

Mailing Date: OCT 17 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1489
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W09-350793
	:	
CARUTTI INC.	:	
T/A STEPHEN'S BELLA CUCCINA	:	LID - 45730
1415 CITY LINE AVE.	:	
LOWER MERION TWP.	:	
WYNNEWOOD PA 19096	:	
	:	
MONTGOMERY COUNTY	:	
LICENSE NO. R-AP-SS-17380	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ROY HARKAVY, ESQ.**

FOR THE LICENSEE:

**JOHN J. McCREESH, III, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 18, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Carutti, Inc., t/a Stephen's Bella Cuccina, License Number R-AP-SS-17380 (hereinafter "Licensee").

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t/a Stephen's Bella Cuccina  
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An Administrative hearing was held on Tuesday, February 5, 2008, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on January 30, February 4, 11 and 17, 2007, and divers other occasions within the past year, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to ten (10) male minors and eight (8) female minors, seventeen (17) to twenty (20) years of age.

The second count charges Licensee with violation of Section 493(14) of the Liquor Code, 47 P.S. Section 4-493(14), in that on January 30, February 4, 11 and 17, 2007, and divers other occasions within the past year, Licensee, by its servants, agents or employes, permitted ten (10) male minors and eight (8) female minors, seventeen (17) to twenty (20) years of age, to frequent the licensed premises.

#### COUNT NOS. 1 AND 2

#### FINDINGS OF FACT:

1. Enforcement Officer D. Devaney is employed by the Bureau of Enforcement. He was assigned to investigate the matter based upon a report from St. Joseph's University and the Lower Merion Police Department. During the officer's investigation, he conducted interviews with several minors who were arrested on the licensed premises. The officer also made two undercover visits to the licensed premises during the course of his investigation (N.T. 6-8).

2. Officer Bove is employed by the Lower Merion Township Police and has been a law enforcement officer for approximately eleven years. On February 17, 2007, she was working as a police officer in the area of Pennway in the Overbrook community in the city of Philadelphia (N.T. 10-11).

3. At approximately 12:15 a.m., Officer Bove received assistance from other officers to handle a situation at the licensed premises. The officers arrived at the premises between 12:15 and 12:30 a.m. They were dressed in full uniform. There were approximately twelve police officers who conducted an investigation/raid of the licensed premises (N.T. 11).

4. At approximately 12:30 a.m., several officers went into the bar. They were stationed at the front and rear doors of the premises. Officer Bove was standing at the front door with several other officers. After a check of the bar, she noted that there were several people whom she believed to be under the age of twenty-one (N.T. 12).

5. Officer Bove walked through the bar towards the rear where she saw a couple of people at the pool tables in the back (N.T. 12).

6. When Officer Bove first walked into the bar, she noticed someone playing pool that she believed to be well under the age of twenty-one. That individual, who identified himself as D. D., handed her a legal driver's license which was determined to be fraudulent. The officer determined that D. D. was under the age of twenty-one and used a fake identification to enter the bar (N.T. 12-13).

7. Officer Bove also observed a male, B. E., who she watched drink a beer. B. E. was determined to be under twenty-one. There were eleven people arrested at that location for underage drinking. Three of the eleven individuals were also charged with possessing fake identification. Two of the people arrested were juveniles (N.T. 13).

8. Both of the juveniles who were arrested had no identification. Five of the eleven individuals arrested had no valid identification. Four of the eleven people only had a college identification, which had no date of birth on it. Two of the eleven people who were arrested had their real licenses but were also in possession of fake identification. One of the minors arrested at the bar that night was also arrested at the bar on February 11, 2007 in possession of fake identification. One of the eleven arrested was charged with a misdemeanor (N.T. 14).

9. B. E. indicated that he walked into the bar with friends. His date of birth is December 16, 1986 (N.T. 14-15).

10. B. E. had no fake identification. He gave his name as "Jim" and stated a false date of birth, November 16, 1984. He gave a false Pennsylvania address (N.T. 15-16).

11. V. B. was born on April 17, 1987 and on February 17, 2007 she was nineteen years of age. She visited the licensed premises on February 17, 2007 around 10:00 p.m. When she got there, she consumed a Miller Lite beer. The doorman that was working that night asked her for identification. She presented her Penn State identification. It had no date of birth on its face. The Miller Lite beer was ordered by a friend. She was not asked to sign a declaration of age card (N.T. 18-19).

12. J. H. was born November 25, 1987 and on February 17, 2007, he was nineteen years of age. On that night, he visited the licensed premises arriving at around 11:00 p.m. (N.T. 23-24).

13. J. H. went to the licensed premises on February 17, 2007 with two of his friends. He consumed alcohol while on the premises in the nature of bottles of Bud Light beer. He ordered the beer and paid for it. He did note that there was no doorman working that night. He entered the licensed premises with a bartender, whom his friend knows (N.T. 25-26).

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14. J. H. presented a false identification card. It was photocopied and he signed the copy. The identification did not have his correct birth date on it. He consumed approximately three beers on the premises. In the year prior to February 17, 2007, he has never been in the licensed premises (N.T. 25-26).

15. J. H. indicated there was no doorman, but did indicate that there was a bouncer. The bartender was the one who requested identification and who copied the identification and had him sign it (N.T. 26-27).

16. J. H. does not believe that his friend who accompanied him was requested to sign anything (N.T. 27).

17. The identification has J. H.'s photograph on it, but a different birthday than his actual one (N.T. 28).

18. B. E. was born December 16, 1986 and was twenty on February 17, 2007. On the night in question, he ordered, paid for and consumed beer at the licensed premises (N.T. 29-30).

