

Mailing Date: SEP 08 2010

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-3061
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-364647
	:	
BIG FACES INC.	:	
800 W. VENANGO ST.	:	LID - 46943
PHILADELPHIA PA 19140-4425	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-13497	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EDWARD TARASKUS, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

Big Faces, Inc.  
Citation No. 07-3061

This proceeding arises out of a citation that was issued on January 8, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Big Faces, Inc., License Number R-AP-SS-OPS-13497 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, January 27, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Sections 471 and 493(31) of the Liquor Code, 47 P.S. Sections 4-471 and 4-493(31), and Section 780-101, et seq., of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. Section 780-101, in that on September 25, 26 and 27, 2007, Licensee, by its servants, agents or employes, aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

The second count charges Licensee with violation of Sections 471 and 493(31) of the Liquor Code, 47 P.S. Sections 4-471 and 4-493(31), and Section 780-101, et seq., of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. Section 780-101, in that on September 25, 26 and 27, 2007, Licensee, by its servants, agents or employes, possessed and/or sold a controlled substance on the licensed premises or on premises contiguous or adjacent thereto or used in connection therewith.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. An officer from the Philadelphia Police Department assigned to the Narcotics Field Unit testified that he has been a policeman for fifteen years. He has been assigned to the Narcotics Field Unit for approximately ten years. The officer has been trained to identify narcotics through chemical testing. He was trained in meth labs and knew how to break down an operating lab. The officer has further been trained on surveillance and corporation of search and seizure warrants. Over the years, the officer indicated that he has conducted thousands of narcotics investigations (N.T. 6-7).

2. The Philadelphia Police officer was trained in the NIK test, whereas one puts a sample of a narcotic in a plastic packet and then breaks the vials which come inside the package. Depending on the color scheme, it determines the type of narcotic or if indeed it is a narcotic. The officer has used this test since 1998 in thousands of investigations. The NIK test A and NIK test L

are for heroin and NIK test E is for marijuana and NIK test G is for crack cocaine or cocaine base (N.T. 7-8).

3. During his career, he has never known the field test to come back differently from the subsequent lab testing (N.T. 8).

4. In particular, the investigation was focused around Clayton M. Adams, Jr. The officer identified Mr. Adams in Court and seated next to counsel at counsel table (N.T. 9).

5. The Philadelphia Police officer testified that his information had come from a reliable confidential informant and that he ascertained a picture of Mr. Adams through the Philadelphia Police Department. He saw Mr. Adams outside and inside the bar. The investigation began in September of 2007 (N.T. 9).

6. The officer received detailed information from the confidential informant, at which time he directed the officer to set up a surveillance at different locations. The officer set up surveillance on September 25, 2007 at 8<sup>th</sup> and Venango where the premises is located (N.T. 910).

7. The officer set up surveillances on September 11, 2007, September 12, 2007 and September 25, 2007 (N.T. 10).

8. The officer was positioned diagonally across the street from the bar. On September 25, 2007, he arrived at the premises at approximately 8:00 p.m. Two other Philadelphia Police officers were present on this date. On September 25, 2007, the officer observed numerous unknown black males and females come to the corner of 8<sup>th</sup> and Venango Sts. Mr. Adams and John James were outside of the premises. Males and females were conversing with Mr. Adams. Mr. Adams would point to Mr. James. Mr. James would then approach these unknown persons and accepted U.S. currency in exchange for small items. Afterwards, Mr. James handed currency over to Mr. Adams, who took the money and placed it in his pocket (N.T. 11-12).

9. During the officer's surveillance of the premises, Mr. Adams entered a dark Chevrolet and drove to 3618 North 16<sup>th</sup> Street, where he entered this location with a key. About thirty seconds after he entered, a light came on the third floor. A minute or two later, Mr. Adams exited the location with a bag in his hand. He put the bag in the truck. He returned to the bar and handed the bag to Mr. James. The police officer directed a second police officer to send the confidential informant to make a narcotics purchase from Mr. James (N.T. 12-13).

