

Mailing Date: DEC 10 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2058
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-358845
	:	
JOE SIX PACK INC.	:	
7015 ROOSEVELT BLVD.	:	LID - 40580
PHILADELPHIA PA 19149-1430	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-OPS-7045	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**STEPHEN R. MURPHY, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 11, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Joe Six Pack, Inc., License Number R-SS-OPS-7045 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, November 15, 2007, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on August 2, 2007, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age.

FINDINGS OF FACT:

1. Officer Rowe is employed by the Bureau of Enforcement and at the time of hearing had been so employed for approximately two and a half to three years. He conducted an investigation of the licensed premises beginning on August 2, 2007. The investigation was closed on August 3, 2007 (N.T. 8-9 and Exhibit B-1).

2. The officer was in the parking lot of the licensed premises between 9:15 and 9:25 p.m. The officer was approximately eighty feet from the premises and had a clear view. Shortly after arriving, a vehicle pulled up with four individuals in it. One of the individuals walked in and grabbed three forty ounce Hurricane Malt Liquors and placed them on the counter. The clerk asked for identification from the individual and completed the sale. As the individual was walking out to return to the car, Officer Spera and Officer Rowe stopped him. The individual opened his wallet and produced identification. At that time, the officer noticed that there was a second identification in the wallet (N.T. 9-11).

3. The officer then asked him to pull out the second identification card so they could compare the two. The second identification was a driver's license, which the officer indicated to him did not look like the individual. The name E. L. was on the second one and the date of birth appeared as July 12, 1984 (N.T. 11-12).

4. The officer talked to T. D., the individual whom the officer stopped. The two officers proceeded into the licensed premises to speak with personnel (N.T. 13).

5. Officer Spera interviewed the passenger of the vehicle, who had actually gone into the licensed premises first, about the transaction that took place with the other passenger. The passenger attempted to make a purchase of alcoholic beverages. The passenger returned to the vehicle and another individual, T. D., exited the vehicle and went inside (N.T. 13-15).

6. The officer saw in T. D.'s hand what appeared to be an identification, which he had handed to the cashier. The officer then checked both sets of identification through the J-Net file (N.T. 16 and Exhibit B-3).

7. T. D. was born on December 10, 1986. On August 2, 2007, T. D. visited the licensed premises at approximately 10:00 p.m. He entered the premises in order to purchase alcoholic beverages. The counterperson looked at his identification and questioned him about it. The individual then scanned it and permitted him to purchase an alcoholic beverage (N.T. 19-20).

8. T. D. indicated that the identification which identified him as E. L. was used to purchase the alcoholic beverage while he was on the licensed premises (N.T. 21).

9. Mr. Fox is employed at the licensed premises and has been so employed for approximately seven and a half years. Mr. Fox stated that he is aware of the statement for the licensed premises which prohibits sales of alcoholic beverages to minors (N.T. 29-31 and Exhibit L-1).

10. Mr. Fox was working alone on August 3, 2007. He was working as a cashier. He noted that a young man came in to purchase alcoholic beverages. He scanned the identification card and then he asked him if he had any backup identification. He indicated that he did not. He could not scan the identification which was presented to him and therefore the individual was denied service (N.T. 32).

11. The type of scanner that the premises used does not have a printout but it does maintain a history (N.T. 32-33).

12. Within five minutes, the second individual came into the store and presented Mr. Fox with identification. Mr. Fox scanned the identification which indicated the birth date was over twenty-one and questioned the individual about the information that was contained on the identification (N.T. 35-36).

13. The individual had no trouble answering the questions (N.T. 37).

14. After scanning the identification and questioning the individual, he allowed T. D. to purchase alcoholic beverages (N.T. 37).

15. Mr. Swerdlow is the owner and shareholder of the licensed premises and has been so for over ten years. He indicated that he had been R.A.M.P. trained and was taking the owner/manager training for certification at the end of the month and he recertifies every two years (N.T. 39 and Exhibits L-1, L-2 and L-3).

16. The machine used at the licensed premises was a caller identification machine and has a visual memory but no printout device. He indicated that Mr. Fox contacted him with regard to the Bureau Enforcement's visit to the premises (N.T. 42-43).

17. The owner did review the information on the machine which indicated that there was a Pennsylvania Driver's license which was swiped and was shown to be authentic. There were a number of them swiped that day, but this one was dated and timed around the same time as the transaction by T. D. (N.T. 44).

18. The record was left open for the Licensee to present proof that the identification was scanned (N.T. 45-46)).

19. In a letter from Licensee's attorney dated November 29, 2007, it indicates that a meeting was held in his office on November 19, 2007 to allow the Bureau to inspect the identification machine. The president of the licensed premises, along with the representative from the Bureau of Enforcement was present and the identification machine was inspected. Licensee was not provided with a copy of the driver's license which was marked B-3 in order to preserve the integrity of the machine's stored information. The machine's stored information confirmed that the Licensee did swipe the driver's license number at precisely 10:00 on August 2, 2007. This is the same license number identified in Exhibit B-3. The Bureau agreed to the veracity of the information revealed on the machine's stored memory.

#### CONCLUSIONS OF LAW:

There is insufficient evidence to conclude that on August 2, 2007, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

#### DISCUSSION:

The record remained open to see if in fact the Licensee could produce a printout of the record of the transaction. The parties met and reviewed the memory from the machine, which verified that the identification in possession of the minor was scanned. The Licensee was R.A.M.P. certified on December 4, 2003, February 21, 2006 and May 22, 2008. This violation was committed on August 2, 2007 when the Licensee was R.A.M.P. certified.

47 P.S. Section 495 indicates that in order to establish a defense, a valid photo driver's license or identification card must be issued by each state of the United States, a valid armed forces identification or passport must be presented. In reference to the presentation of the identification, Section 495 indicates that no penalty shall be imposed on the Licensee if the Licensee or its employee establishes that the minor was required to produce an identification card and that some visual presentation of the identification card was made and these documents were relied upon in good faith. Or if the Licensee can establish that the minor was required to present an identification and that it was scanned as valid and that the transaction was relied upon in good faith. The Court finds that the Licensee met all of these requirements to establish a defense under Section 495.

The only remaining question was whether Licensee's reliance on the identification was reasonable, in that the young man did look somewhat but not substantially different from the picture on the photograph. However, in this instance, that does not negate the element of good faith in that he looked somewhat different, the Licensee questioned him extensively about the information on the identification card. The Court finds that the attendant relied upon it in good faith. Not only did Licensee act in good faith, but they have since 2003 taken R.A.M.P. training and carried out that which they were taught, including to refuse service earlier to an individual whose identification did not scan and who did not have backup identification.

Under the circumstances, this matter is dismissed.

Accordingly, we issue the following

ORDER:

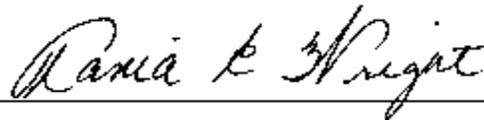
THEREFORE, it is hereby Ordered that Citation No. 07-2058 is DISMISSED.

IT IS FURTHER ORDERED that Licensee shall remain in compliance with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management for a period of one year from the mailing date of this Order.

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).

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

Dated this 26TH day of NOVEMBER, 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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Joe Six Pack, Inc.  
Citation No. 07-2058

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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