

Mailing Date: NOV 20 2008

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

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|----------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 07-1805 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W01-356940 |
| v. | : | |
| | : | LID - 49421 |
| 2813 CHARLES INC | : | |
| 2813 W 9 th ST | : | |
| CHESTER PA 19013-1710 | : | |
| | : | |
| DELAWARE COUNTY | : | |
| LICENSE NO. R-AP-SS-7395 | : | BEFORE: JUDGE SHENKLE |

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 21, 2007. There are two counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on July 1, 2007, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to two female minors, seventeen and twenty years of age.

The second count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on July 1, 2007, and on divers other occasions within the past year, by permitting two female minors, seventeen to twenty years of age, to frequent its licensed premises.

A hearing was scheduled for February 25, 2008, before the Honorable Felix Thau, but it was continued because two witnesses who had been served with subpoenas failed to appear.

A hearing was held before the undersigned on October 9, 2008, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Liquor enforcement officers and other law enforcement personnel inspected the licensed premises at about 1:00 a.m. on July 1, 2007. There were between 75 and 100 patrons present. Liquor Enforcement Officer Bauer questioned a young woman who was in possession of a red-colored beverage. As a result of that contact the officer issued citations to the woman for underage possession of alcohol and misrepresentation of age (N.T. 5-7).

2. Liquor Enforcement Officer Ed Gartland was a part of the enforcement detail on July 1, 2007. He saw a young woman standing at a table on which there were containers of alcoholic beverages, but there was nothing he could see which indicated that she was in possession of any of the beverages. He questioned the woman about her age and whether she had possessed any alcoholic beverages in the premises (N.T. 25-28).

CONCLUSIONS OF LAW:

The evidence presented by the Bureau did not prove the averments of the citation.

DISCUSSION:

The subpoenaed witnesses failed to appear at the hearing of October 9, 2008, as well as the original hearing. Pursuant to the practice followed by judges of this Office, only one continuance for this reason may be allowed to the government.

Walker v. Unemployment Compensation Board of Review, 367 A.2d 366 (Pa. Cmwlth Ct, 1976) requires that hearsay evidence, properly objected to, be excluded from administrative proceedings such as the present case.

Counsel for Licensee interposed timely objections in this case, which prevented the Bureau from proving its case on the testimony of its officers.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 07-1805 is DISMISSED.

Dated this 17th day of November, 2008.



David L. Shenle, 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.