10. The confidential informant made the purchase which was turned over to another Philadelphia Police officer and subsequently turned over to this police officer for chemical analysis. The officer received a blue heat sealed packet containing a white powder substance. The officer conducted the NIK test G for cocaine and it came back positive. It was placed on Philadelphia Police Property Receipt #2749596 and was later submitted to the Philadelphia Police Chemical Lab for further analysis (N.T. 13-15).

11. The officer again visited the premises on September 26, 2007 and arrived at approximately 9:00 p.m. At 9:25 p.m., Clayton M. Adams, Jr. arrived in a blue Chevrolet and remained inside the vehicle. About 9:35 p.m., Mr. Robinson exited the bar. He walked over to Mr. Adams, at which time he had a conversation with Mr. Adams. He handed a large amount of U.S. currency to Mr. Adams, at which time Mr. Adams entered into the bar while Mr. Robinson remained outside (N.T. 15).

12. At 9:40 p.m., the officer saw Mr. Adams exit the bar at which time he handed Mr. Robinson a clear plastic bag. Mr. Robinson placed the bag into his pocket and sat on the steps of the bar. Mr. Adams entered the Chevy Impala on the driver's side (N.T. 15-16).

13. The police officer then directed the second officer to send the confidential informant in to make a controlled narcotics purchase. That officer subsequently turned over another plastic bag, which contained approximately seven grams of powdered cocaine. The officer described it as being a little less than the size of a golf ball (N.T. 16-17).

14. The officer conducted a NIK test G on the substance contained in the clear plastic sandwich bag and it came back positive for cocaine. The item was then placed on property receipt #2754105 and submitted to the Philadelphia Police chemical lab for analysis (N.T. 17).

15. Based upon observations at the premises, the officer prepared a search and seizure warrant for the 800 West Venango Street, the apartment building at 3618 North 16<sup>th</sup> Street that Mr. Adams was observed entering on the September 25, 2007 and for Mr. Adams' residence in Delaware (N.T. 17-18).

16. The search warrant was executed at the licensed premises on September 27, 2007. When he first entered the premises, the police officer recovered a Smith and Wesson 357 revolver loaded with seven rounds of ammunition and \$219.00 in U.S. currency. On the second floor, he found a book that contained cocaine residue inside a safe (N.T. 18-21).

17. The residue was tested and it was determined to be positive for cocaine. It was placed on property receipt #2754108 and submitted to the Philadelphia police lab for further analysis (N.T. 21).

18. In a bedroom on the second floor, there were five clear ziplocked packets which contained numerous new and unused yellow, red and clear empty packets. These packets are known for packaging cocaine or marijuana (N.T. 21).

19. The officers went to 316 North 16<sup>th</sup> Street, the address of the apartment. On the third floor, the officer recovered one white plate with green and yellow designs which had residue

on it, which appeared to be crack cocaine. It was tested with the NIK test G and the residue was determined to be positive for cocaine. The substance was placed on a property receipt. There was also a silver razor blade and one white plastic bowl and one black scale, which also had residue on it (N.T. 22).

20. The officers also recovered one clear Ziploc bag containing marijuana, with a projected weight of 100 grams. They also found one amber pill bottle which contained 51 Xanax pills. There was one knotted bag containing crack cocaine with a projected net weight of ten grams, one clear Ziploc packet with red markings containing eight clear and nine green Ziploc packets. Each of those packets contained crack cocaine and three sealed packets contained powder cocaine (N.T. 23-24).

21. The officers also found 17 clear Ziploc packets which contained new and unused empty packets in different sizes, shapes and colors (N.T. 24).

22. The officer also recovered a bullet proof vest and one green plastic wrapping with black electrical tape consistent with that used to package bricked shaped kilograms of cocaine (N.T. 24).

23. The officers found a multi-colored package, which had the word "blue" on it. The package was like that used to wrap the drugs purchased by the confidential informant at the time of his/her first controlled buy (N.T. 25).

24. In the home of Mr. Adams, the police recovered \$150,900.00 in the freezer in a garage. The officer also recovered two handguns and one shotgun and numerous forms of identification and proof of residency for the Delaware address in Mr. Adams' name (N.T. 26).

25. Mr. Adams was criminally charged with intent to deliver, possession, conspiracy and possession of instruments of crime (N.T. 27).

