

Mailing Date: SEP 16 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2548
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-348759
v.	:	
	:	LID - 51933
MYRTLE, INC.	:	
T/A FOUR SEASONS RESTAURANT	:	
5450 FAIRFIELD RD.	:	
CARROLL VALLEY	:	
FAIRFIELD, PA 17320-9801	:	
	:	
ADAMS COUNTY	:	
LICENSE NO. R-AP-SS-EHF-18632	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Frank C. Sluzis, Esquire
2000 Linglestown Road
Suite 106
Harrisburg, PA 17110

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 8, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Myrtle, Inc., t/a Four Seasons Restaurant (Licensee), License Number R-AP-SS-EHF-18632.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on February 4, 2007, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) male minors, eighteen (18) and nineteen (19) years of age.

The second count charges Licensee with violations of Section 493(2) of the Liquor Code [47 P.S. §4-493(2)] and Sections 11.192 and 11.193 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §11.192 and §11.193]. The charge is that on July 20, August 18, 29, September 1 and 5, 2007, and divers other occasions, Licensee, by servants, agents or employes, sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.

An evidentiary hearing was conducted on August 8, 2008 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on February 20, 2007 and completed it on September 12, 2007. (N.T. 18, 41)
2. During the course of the investigation, the Officer obtained certain records from Licensee (Commonwealth Exhibit No. C-3, N.T. 18).
3. During the course of the investigation, the Officer completed four undercover visits finding no violations in addition to two administrative inspections. (N.T. 41)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on October 11, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

Count No. 1:

5. On February 4, 2007, a nineteen year old (born March 16, 1987) entered the premises somewhere between 9:00 p.m. to 10:00 p.m. (N.T. 42-48)

1. Commonwealth Exhibit No. C-2, N.T. 6.

6. The young man went to the premises originally to watch the Super Bowl game with friends. He was not questioned as to age upon entry. While the young man was talking to his older friends, the bartender took drink orders. In doing so, she asked the minor what he wanted to drink. The nineteen year old ordered a bottle of beer. The bartender asked if the young man intended to drink anything else. He responded in the affirmative. He gave the bartender a bank card for purposes of initiating a tab. The minor continued to order beer that evening. He ordered somewhere between six or seven bottles of beer. At approximately 2:00 a.m., he reconciled his tab with the bartender. (N.T. 48-57)

7. The nineteen year old was the companion of a twenty year old (born February 17, 1988). He was also not questioned as to age on the evening in controversy. During the course of his stay, the twenty year old was asked by the bartender if he needed a drink to which he replied in the affirmative. He ordered and was served a bottle of beer. (N.T. 66-69)

8. As a result of this incident, Licensee fired the bartender. Licensee also now provides two individuals for closing purposes. Licensee has further instituted policy guidelines in terms of who and how to serve patrons. (N.T. 84-90)

Count No. 2:

9. Licensee began a tab for a customer on July 20, 2007 and continued those credit transactions on all of the dates charged up and until including September 5, 2007, and on divers other occasions within one year of that date. (N.T. 11-14)

10. Licensee was not aware of the restriction regarding credit sales of alcoholic beverages. (N.T. 14-15)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since December 1, 2003, and has had one prior violation (Commonwealth Exhibit No. C-5, N.T. 80):

Adjudication No. 05-1408. Fine \$2,000.00.
Sales to a visibly intoxicated person.
June 11, 2005.

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 Count No. 1 and a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count No. 2 in this case.

That Section further 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 matter, 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.

I adopt the jointly recommended penalty as follows:

Count No. 1 - \$1,500.00 fine.
Count No. 2 - \$250.00 fine.

As Licensee is R.A.M.P. certified as of February 20, 2007, I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year from the mailing date of this Adjudication.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,750.00 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.

R.A.M.P. Requirements

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

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 29th day of August, 2008.

Felix Thau, A.L.J.

pm

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.

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

Citation No. 07-2548
MYRTLE, INC.