19. B. E. was not requested to show any identification and had no identification on him on that night (N.T. 30).

20. B. E. had never gone to the licensed premises prior to February 17, 2007 (N.T. 31).

21. B. E. indicated that he was intoxicated when he arrived at the bar and does not remember whether or not he signed anything that could have been a declaration of age card (N.T. 32).

22. K. B. was born May 3, 1986 and on February 17, 2007, she was twenty years of age. She visited the licensed premises around 11:00 p.m. and believes that she was there approximately forty-five minutes before the premises was raided. She indicated that no one questioned her with regard to age and there was no door person working at the time that she entered. While on the premises, she consumed Budweiser beer. She ordered two or three beers herself and paid for them herself (N.T. 37-38).

23. K. B. indicated that she has been to the premises on earlier occasions, but was not permitted service on that date (N.T. 38-39).

24. She had no identification on her on that night. When she was stopped by the police officers, her friend had to go out to the car and retrieve her identification, because she was not permitted to leave until they were finished (N.T. 39).

25. She presented her identification, took a breathalyzer test and was given a citation. She showed the police officers her driver's license which indicated her date of birth as May 3, 1986. She indicated that she has no false identification (N.T. 39-40).

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26. K. B. was born on December 5, 1986. On February 17, 2007, she was twenty years of age. She arrived at the premises between 11:00 p.m. and 12:00 a.m. with three of her friends. She also went in with one of the bartenders that worked there. The bartender picked her and her friends up from the train station. At the premises, she consumed Miller Lite beer. She ordered and paid for the beer. She was actually given some beer by the bartender (N.T. 41-43).

27. K. B. was not questioned relative to age and was not required to produce any identification (N.T. 33-34).

28. K. B. indicated that within the last year, she visited the premises on two or three different occasions and was served alcoholic beverages on that occasion. On one occasion, she used fake identification, but the other times, she was not carded (N.T. 44).

29. She did not sign a declaration of age card or any other document regarding her age (N.T. 44-45).

30. William Piel works at the licensed premises. When the manager is not there, he is considered the man in charge and is the head bouncer. On February 17, 2007, he indicated that he was at the front door at approximately 9:30 p.m. His job was to check and copy identification on anyone who appeared to be under twenty-five years of age. He indicated that he has several cards in his file which belong to individuals who were arrested on the premises (N.T. 51).

31. Mr. Piel indicated that he did not leave the door on the night of February 17, 2007. There were approximately seventy to one hundred people on the premises on this night (N.T. 53).

32. Mr. Piel indicated that he cards everyone that walks through the door (N.T. 53).

33. Mr. Piel denied that Jarrod Haas is employed at the premises. Jarrod Haas was identified as the individual who picked up several youthful individuals from the train station and brought them to the premises. Jarrod Haas identified himself to these individuals as a bartender at the premises (N.T. 54).

34. The licensed premises does have a scanner that checks identification, however, it was not working on February 17, 2007 (N.T. 54-55).

#### CONCLUSIONS OF LAW:

Count No. 1 - On February 17, 2007, and divers other occasions within the past year, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to minors, seventeen (17) to twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

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Count No. 2 - On February 11 and 17, 2007, and divers other occasions within the past year, Licensee, by its servants, agents or employes, permitted minors, seventeen (17) to twenty (20) years of age, to frequent the licensed premises, in violation of Section 493(14) of the Liquor Code, 47 P.S. Section 4-493(14).

PRIOR RECORD:

Licensee has been licensed since April 5, 2000, and has a record of prior violations as follows:

Citation No. 05-2121. \$1,000.00 fine.

1. Sales to minors.  
July 26, 2005.

Citation No. 06-0788. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.  
October 28 and November 4, 2005.

Citation No. 06-0914. \$1,250.00 fine.

1. Minors frequenting.  
January 27, 2006.
2. Sales to minors.  
January 27, 2006.

DISCUSSION:

Although in some cases the Court did not find the minors wholly credible, overall the Court did find the evidence sufficient to determine that the minors were permitted into the premises. Some were carded; others may have surreptitiously entered the premises. Unfortunately, the Licensee was not able to produce declaration of age cards nor photo identifications sufficient to identify these persons. Therefore, Licensee was not able to establish an affirmative defense as set forth in Section 495 of the Liquor Code, 47 P.S. Section 4-495. Only a few of the minors claim to have actually signed declaration of age cards.

Licensee has had two prior violations for sales to minors. Under the circumstances, it is evident that substantial measures need to be taken to avoid this type of action in the future. The Licensee will be required to be R.A.M.P. certified. In addition, a monetary penalty and period of suspension shall be imposed.

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PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,000.00 and two days suspension.

Count No. 2 - One day suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Carutti, Inc., t/a Stephen's Bella Cucina, License Number R-AP-SS-17380, pay a fine of One Thousand Dollars (\$1,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (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 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 No.: 1-866-275-8237; Web Site: [www.lcb.state.pa.us](http://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).

IT IS ALSO ORDERED that the Restaurant Liquor License of Carutti, Inc., t/a Stephen's Bella Cucina, License Number R-AP-SS-17380, be suspended for a period of three (3) days **BEGINNING** at 7:00 a.m. on Monday, January 26, 2009 and **ENDING** at 7:00 a.m. on Thursday, January 29, 2009.

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Licensee is directed on Monday, January 26, 2009 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.

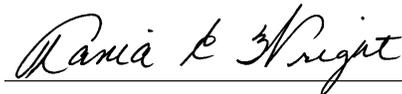
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Thursday, January 29, 2009 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 16<sup>th</sup> day of October, 2008.



Tania E. Wright, J.

**NOTE:** 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.

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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg, PA 17110-9661

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