Mailing Date: SEP 12 2008

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 07-1791
	:	Incident No. W02-352045
v.	:	
	:	LID - 46423
JOSEPH J. ARDOLINE 324 WILLIAM ST. PITTSTON, PA 18640-3517	:	
LUZERNE COUNTY LICENSE NO. R-AP-SS-14877	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire

For Licensee
Joseph F. Saporito, Jr., Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 15, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against JOSEPH J. ARDOLINE, License Number R-AP-SS-14877 (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 April 5 and 6, 2007, Licensee, by his servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

The investigation which gave rise to the citation began on April 12, 2007 and was completed on July 2, 2007; and notice of the violation was sent to Licensee by Certified Mail on July 13, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 31, 2008 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. K.P.R. was born on October 18, 1986, and, on April 5 and 6, 2007, he was 20 years old (N.T. 21-22).

2. On April 5, 2007 K.P.R. went to the licensed premises at about 10:30 p.m. (N.T. 22-23).

3. While on the licensed premises, K.P.R. ordered, was served and consumed Budweiser draft beers (N.T. 23).

4. While on the licensed premises, K.P.R. was not questioned as to age nor was he asked to produce any identification (N.T. 23-24).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The Bureau has sustained the charge in this case by the preponderance of the evidence.

In a liquor license case, the burden is on the Commonwealth to establish a violation by a clear preponderance of the evidence. ***In re Omicron Enterprises***, 449 A.2d 857 (Pa.Cmwlth 1982).

The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. ***Black's Law Dictionary, Fifth Edition***, West Publishing Company, Copyright 1979, Page 1064.

It is within my province, and is part of my responsibility to determine the credibility of witnesses and the weight to be given to their testimony. ***State Correctional Institute v. Robinson***, 561 A.2d 82 (Pa.Cmwlth 1989). I may give testimony such consideration as it may deserve, and accept it or reject it in whole or in part. ***McFarland Landscape Service v. Workmen's Comp. Bd. Of Appeal***, 557 A.2d 816, 817-18 (Pa.Cmwlth 1989); ***Hollenbach v. North Wales Foundry Co***., 136 A.2d 148, 150 (Pa.Super 1957).

I find the testimony of the minor in this case to be convincing despite the fact that Licensee has attempted to impeach his credibility via an inconsistent statement. It is clear to me that that inconsistent statement was made because the minor in this case was intimidated during a confrontation with the Licensee who appeared at his house to question him. The statement was obtained by Licensee under circumstances which, at best, can only be considered as questionable.

Based on the foregoing I conclude that the Bureau has met its burden and the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since July 10, 2000, and has had five prior violations:

Citation No. 03-0203. Fine $1,000.00.

1. Sales to a visibly intoxicated person. January 24, 2003.

Citation No. 03-1185. Fine $100.00.

1. Used loudspeakers or devices whereby music could be heard outside. June 8, 2003.

Citation No. 05-1836. 1 day suspension and thereafter until verification conditions corrected.

1. Not a bona fide restaurant in that you failed to provide food upon request. August 9 and 11, 2005.

Citation No. 06-1970. 3 days suspension and RAMP training mandated.

1. Sales to a minor. July 12, 2006.

Citation No. 07-1036. Fine $200.00.

1. Failed to comply with the Order of the Administrative Law Judge at Citation No. 06-1970, mandating responsible alcohol management training. February 28 to March 29, 2007.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of $2,000.00 and Licensee must remain RAMP compliant up to August 15, 2009.

ORDER

THEREFORE, it is hereby ordered that Licensee JOSEPH J. ARDOLINE, pay a fine of $2,000.00 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 Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee must remain in compliance until **August 15, 2009**.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 20th day of August, 2008.

Daniel T. Flaherty, Jr., J.

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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.

Detach here and submit stub with payment

The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable**. Make 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. 07-1791
Joseph J. Ardoline