26. The officer identified a photo of Clayton M. Adams, Jr. taken from the records of the Liquor Control Board. The officer identified Clayton M. Adams, Jr. as the individual he observed on the September 25, 26 and 27, 2007 (N.T. 29 and Exhibit B-4).

27. The records of the Liquor Control Board indicate that Clayton M. Adams, Jr. is the Board approved president, secretary, treasurer, director, stockholder and manager of the licensed premises. Mr. Clayton M. Adams, Jr. acknowledges that he is the sole corporate owner (N.T. 59 and Exhibit B-3).

28. Another officer from the Philadelphia Police Department testified that he was part of the criminal investigation regarding Clayton M. Adams, Jr. The officer has been a Philadelphia

Police officer for twenty years and has been in the plainclothes unit for approximately twelve years. He has conducted over 1,200 narcotics investigations during his career (N.T. 38-39).

29. On September 25, 2007, this officer was responsible for the confidential informant. He met with the confidential informant and thoroughly searched him for money, drugs and paraphernalia. He and the confidential informant went to the licensed premises. Prior to going in, the officer gave the confidential informant twenty dollars. The officer was able to observe the confidential informant from a distance of about thirty to thirty-five feet (N.T. 30-40).

30. The officer and the confidential informant went to the licensed premises at approximately 9:00 p.m. The officer watched the confidential informant approach the front of the bar and meet with Clayton M. Adams, Jr. After a brief conversation, he observed the confidential informant give Clayton M. Adams, Jr. twenty dollars. Clayton M. Adams, Jr. then yelled into the bar and another individual exited the bar and pulled a plastic bag out. Mr. Adams informed this individual to take care of the person who was known to the officer as the confidential informant (N.T. 40-41).

31. When Mr. Adams yelled into the bar, he called out to Johnny and an older black male exited the bar. He directed that male to take care of the confidential informant. The older black man pulled a plastic baggie from his pocket, pulled an object from the bag and gave it to Mr. Adams, who in turn gave it to the confidential informant (N.T. 41-42).

32. After the exchange with Mr. Adams, the confidential informant returned to the officer and turned over one blue heat sealed packet. This officer, who in turn gave it to the officer whose responsibility it was to field test the products (N.T. 43).

33. On September 26, 2007, this officer arrived at the premises at 10:00 p.m. Again his responsibility was to control the confidential informant. The confidential informant was thoroughly searched for money, drugs and paraphernalia. Nothing was found on him. The officer then gave the confidential informant \$300.00. He watched the confidential informant exit the vehicle and walk towards the bar where another officer was to observe the confidential informant. About five minutes later, the confidential informant came back to this officer and gave him one clear baggie, which was knotted and contained powder cocaine. That substance was turned over to the police officer whose responsibility it was to conduct field tests (N.T. 43-45).

34. On September 26, 2007, this officer was approximately sixty to sixty-seven feet away from the bar when making his observations (N.T. 48-49).

35. The confidential informant was not present and did not testify during the proceedings (N.T. 46).

36. On September 27, 2007, this officer served as a back up officer. He was at the bar during the execution of the search warrant (N.T. 45).

37. A third officer from the Philadelphia Police Department Narcotics Field Unit testified that he has been a policeman for fifteen years and has been with the Narcotics Field Unit for approximately eleven years. He is a certified expert in Municipal Court, Common Pleas Court and Federal Court. He has conducted thousands of investigations as a surveillance officer and as part of a back up team. He has had training to identify drug packaging, particularly with regard to items sold in Philadelphia (N.T. 51-52).

38. On September 26, 2007, the officer arrived at the licensed premises shortly before 10:00 p.m. He was assigned to make observations of the confidential informant who was coming to that location to purchase a controlled substance. When the confidential informant arrived at the premises, Mr. Adams also arrived in a blue Chevy. Mr. Adams exited the Chevy and the confidential informant approached Mr. Adams. Mr. Adams gave the confidential informant what the officer would consider a “hand signal” indicating to *wait a minute*. Mr. Adams went into the bar and in approximately two to three minutes returned to the confidential informant. The confidential informant had pre-recorded buy money that had been provided to him earlier. He handed the pre-recorded buy money to Mr. Adams. Mr. Adams then handed him a clear plastic bag. At that time, the confidential informant left the bar and went back to the police officer who was assigned to *control* the confidential informant (N.T. 53-54).

