

Mailing Date: JUL 01 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-3132C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-365359
v.	:	
	:	LID - 55716
NAPLES PIZZA, INC.	:	
T/A NAPLES PIZZA	:	
121 S. FRONT ST.	:	
STEELTON, PA 17113-2534	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-SS-10212	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
John J. Krafzig, Jr., Esquire
2921 N. Front Street
Harrisburg, PA 17110

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 24, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Naples Pizza, Inc., t/a Naples Pizza (Licensee), License Number R-SS-10212.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on November 24, 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, eighteen (18) years of age.

An evidentiary hearing was conducted on May 19, 2008 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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 its investigation on November 24, 2007 and completed it on November 27, 2007. (N.T. 7)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on December 21, 2007. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 6)

3. On November 24, 2007, pursuant to the Bureau's Age Compliance Check program, an eighteen year old (born June 3, 1989) entered the premises at 4:00 p.m. He attempted to purchase beer. He was questioned as to age. The eighteen year old provided the employe his valid and true Pennsylvania Driver's License showing him to be underage. (N.T. 7-18)

4. The employe looked at the identification, handed it back to the minor. The minor was allowed to purchase the beer. (N.T. 20-21)

5. Licensee's witness acknowledged selling to the minor. He explained he was busy and was distracted.

1. Commonwealth Exhibit No. B-2, N.T. 6.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

There is no such defense in the Liquor Code of permitting a licensee to argue distraction.

PRIOR RECORD:

Licensee has been licensed since December 14, 2005, 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 of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

Liquor Code Section 471(d) [47 P.S. §4-471(d)] imposes the mandate upon me to require a licensee to become R.A.M.P. compliant where, as here, the violation is the first of this type. I am authorized to require such compliance for a period up to one year.

As Licensee has voluntarily complied with Liquor Code Section 471.1 [47 P.S. §4-471.1] relating to R.A.M.P. and has been certified effective April 3, 2008 for a period of two years, I now order Licensee to remain in compliance for a period of one year from the mailing date of this Adjudication.

I impose a \$1,250.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,250.00 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.

R.A.M.P. Requirements

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee must remain in compliance for a period of one year from the mailing date of this Adjudication.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 19th day of June, 2008.

Felix Thau, A.L.J.

pm

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.

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. 07-3132