

Mailing Date: APR 14 2010

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1413
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-345728
	:	
THE ONE WAY INN INCORPORATED	:	
T/A THE ONE WAY INN	:	LID-11432
4344 PEACH ST : ERIE PA 16509-1443	:	
	:	
	:	
ERIE COUNTY	:	
LICENSE NO. R-SS-4435	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Michael C. Nickles, Esq.

LICENSEE COUNSEL: Jeff A. Connely, Esq.

BACKGROUND:

This proceeding arises out of a citation that was issued on June 25, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against The One Way Inn, Incorporated, T/A The One Way Inn, License Number R-SS-4435 (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4493(1)], in that on December 19 and 20, 2006, Licensee, by its servants, agents or employees, 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.

The investigation which gave rise to the citation began on December 21, 2006 and was completed on May 17, 2007. The notice of violation letter was mailed to Licensee on May 29, 2007.

An evidentiary hearing was held on this matter on February 24, 2010, in Erie, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is a corporation located in Erie County, Pennsylvania and holds Restaurant Liquor license number R-SS-4435. (N.T. 4)
2. On Tuesday, December 19, 2006, at approximately 11:00 p.m., and continuing into the early hours of Wednesday, December 20, 2006, a nineteen year old minor male, J.M., with a date of birth of June 25, 1987, entered the licensed premises with his father and friends and consumed alcoholic beverages. (N.T. 29-31, 33, 36).
3. Licensee's bartender questioned the minor about his age, but did not require him to complete a Declaration of Age card, nor scan or photo copy his I.D. card. (N.T. 30-31, 42, 44, 50).

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

This case arose from an off-duty State Police Trooper observing a suspected minor possessing alcoholic beverages at the licensed premises and who subsequently reported the incident to the Bureau of Liquor Enforcement. (N.T. 7-10). Counsel for Licensee stipulated that the Bureau's investigation was continuous and ongoing. (N.T. 8-9).

Hearings in this case were continued on January 20, 2008, April 10, 2008, December 11, 2008 and December 8, 2009, for good cause under 40 Pa. Code §15.54.

At the hearing held on February 24, 2010, J.M., appeared and testified that on the late evening of Tuesday, December 19, 2006, and continuing into the early morning hours of Wednesday, December 20, 2006, he was nineteen years of age and accompanied his father and friends to the licensed premises where he consumed alcoholic beverages. He was carded by the bartender but was not required to complete a Declaration of Age card, or have his identification card photo copied or scanned by a transactional scanning device (scanner).

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Licensee's bartender testified that she was R.A.M.P. certified and that she did card the minor, but did not require him to complete a Declaration of Age card, or photocopy it, or verify it through a scanner. The premises currently has a scanner, but did not have one on December 19 and 20, 2006.

Licensee's president testified that they are R.A.M.P. certified as of August 25, 2009, (Exhibit L1), received a notice of compliance from the PSP, BLCE on January 31, 2007, (Exhibit L-2), been recognized by local colleges for preventing underage drinking (Exhibit L-3) and have written rules for employees to prevent service to minors (Exhibit L-4).

I find the testimony of all witnesses to be credible and that Licensee's bartender acted in good faith.

Under the liquor code a Licensee is strictly liable if it permits any alcoholic beverages to be furnished to a minor. Banks Liquor License Case, 467 A.2d, Pa. Commonwealth, 1983. However, sections 495(e), (f), and (g) set forth an affirmative defense if Licensee acted in good faith when serving alcoholic beverages to a minor after carding the minor and had the minor either complete a Declaration of Age card, kept a photocopy of the valid identification card, or validated the card with a transaction scan device.

Because Licensee did not comply with Section 495(e), (f), and (g), the citation must be sustained.

PRIOR RECORD:

Licensee has been licensed since January 1, 1987, and has one (1) prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 00-0942. Fine \$100.00.

1. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.

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 a violation of the type found in this case.

Licensee received R.A.M.P. certification on August 25, 2009. (Exhibit L-1).

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After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$1,250.00, mandatory R.A.M.P. certification for one year will be imposed as the penalty in this case.¹

ORDER:

THEREFORE, it is hereby ordered that Licensee, The One Way Inn, Incorporated, T/A The One Way Inn, 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.

IT IS ADDITIONALLY ORDERED that Licensee remain in R.A.M.P. compliance for one year from the date of this ORDER.

Failure to comply with this Order will be grounds for modification of penalty in this case, and for that purpose jurisdiction is retained. Failure to comply may also constitute ground for issuance of a new citation as authorized by 47 P.S. §4-471(e).

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 31ST day of MARCH, 2010.



Robert F. Skwaryk, J.

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

¹ [47 P.S. §4-471(d)], effective June 12, 2006.

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The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** 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

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The One Way Inn, Incorporated

T/A The One Way Inn