

Mailing Date: JUL 14 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2999C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-364549
v.	:	
	:	LID - 45231
BOTTOMS UP SALOON INC	:	
T/A BOTTOMS UP SALOON	:	
314 HELEN STREET	:	
MCKEES ROCKS PA 15136-2873	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-13477	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Nadia Vargo, Esquire

For Licensee
Stephen Taylor,
Corporate Officer, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 31, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Bottoms Up Saloon, Inc., t/a Bottoms Up Saloon, License Number R-AP-SS-13477 (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 November 7, 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 May 20, 2008, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee's sole Corporate Officer Stephen Taylor appeared on behalf of Licensee corporation.

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. The Bureau commenced its investigation of Licensee's premises on November 7, 2007, and completed its investigation on November 8, 2007. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated November 29, 2007, which was sent by certified mail and received by Licensee on November 30, 2007. (Exhibit C-2)
3. The citation was issued on December 31, 2007, and was sent by certified mail and received by Licensee on January 4, 2008. (Exhibits C-3, C-4)
4. On November 7, 2007 at approximately 8:20 p.m., Liquor Enforcement Officer Dan West entered Licensee's premises in an undercover capacity and observed a female bartender later identified as Susan Hine rendering service to 15 patrons. Upon entering, Officer West took a seat at the bar and purchased a bottle of beer from Ms. Hine. The purpose of Officer West's visit was to secure the premises in preparation for the entry of Underage Buyer #243. (N.T. 17-18)
5. Shortly after 8:20 p.m., Underage Buyer #243 participating in the Bureau's Age Compliance Check Program entered Licensee's premises and took a seat at the bar next to Officer West. (N.T. 18, 42-43)
6. Underage Buyer #243 was born on October 10, 1988 and was 19 years of age on November 7, 2007. (N.T. 41)
7. Moments after taking a seat at the bar, Underage Buyer #243 ordered a 12-ounce bottle of Coors Light beer at which time Ms. Hine requested identification. (N.T. 18, 44-45)
8. At this time, Underage Buyer #243 provided Ms. Hine with her true and correct Pennsylvania photo identification card reflecting her date of birth of October 10, 1988. This photo identification card further indicated that she is under 21 until October 10, 2009. (Ex. C-5, N.T. 18, 47-50)

9. Ms. Hine briefly studied Underage Buyer #243's Pennsylvania photo identification card near a light located behind the bar counter. Following her examination of this identification card, Ms. Hine returned the card to Underage Buyer #243 and proceeded to serve her a 12-ounce bottle of Coors Light beer. (N.T. 18-19, 45-46, 52)

10. Underage Buyer #243 provided Ms. Hine with a \$5.00 bill and received \$2.75 in change. (N.T. 19, 45)

11. Underage Buyer #243 then departed Licensee's premises without consuming any alcoholic beverages. (N.T. 19, 52-53)

12. Following his observation of the aforementioned transaction, Officer West departed Licensee's premises shortly after the departure of Underage Buyer #243. (N.T. 19)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On November 7, 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 is of the opinion that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

PRIOR RECORD:

Licensee has been licensed since March 20, 2000, and has had eight prior violations, to wit:

Citation No. 03-0966X. Fine \$75.00.

1. Issued worthless checks in payment for malt or brewed beverages.
April 9, 2003.

BOTTOMS UP SALOON, INC.

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Citation No. 03-1856X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages.
September 24, 2003.

Citation No. 05-0559. Fine \$600.00.

1. Illegal gambling (machines).
December 30, 2004 and February 16, 2005.

Citation No. 05-1879. Fine \$1,000.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Illegal gambling (machines).
May 13 and July 13, 2005.

Citation No. 06-1186. Fine \$1,000.00 and six days suspension.

1. Illegal gambling (machines and sports pools).
January 18 and April 17, 2006.

Citation No. 06-2215. Fine \$1,450.00 and one day suspension.

1. Sold alcoholic beverages during a time when its restaurant liquor license was suspended.
August 14 and 15, 2006.
2. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension.
August 14 and 15, 2006.

Citation No. 06-2986. Two day suspension.

1. Sales during a time when its license was suspended.
November 15, 2006.

Citation No. 07-2044. Fine \$100.00.

1. Premises had an inside passage or communication to or with another business conducted by the Licensee without Board approval.
August 2 and 6, 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 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. Therefore, license revocation or suspension must be included as part of the penalty.

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 \$1,600.00, Licensee's restaurant liquor license shall be suspended for one day, 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 Bottoms Up Saloon, Inc., t/a Bottoms Up Saloon, License Number R-AP-SS-13477, pay a fine of \$1,600.00 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 License No. R-AP-SS-13477 be suspended for one (1) day. However, the suspension period is deferred pending reactivation of Licensee's license, at which time the suspension period will be fixed by further Order.

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, however the training is deferred pending the reactivation of Licensee's license, at which time the R.A.M.P. training will be fixed by further Order.

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 and R.A.M.P. training.

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Jurisdiction is retained to ensure compliance with this Order.

Dated this 27th day of June, 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.

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. 07-2999C, Bottoms Up Saloon, Inc.