

Mailing Date: MAR 05 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2734C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-362869
v.	:	
	:	LID - 47974
JPK INC	:	
T/A MAYOR ED'S PUB	:	
112 GREENFIELD ROAD	:	
P O BOX 30	:	
PERRYOPOLIS PA 15473	:	
	:	
FAYETTE COUNTY	:	
LICENSE NO. R-AP-SS-18806	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Emily Gustave, Esquire

For Licensee
Douglas Sepic, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 4, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against JPK, Inc., t/a Mayor Ed's Pub, License Number R-AP-SS-18806 (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 October 10, 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 female minor, 19 years of age.

An administrative hearing was conducted on February 3, 2009, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee was represented by Douglas Sepic, Esquire.

The Bureau began its investigation of this matter on October 10, 2007, and completed its investigation on October 15, 2007. Thereafter, Licensee was notified of the nature of the violation(s) disclosed by the investigation by letter sent by certified mail on November 1, 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 October 10, 2007 at 9:08 p.m., Liquor Enforcement Officer Heather Micklos entered Licensee's premises in an undercover capacity and took a seat at the bar at which time she purchased a mixed drink alcoholic beverage from Licensee's bartender later identified as Sandra Etling. Officer Micklos was present in order to assure the safety of Underage Buyer #211 who was scheduled to enter the premises as part of an Age Compliance investigation. (N.T. 13-14)

2. At 9:11 p.m., Underage Buyer #211 who was 19 years of age having been born on February 6, 1988 entered Licensee's premises and approached the bar next to Officer Micklos. (N.T. 14, 33-34)

3. Upon being approached by bartender Sandra Etling, Underage Buyer #211 requested a bottle of Coors Light beer. (N.T. 14, 34)

4. Bartender Sandra Etling asked Underage Buyer #211 for identification at which time the underage buyer replied that she did not have identification with her. (N.T. 14, 34)

5. Bartender Sandra Etling proceeded to remove a bottle of Coors Light beer from the cooler, open the bottle, and place it on the bar in front of Underage Buyer #211. (N.T. 15, 22-23, 34, 69)

6. At this time, the underage buyer provided bartender Sandra Etling with a \$20.00 bill which had been provided to her by Officer Micklos prior to entering the premises. Ms. Etling accepted the \$20.00 bill and proceeded to record the transaction on Licensee's cash register and placed the change on the bar in front of the underage buyer. (N.T. 15, 34)

7. The underage buyer placed her hand on the bottle of Coors Light beer and pulled it closer to her. The underage buyer then proceeded to the washroom, returned to the bar. At this time, the underage buyer caused it to appear that she had just taken a call on her cell phone and walked outside of the premises. (N.T. 15, 35)

8. Underage Buyer #211 departed Licensee's premises without consuming any alcoholic beverage. (N.T. 35-36)

9. Upon departing Licensee's premises, Underage Buyer #211 spoke with Supervising Liquor Enforcement Officer Brian Taylor who remained outside as part of this detail and advised him of her purchase. (N.T. 25-26, 36)

10. At 9:17 p.m., Officer Taylor entered Licensee's premises and identified himself to Sandra Etling and advised her that she had just sold a bottle of beer to a minor. (N.T. 26-27)

CONCLUSION OF LAW:

1. On October 10, 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 female minor, 19 years of age, in violation of Section 493(1) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the testimony of Underage Buyer #211 as corroborated in significant part by Officer Micklos relating to the purchase of a bottle of Coors Light beer from Licensee's bartender Sandra Etling establishes the violation as charged in this citation. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

This court further concludes that the testimony offered by bartender Sandra Etling relating to the course of events which allegedly took place during the evening of October 10, 2007, relative to the service of Underage Buyer #211 is self-serving and shall be afforded little weight. More specifically, Ms. Etling testified that she retrieved a bottle of Bud Light beer from the cooler, placed it on an island next to the cash register located behind the bar and was waiting for Underage Buyer #211 to retrieve her proper identification presumptively outside in her vehicle. However, this testimony appears inconsistent with the exchange of money and use of the cash register prior to the departure of Underage Buyer #211.

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.

In mitigation, the record discloses that this citation represents Licensee's first violation.

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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 \$1,400.00 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.

ORDER:

THEREFORE, it is hereby ordered that JPK, Inc., t/a Mayor Ed's Pub, License Number R-AP-SS-18806, pay a fine of \$1,400.00 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 24TH day of FEBRUARY, 2009.



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.

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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JPK, Inc.