

Mailing Date: June 24, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 07-2255  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

DA VINCI, LTD. : License No. R-13883  
t/a Da Vinci Pizza & Casual :  
Eatery :  
RR1 Box 1381 :  
Factoryville, PA 18419-9728 :

Counsel for Licensee: Edwin A. Abrahamsen, Jr., Esquire  
1006 Pittston Avenue  
Scranton, PA 18505

Counsel for Bureau: Craig A. Strong, Esquire  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
8320 Schantz Road, 2<sup>nd</sup> Floor  
Breinigsville, PA 18031

OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) appealed from the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ dismissed the citation.

The citation charged that, on August 28, 2007, Licensee, by its servants, agents or employees, violated section 13.102(a)(2) of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 13.102(a)(2)] by selling and/or serving an increased volume of one (1) drink without a corresponding and proportionate increase in the price of the drink, in that a bucket of five (5) seven (7)-ounce bottles of Coors Light beer was sold for six dollars and fifty cents (\$6.50), while a single seven (7)-ounce bottle of Coors Light beer was sold for one dollar and fifty cents (\$1.50).

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

It is the Bureau's contention on appeal that Licensee's discounting pricing clearly violated section 13.102(a)(2) by allowing for the purchase of five (5) seven (7) ounce bottles of beer at a price that was approximately thirteen percent (13%) off the regular price of the same bottle when purchased individually. The Bureau further contends that there is no solid basis for differentiating the bottles in the bucket from those sold individually.

In the instant case the matter was submitted by way of stipulation of facts as presented in the Bureau's Pre-hearing Memorandum, as well as the affidavit of Frank Mazzone, Licensee's corporate officer. (Admin. Notice).

The parties agreed that, on August 27, 2007, Licensee sold seven (7)-ounce bottles of Coors Light beer for the price of one dollar and fifty cents (\$1.50). (Pre-Hearing Memorandum, Mazzone Affidavit). At the same time, Licensee sold a package of five (5) seven (7)-ounce bottles of Coors Light beer for six dollars and fifty cents (\$6.50). (Pre-Hearing Memorandum, Mazzone Affidavit). This pricing structure is part of Licensee's normal, everyday and regular business practice. (Pre-Hearing Memorandum, Mazzone Affidavit).

Section 13.102(a)(2) of the Board's Regulations provides, in pertinent part, that retail licensees "may not engage in the following discount pricing

practices . . . (2) the sale or serving, or both, of an increased volume of one drink of liquor, wine, or malt or brewed beverages without a corresponding and proportionate increase in the price for the drink. [40 Pa. Code § 13.102(a)(2)].

When offering the single bottle of beer, Licensee's standard price is one dollar and fifty cents (\$1.50) per bottle. When offering the bucket of beer containing five (5) seven (7)-ounce bottles, Licensee's standard price is six dollars and fifty cents (\$6.50), resulting in a price of one dollar and thirty cents (\$1.30) per bottle, a discount of twenty cents (\$.20) from the price of a single bottle of the same product.

In the instant case, the Bureau contends that the fact that Licensee is selling the same seven (7)-ounce bottles of Coors Light beer at two (2) distinct prices continuously during its operation and its repackaging of the seven (7)-ounce bottles to include five (5) bottles to a bucket, without a corresponding and proportionate increase in the cost of the bucket package, is outside of the permitted discount pricing practice as set forth in section 13.102(a)(2). The Bureau contends that there is no solid basis for differentiating the bottles in the bucket from those sold individually and, as

such, Licensee's pricing scheme clearly violates section 13.102(a)(2) of the Board's Regulations.

The Board, however, has consistently opined that it is permissible for licensees to offer a quantity of alcohol at a set price which results in a lower cost than smaller quantities of the same product, so long as the pricing reflects the licensee's standard, daily price, as was the case in the instant matter.

Based on the foregoing, the Board finds the decision of the ALJ was supported by substantial evidence and is, therefore, affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Bureau is dismissed.

---

Board Secretary