

Mailing Date: MAR 13 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1420
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-352689
v.	:	
	:	LID - 51403
600 MACDADE INC	:	
600 MACDADE BLVD	:	
FOLSOM PA 19032-2319	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. D-SS-1742	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.
For Licensee: Donald M. Moser, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 3, 2007. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 21, 2007, and on divers other occasions within the past year, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to two male minors, eighteen and twenty years of age.

A hearing was held on January 23, 2008, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On April 21, 2007, a man whose birth date was March 24, 1989, purchased beer in the licensed premises. His age was not questioned (N.T. 12-15).
2. On April 21, 2007, a man whose birth date was February 10, 1987, purchased beer in the licensed premises. His age was not questioned (N.T. 29-32).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Licensee presented evidence to the effect that it maintains a “computer ID scanner” and uses it whenever they suspect that a customer is under age. Licensee’s personnel believed that they recognized both of the minors who testified in this case and that they had previously “scanned” the identification of each of them and that this had resulted in a report that both persons were of legal age.

Although a large number of print-outs created by this device were displayed during the hearing, Licensee was not able to locate one specifically pertaining to either of these minors. The evidence therefore had the limited effect of showing that on numerous occasions Licensee has attempted to prevent underage customers from making unlawful purchases.

I find that the testimony of Licensee’s officer was insufficient to establish the affirmative defense provided by 47 P.S. §4-495. Since the transaction scan device in the premises had the capability of printing a record of each transaction, it is my opinion that the absence of such a printed record cannot be remedied by testimony that “we can’t find it.”

One of the Bureau’s witnesses, the man born February 10, 1987, arrived at the hearing room 45 minutes late, apparently having gotten lost. At the time he arrived, the Bureau had rested its case and Licensee had presented the testimony of its sole shareholder and officer. I granted the Bureau’s motion to re-open the evidence so as to allow testimony from the late witness, over Licensee’s objection.

It is my opinion that the injunction to construe the rules of procedure liberally “to secure just, speedy and inexpensive determination of the issues presented” found in 1 Pa. Code §31.2 and 40 Pa. Code §15.2(a) was a sufficient basis for this action.

PRIOR RECORD:

Licensee has been licensed since September 3, 2003, and has had two prior violations:

Citation No. 05-0874. \$1,000.00 fine.

1. Sales to minors. March 31, 2005.

Citation No. 05-1321. \$1,500.00 fine.

1. Sales to minors. May 27, 2005.

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. Since this is Licensee’s third violation of a provision mentioned in 47 P.S. §4-471(c) within a four year period, the law requires that the penalty include license suspension or revocation.

ORDER

THEREFORE, it is hereby ORDERED that the Restaurant Liquor License of 600 MacDade, Inc., License No. D-SS-1742, shall be suspended for a period of three (3) days BEGINNING at 7:00 a.m. on Monday, May 5, 2008, and ENDING at 7:00 a.m. on Thursday, May 8, 2008. 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) 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).

Licensee is directed on Monday, May 5, 2008, at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Thursday, May 8, 2008, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 5th day of March, 2008.

David L. Shenkle, 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.