39. At the time of the officer’s observation, he was diagonal from the front door of the bar (N.T. 54-55).

CONCLUSIONS OF LAW:

Count No. 1 - On September 25, 26 and 27, 2007, Licensee, by its servants, agents or employes, aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance, in violation of Sections 471 and 493(31) of the Liquor Code, 47 P.S. Sections 4-471 and 4-493(31), and Section 780-101, *et seq.*, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. Section 780-101.

Big Faces, Inc.  
Citation No. 07-3061

Count No. 2 - On September 25, 26 and 27, 2007, Licensee, by its servants, agents or employes, possessed and/or sold a controlled substance on the licensed premises or on premises contiguous or adjacent thereto or used in connection therewith, in violation of Sections 471 and 493(31) of the Liquor Code, 47 P.S. Sections 4-471 and 4-493(31), and Section 780-101, et seq., of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. Section 780101.

PRIOR RECORD:

Licensee has been licensed since December 7, 2000, and has a record of prior violations as follows:

Citation No. 03-0398. \$500.00 fine and Verification conditions corrected.

1. Operated the licensed establishment without a valid health permit or license. January 6, 2004.
2. Failed to keep records on the licensed premises. January 6 and February 11, 2003.

Citation No. 05-0920. \$300.00 fine. Fine not paid and License suspended one day and thereafter until fine paid.

1. Sold, furnished or gave liquor for consumption off premises. March 18 and April 1, 2005.
2. Used loudspeakers or devices whereby music could be heard outside. March 18 and April 1, 2005.

DISCUSSION:

Licensee is charged with violation of Section 471 of the Liquor Code, 47 P.S. §4-471. Violations of criminal laws other than the Liquor Code may constitute “sufficient cause” for the purpose of invoking penalties under Section 471 of the Liquor Code, 47 P.S. §4-471, only if the Licensee knew or should have known of the illegal activity and failed to take measures to eliminate a known pattern of illegal activity. **Pa. Liquor Control Board v. T.L.K., Inc.**, 544 A.2d 931 (Pa. 1988); **Primo's Bar, Inc., Liquor License Case**, 409 A.2d 1369 (Pa. Cmwlth. 1979). When violations of the Crimes Code are alleged, the Bureau is required to prove Licensee knew or should have known of the alleged conduct. **P.L.C.B. v. TLK, Inc.**, 544 A.2d 932 (Pa. 1988). In addition, Licensee is charged with a violation of Section 493(31) of the Liquor Code, 47 P.S. §4-493(31). Here, Clayton M. Adams, Jr., the sole officer of the licensed premises, is accused of utilizing the licensed premises to sell drugs in and/or in the immediate vicinity of the licensed premises.

This court notes that it is well established that the Bureau must prove its case by a fair 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).

It has been further established that it is for this Court to decide the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robison*, 561 A.2d 82 (Pa. Cmwlth. 1989). Further, this Court may accept or reject, in whole or in part, the testimony of any witness. *Kubler v. Yeager*, 150 A.2d 383 (Pa. Super 1959).

Clayton M. Adams, Jr. claims not to permit drugs or weapons on the premises. Yet, weapons were found in licensed areas of the premises and drug residue and paraphernalia were found in areas adjacent and contiguous to the licensed areas of the premises. Mr. Adams states that the anti-drug and gun policy has been communicated to his employees and that signs were posted indicating the house rules. Those signs were said to be posted at the time of this offense in 2007.

Mr. Adams further claims that on September 10, 2007, he was having work done at the bar and work done at his premises at 3618 North 16<sup>th</sup> Street. Mr. Adams indicated that his former tenant was found dead, after several weeks, inside the apartment.

The police who were observing Licensee's comings and goings surmised that Mr. Adams was storing drugs at the apartment and bringing them to the licensed premises for sale on or in the vicinity of the licensed premises. Therefore, the police stopped Mr. Adams and searched his vehicle. Mr. Adams denies that he was transporting drugs, and explains that he and a Mr. Alfonso Robinson left the licensed premises to go to Home Depot and from Home Depot to the bar and then to his property at 3618. He stated that since it was his girlfriend's birthday, he needed to leave and he gave the bags from Home Depot to Mr. Robinson and left the premises. He stated that he was riding down Erie Avenue towards I-95 and that he was stopped by an unmarked police car.

