

Mailing Date: MAY 22 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2918
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-364009
v.	:	
	:	LID - 51130
CATHY'S SCOTTS GROCERY, INC.	:	
T/A CATHY'S SCOTTS GROCERY	:	
1308 MULBERRY ST.	:	
SCRANTON, PA 18510-2223	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. E-SS-2704	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
Christopher J. Osborne, Esq.
527 Linden Street
Scranton, PA 18505

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 21, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Cathy's Scotts Grocery, Inc., t/a Cathy's Scotts Grocery (Licensee), License Number E-SS-2704.

This citation¹ contains three 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 October 26, 2007, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

The second count charges Licensee with a violation of Section 442(a)(1) of the Liquor Code [47 P.S. §4-442(a)(1)]. The charge is that on October 26, 2007, Licensee, by servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.²

The third count charges Licensee with violations of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)]. The charge is that on October 26, 2007, and divers unknown dates within the past year, Licensee, by servants, agents or employes, permitted one (1) male minor, nineteen (19) years of age, to frequent its licensed premises.

An evidentiary hearing was conducted on April 8, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, 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 and completed its investigation on October 26, 2007. (N.T. 13)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 19, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 14)

Count Nos. 1 and 3:

3. On October 26, 2007, a nineteen year old (born May 10, 1988) went to the licensed premises. He purchased three, twelve packs of beer. (N.T. 29-34)

1. Commonwealth Exhibit No. C-2, N.T. 14.

2. By Order dated January 26, 2009, I granted the Bureau's Motion to Withdraw Count No. 2 of the citation.

4. The young man was questioned as to age and showed an altered New York Driver's license (N.T. 42) (Commonwealth Exhibit No. C-3, N.T. 60).

5. The young man had been to the premises on previous occasions as charged in Count No. 3. (N.T. 38-40)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. **Withdrawn** by Order dated January 26, 2009.

Count No. 3:

4. **Sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since May 6, 2003, and has had three prior violations:

Adjudication No. 06-1374. Fine \$1,250.00 and RAMP training mandated.

Sales to minors.

May 6, 2006.

Adjudication No. 07-0177. Fine \$200.00.

Failed to comply with the order of the ALJ mandating RAMP training.

November 28, 2006 through January 12, 2007.

Adjudication No. 07-0617. Fine \$1,500.00.
Sales to minors.
February 16, 2007.

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 Nos. 1 and 3 in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudications (06-1374 and 07-0617), in combination with the charge in this citation, requires that license revocation or suspension must be included as part of the penalty.

I impose:

Count Nos. 1 and 3 - merged - \$1,800.00 fine and three days suspension.

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.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,800.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Retail Dispenser Eating Place license (including all permits) of Cathy's Scotts Grocery, Inc., t/a Cathy's Scotts Grocery, License No. E-SS-2704, be suspended for a period of three days. However, the suspension period is deferred pending reactivation of Licensee's license from safekeeping at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing the dates for suspension.

Withdrawal of Count No. 2:

By Order dated January 26, 2009, I granted the Bureau's Motion to Withdraw Count No. 2 of the citation.

R.A.M.P. Requirements

However, since the license is in the process of being transferred so much of this Adjudication as it relates to mandatory compliance with Liquor Code Section 471.1, pertaining to Responsible Alcohol Management, is suspended pending transfer. If the license is not transferred within 90 days of the mailing date of this Adjudication, I will review the Adjudication for further appropriate action.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 8TH day of May, 2009.


Felix Thau, A.L.J.

pm

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, Pennsylvania 17110-9661