

Mailing Date: AUG 13 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2699
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-361991
v.	:	
	:	LID - 56169
696 BAY INC	:	
696 LONG LN	:	
UPPER DARBY PA 19082-5113	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. D-SS-3351	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.

For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on November 19, 2007. There are three counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on September 21, 2007, and on one other unknown occasion within the past year, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, seventeen years of age.

The second count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471 and Section 5101 of the Crimes Code, 18 Pa. C.S. §5101, on September 21, 2007, by interfering with a Liquor Control Enforcement Officer in the performance of his duties.

The third count alleges that Licensee violated §493(21) of the Liquor Code, 47 P.S. §4-493(21), on September 21, 2007, by refusing Enforcement Officers the right to inspect completely the entire licensed premises at a time during which the premises was open for the transaction of business or when patrons or guests or members were in that portion of the licensed premises wherein alcoholic beverages are sold.

At the hearing scheduled for May 13, 2008, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period September 21 through September 27, 2007, and sent written notice of the results of its investigation to the licensed premises by certified mail on October 11, 2007 (N.T. 9-10, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on November 19, 2007 (N.T. 10, Exhibit B-2).

3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on March 28, 2008.

4. Liquor Enforcement Officer Edward Gartland conducted surveillance at Licensee's premises beginning at about 7:15 p.m. on September 21, 2007. At about 7:25 p.m. he saw a young man enter the premises empty-handed and then leave several minutes later with two cases of beer. Officer Gartland identified himself to the young man and asked him to put the beer down. The young man put the beer on the trunk of a car in which there were three young women. He told the officer that he was 21 but did not have identification with him. When the officer began to frisk him, the young man fled the scene on foot (N.T. 4-6).

5. Officer Gartland obtained information identifying the young man from the young women in the car. He then entered the premises and identified himself to the sole employee. He told her that a juvenile had just obtained beer in the premises. She demanded to see the juvenile. The officer explained that he had fled, and asked the employee for identification. The employee refused to identify herself and locked the door to the employee-only area behind a Plexiglas barrier, so as to prevent the officer from entering. When he attempted to note Licensee's name and address from the liquor license, the employee removed the license from the wall so as to conceal it (N.T. 6-8).

6. At about 8:15 p.m. Licensee's president, Bay V. Vo, arrived at the premises. Officer Gartland explained his need to enter and inspect the premises and obtain identifying information from the employee and the liquor license. Mr. Vo refused these requests. The officer went out to use his cell phone. The door was immediately closed and locked. The lights were turned off. Repeated knocks on the door went unanswered (N.T. 8-9).

7. The young man Officer Gartland saw carrying the beer had been born on January 1, 1990; he was seventeen years old on September 21, 2007. He had purchased the beer without question as to his age (N.T. 12-13).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on September 21, 2007, by selling alcoholic beverages to one male minor, seventeen years of age.

Licensee violated §471 of the Liquor Code, 47 P.S. §4-471 and Section 5101 of the Crimes Code, 18 Pa. C.S. §5101, on September 21, 2007, by interfering with a Liquor Control Enforcement Officer in the performance of his duties.

Licensee violated §493(21) of the Liquor Code, 47 P.S. §4-493(21), on September 21, 2007, by refusing enforcement officers the right to inspect completely the entire licensed premises at a time when it was open for business.

DISCUSSION:

Licensee's failure to attend the hearing in this case is consistent with its officer's behavior in refusing to cooperate with the enforcement officer. It is not possible to carry on the licensed and thoroughly regulated business of selling malt or brewed beverages to the public while at the same time refusing to cooperate with or acknowledge the legitimate investigative requests of an enforcement officer who has properly identified himself as such.

These things cannot be ignored. Since this is Licensee's first violation, I am requiring only the payment of a fine and R.A.M.P. – certification, as explained below.

The order set forth below cannot be ignored. If the fine is not paid within the time allowed, a further order will suspend this license indefinitely. Since the license has expired, Licensee may be tempted to think that it can ignore this penalty without consequence. This is not true. Failure to pay this fine or obtain the mandatory R.A.M.P. – certification required by law will ultimately result in the revocation and irredeemable loss of his license, including the right to renew it.

PRIOR RECORD:

Licensee has been licensed since April 19, 2006, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Counts 1 and 3, any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in Count 2, any fine must be in the \$50.00 to \$1,000.00 range.

Act 26 of 2006, enacted April 13, 2006, and effective June 12, 2006, amends 47 P.S. §4-471(d) so that it now requires administrative law judges to order compliance with 47 P.S. §4-471.1 if “a licensee has been cited and found to have violated section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated person...”

Since the incident which resulted in this citation occurred after this statute had become effective, and since this violation involves the sale of alcoholic beverages to a minor and constitutes Licensee's first offense, I am required to enter the following order.

Penalties are allocated as follows:

- Count 1 – a fine of \$1,500.00 plus mandatory R.A.M.P. – certification.
- Count 2 – a fine of \$500.00.
- Count 3 – a fine of \$1,000.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 696 Bay, Inc., License No. D-SS-3351, shall pay a fine of three thousand dollars (\$3,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management. However, the time for compliance is deferred because the license is currently inactive. The Bureau of Licensing is requested to notify this Office of the reactivation of this license so that an order may be entered setting forth the manner in which Licensee must comply.

Dated this 5th day of August, 2008.



David L. Shenle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 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