The car was searched by one of the officers. Mr. Adams indicated he was questioned about drugs at that time. He was then released. He then called his tenant to find out if anything was going on in the building and to find out if they were involved in any activity. Then he called his lawyer, because he was uncomfortable about the situation.

According to Mr. Adams, on September 26, 2007, a *stranger* came into the bar and asked him for twenty dollars worth of powder. He claims to have told him that he did not allow drugs, but was asked if he could point out somebody in the room who could get the drugs for him. On September 26, 2007, he indicated he saw the same individual in front of the bar. Mr. Adams stated that this gentleman interrupted him while he was on a business call while seated in the car. As he

was walking in the bar, he stated that the gentleman asked him again if he could get him a half an ounce of powder. He claims that he sent him away, escorted him to the door and never saw him again. The Court did not find Mr. Adams' testimony credible.

Despite the testimony of witnesses who stated that Mr. Adams is of good character, police officers clearly saw him engaged in drug activity in the immediate area of the licensed premises. Despite the fact that Mr. Adams denies any involvement in drug transactions, the police officers testified credibly that they witnessed drug buys from the confidential informant and during a raid, retrieved drug paraphernalia, which included certain items known for packaging, from the licensed premises, and drugs and drug paraphernalia from his supposedly recently vacant apartment. Mr. Adams appeared to be packaging and storing drugs at the apartment for sale on and/or at the licensed premises. The bar was an essential point of delivery.

Despite the fact that Mr. Adams has not been criminally convicted of any drug offense relative to this investigation, the Office of Administrative Law Judge finds that there is a fair preponderance of evidence so as to constitute "sufficient cause" to sustain a violation of Section 471 of the Liquor Code, 47 P.S. §4-471, and a violation of §4-493(31).

As the Commonwealth Court has noted, it is well settled that:

resolution of criminal charges in favor of a criminal defendant does not bar subsequent civil or administrative proceedings concerning the same underlying misconduct.... [A] judgment or sentence in a criminal prosecution is neither a bar to a subsequent civil proceeding found on the same facts, nor is it proof of anything in such civil proceeding, except the mere fact of rendition. So, where the same acts or transactions constitute a crime and also give a right of action for damages or for a penalty, the acquittal of [a] defendant when tried for the criminal offense is no bar to the prosecution of the civil action against him, nor is it evidence of his innocence in such action....

*Spence v. Pennsylvania Game Commission*, 850 A.2d 821, 823 (Pa.Cmwlt. 2004). Thus, even an acquittal in criminal proceedings has no preclusive effect in a subsequent administrative proceeding. *See VJR Bar Corporation v. Commonwealth*, 390 A.2d 163 (Pa. 1978).

Although Licensee has a prior record which includes failing to have a valid health permit, failing to keep records on the premises, liquor consumption off premises and use of loudspeakers, nothing in the past history rises to the level of the current offense. After careful consideration, a monetary penalty and period of suspension shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,000.00 and thirty days suspension

Count No. 2 - \$1,000.00 and thirty days suspension

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Big Faces, Inc., License Number RAP-SS-OPS-13497, pay a fine of Two Thousand Dollars (\$2,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS ALSO ORDERED that the Restaurant Liquor License of Big Faces, Inc., License Number R-AP-SS-OPS-13497, be suspended for a period of sixty (60) days **BEGINNING** at 7:00 a.m. on Monday, December 6, 2010 and **ENDING** at 7:00 a.m. on Friday, February 4, 2011.

Licensee is directed on Monday, December 6, 2010 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

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Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Friday, February 4, 2011 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 30<sup>TH</sup> day of AUGUST, 2010.



Tania E. Wright, J.

**NOTE: 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.**

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Detach Here and Return Stub with Payment

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Big Faces, Inc.  
Citation No. 07-3061

The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

PLCB - Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg, PA 17110-9661

Citation No. 07-3061 Big  
Faces, Inc.