning, this youthful appearing individual was identified as Ryan T. (N.T. 12-13)
9. Ryan T. was born on March 25, 1988, and was 19 years of age during the evening of March 29-30, 2007. (N.T. 18-19)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On March 29 and 30, 2007, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, 19 years of age, in violation of Section 493(1) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

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.

Moreover, Section 471(d) of the Liquor Code [47 P.S. §4-471(d)] 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 case, 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.

A review of Board records reveal that Licensee is not R.A.M.P. certified.

At the hearing, Licensee's Corporate President Patrick Desimone represented to this court that subsequent to the issuance of this citation, Licensee purchased and currently utilizes two scanning devices at each of its two entrances to the premises to more accurately identify underage individuals as they attempt to enter the premises.

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,200.00 and Licensee is directed to participate in mandatory Responsible Alcohol Management (R.A.M.P.) training as set forth in Section 471.1 of the Liquor Code.

SOUTH SIDE ENTERTAINMENT  
COMPANY, INC.  
Citation Number 07-1122

ORDER:

THEREFORE, it is hereby ordered that South Side Entertainment Company, Inc., License Number R-AP-SS-12729, pay a fine of \$1,200.00 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.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Section 471.1 of the Liquor Code [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management in the following manner: 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](http://www.lcb.state.pa.us)) within 30 days of the mailing date of this Adjudication in order to seek 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.

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) or (e) of the Liquor Code [47 P.S. §4-471(d) or §4-471(e)].

Jurisdiction is retained to ensure compliance with this Order.

Dated this 2<sup>nd</sup> day of January, 2008.

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Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

SOUTH SIDE ENTERTAINMENT  
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Citation Number 07-1122

Detach Here and Return Stub with Payment

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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. 07-1122, South Side Entertainment Company, Inc.