

Mailing Date: JUN 03 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2059
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-352435
	:	
198 HONG INC.	:	
T/A PHIL'S PLACE	:	LID - 51982
198 W. GODFREY AVE.	:	
PHILADELPHIA PA 19120-1516	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-9099	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, 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 September 11, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 198 Hong, Inc., t/a Phil's Place, License Number R-AP-SS-OPS-9099 (hereinafter "Licensee").

198 Hong, Inc.
t/a Phil's Place
Citation No. 07-2059

An Administrative hearing was held on Thursday, March 6, 2008, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

On January 8, 2008, Officer Cliff Lyghts from the Northwest Detective Division of the Philadelphia Police Department testified on behalf of the Bureau of Enforcement. The case was bifurcated to allow the Bureau to bring in a second Philadelphia Police Officer and minor witness. Those witnesses did not appear. Therefore, no evidence was taken at the March 6, 2008 hearing.

The citation contains two counts.

The first count charges Licensee with violation of Sections 401(a) and 407 of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-407, in that on May 25, 2007, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on April 11, 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, eighteen (18) years of age.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Police Lieutenant Cliff Lyghts is employed by the Philadelphia Police Department and has been so employed for approximately eleven years. He conducted an investigation of the licensed premises and in doing so visited the premises on April 11, 2007. He performed a bar check because of a prior robbery that occurred at that location (N.T. 10).

2. Lieutenant Lyght went into the bar. He saw a white male drinking beer from a container. The white male put the beer on the barstool and went to the pool table. Officer Whelan, an officer from the Philadelphia Police Department, stopped the male and placed him into custody for being underage. He determined that the individual's name was K. M. (N.T. 10).

3. The Lieutenant received information from Officer Whelan with regard to the age of the individual (N.T. 12).

4. The Bureau was unable to retrieve a photograph of the individual from the J-Net system (N.T. 6).

198 Hong, Inc.
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CONCLUSIONS OF LAW:

There is insufficient evidence to conclude that on May 25, 2007, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises, in violation of Sections 401(a) and 407 of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-407.

There is insufficient evidence to conclude that on April 11, 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, eighteen (18) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

DISCUSSION:

The Bureau of Enforcement's J-Net file was returned with no picture. The patron did not appear and no officer was able to sufficiently identify the individual as a minor through any other means. The police officer who originally retrieved the J-Net relative to the age of the patron was also not available.

Under the circumstances, the evidence is insufficient to find that there was a violation.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Citation No. 07-2059 is **DISMISSED**.

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

Dated this 27th day of May, 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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