

Mailing Date: APR 18 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2282
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-359696
v.	:	
	:	LID - 44484
GREEN STAR TRADING COMPANY	:	
T/A BEER BETS & BUTTS	:	
8712 NORWIN AVENUE	:	
NORTH HUNTINGDON PA 15642-	:	
2745	:	
	:	
	:	
WESTMORELAND COUNTY	:	
LICENSE NO. D-SS-2360	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Emily Gustave, Esquire

For Licensee
Gregory Nichols, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 10, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Green Star Trading Company, t/a Beer Bets and Butts, License Number D-SS-2360 (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 August 17, 2007, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, 17 years of age.

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An administrative hearing was conducted on March 12, 2008, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee was represented by Gregory Nichols, Esquire.

The Bureau began its investigation of this matter on August 17, 2007, and completed its investigation on August 17, 2007. Thereafter, Licensee was notified of the nature of the violation(s) disclosed by the investigation by letter sent by certified mail on September 11, 2007. Counsel for Licensee stipulates that the notice provisions of Section 471 of the Liquor Code have been satisfied.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. On August 17, 2007 at 9:40 p.m., Gary N. Schroeder arrived in the parking lot area of Licensee's distributorship and commenced an outside surveillance. At 9:53 p.m., Officer Schroeder observed that a youthful appearing male entered Licensee's premises. (N.T. 7, 10)

2. Approximately two minutes later, Officer Schroeder observed the aforementioned youthful appearing male exit Licensee's premises carrying three 30-packs of 12-ounce cans of Natural Light beer. (N.T. 7)

3. Officer Schroeder approached the aforementioned youthful appearing male and requested identification. Initially, this male produced a photo driver's license from the state of New York bearing the name of Cory R. with the date of birth of August 5, 1985. (N.T. 8, 25-26)

4. Upon further questioning, Officer Schroeder learned that the true name of the aforementioned youthful appearing male was Michael L. who had then displayed his true and correct Pennsylvania photo driver's license reflecting a date of birth of April 27, 1990. (N.T. 8-9, 22)

5. Michael L. was 17 years of age on August 17, 2007. (N.T. 22)

6. Michael L. admitted to Officer Schroeder that he purchased the three 30-packs of 12-ounce cans of Natural Light beer from a youthful male employee later identified as David U. after showing the false New York photo driver's license representing his age to be over 21 years. (N.T. 22-24)

CONCLUSION OF LAW:

1. On August 17, 2007, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, 17 years of age, in violation of Section 493(1) of the Liquor Code.

DISCUSSION:

The record is clear that on the evening of August 17, 2007, Michael L., 17 years of age, entered Licensee's premises and requested three cases of beer consisting of 30 12-ounce cans of Natural Light beer from Licensee's employee David U. David U. requested proof of age at which time Michael L. produced what appeared to be a valid New York driver's license reflecting a date of birth of August 5, 1985. The description on this New York driver's license matched that of Michael L., and the photograph upon quick inspection was a reasonable match. However, upon a closer inspection of this photograph, the resemblance may be called into question.

Nevertheless, if this court were to accept the photograph on the false New York driver's license as a reasonable photographic representation of Michael L., Section 495 of the Liquor Code requires that a licensee take additional measures in order to use good faith acceptance of this identification card as a defense. Section 495 Subsections (a), (b), (c), (e), (f) and (g) require that in order for a licensee to escape liability from selling alcoholic beverages to a minor, certain procedures must be followed. These procedures include in addition to accepting in good faith what appears to be a valid identification card as set forth in Subsection (a), a completed and signed Declaration of Age card as set forth in Subsection (c), a photograph of the identification card accepted in Subsection (f) or that the identification card is identified as a valid card by a transaction scan device set forth in Subsection (g).

The law is well settled that strict liability applies to violations of the Liquor Code. *PLCB v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988). The record is clear that in this case, Licensee's employee did not require Michael L. to complete and sign a Declaration of Age card, did not make a photocopy of the driver's license upon which he relied, and did not have the ability to scan this card for verification in a scanning device. Accordingly, this citation must be sustained.

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.

Moreover, Section 471(d) of the Liquor Code [47 P.S. §4-471(d)] provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this case, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,000.00 and Licensee is directed to participate in mandatory Responsible Alcohol Management (R.A.M.P.) training as set forth in Section 471.1 of the Liquor Code.

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ORDER:

THEREFORE, it is hereby ordered that Green Star Trading Company, t/a Beer Bets & Butts, License Number D-SS-2360, pay a fine of \$1,000.00 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 Section 471.1 of the Liquor Code [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management in the following manner: Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No. 1-866-275-8237; Web Site: www.lcb.state.pa.us) within 30 days of the mailing date of this Adjudication in order to seek assistance in the compliance process. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued.

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) or (e) of the Liquor Code [47 P.S. §4-471(d) or §4-471(e)]

Jurisdiction is retained to ensure compliance with this Order.

Dated this 14th day of April, 2008.

Roderick Frisk, J.

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NOTE: 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.

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Detach Here and Return Stub with Payment

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 to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

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