

Mailing Date: JAN 8 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0158
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-367163
	:	
1305 JOE INC.	:	
MANOA SHPPG. CTR.	:	LID - 51639
STORE NO. 11 & 12	:	
1305 WEST CHESTER PK.	:	
HAVERFORD TWP.	:	
HAVERTOWN PA 19083	:	
DELAWARE COUNTY	:	
LICENSE NO. D-SS-3152	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 12, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 1305 Joe, Inc., License Number D-SS-3152 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, August 12, 2008, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on December 29, 2007, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) male minors, nineteen (19) and twenty (20) years of age.

FINDINGS OF FACT:

1. Officer Edward Gartland is employed by the Bureau of Enforcement and was so employed on December 29, 2007. On that date, he conducted an inspection of the licensed premises. The officer arrived at the premises at approximately 7:00 p.m. on what he described as a routine minor patrol. He parked his vehicle in the shopping center parking lot and surveyed the premises (N.T. 6-8).

2. The officer parked about forty feet from the premises with a clear line of vision. The premises had a glass door and a window. At approximately 7:45 p.m., Officer Gartland observed two white males enter the premises empty handed. Both males appeared youthful. Approximately ten minutes later, they exited the premises each with a case of beer (N.T. 8).

3. Officer Gartland identified himself and requested proof of age. One patron was identified as M. C. He was found to be nineteen years of age. He had purchased a case of Natural Light beer, that is to say, a thirty pack of twelve ounce cans. The other patron was also a minor, twenty years of age. He purchased a case of Busch Light beer, that is to say, a thirty pack of twelve ounce cans (N.T. 8-9).

4. Both individuals were issued citations for possession and purchase of alcoholic beverages. M. C. was also cited for carrying false identification (N.T. 9-10).

5. The officer took the minors back into the premises where they identified the individual who had sold them the beer (N.T. 10-11).

6. The clerk indicated that one of the individuals showed him a New York non-government identification (N.T. 11-13 and Exhibit B-3).

7. There is a picture of M. C. on the identification card and the information on the card fits his description, hair color, height and eye color (N.T. 14-15 and Exhibit B-3).

8. M. C. was born November 4, 1987 and at the time of the hearing was twenty years of age. On December 29, 2007, he went to the licensed premises, along with Z. C. to buy beer. The licensed premises is located in a strip mall. M. C. selected cans of Busch Light beer, went to the cash register and paid for it. He did not show any identification. The only identification he had in his possession was his driver's license, which indicated that he was underage (N.T. 17-19).

9. The sales person took no photo of M. C. nor did he use any type of scanning device (N.T. 19-20).

10. Z. C. was born February 14, 1988 and was nineteen years of age on December 29, 2007. He visited the licensed premises in order to purchase beer. He was accompanied by M. C. Z. C. went to the back refrigerator and picked up a case of Natural Ice beer. Z. C. went to the counter first and when requested to show identification, showed false identification. The counter person looked at the identification. Z. C. then paid for the beer and left the premises. The identification that he presented was false and indicated that he was twenty-one years of age (N.T. 20-21 and 25-27).

11. The clerk neither scanned the identification card nor did he ask for backup identification. Z. C. was not asked to sign anything. The identification was not photocopied (N.T. 27-28).

12. According to Z. C., he made both transactions (N.T. 28).

13. Z. C. indicated that the false identification contained his true picture, but a false age, name, address and date of birth. The identification has a warning on the back, which indicates that the accepting parties should request supporting documents as a precaution (N.T. 28-29).

CONCLUSIONS OF LAW:

On December 29, 2007, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) male minors, nineteen (19) and twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

PRIOR RECORD:

Licensee has been licensed since August 6, 2003, and has no record of prior violations.

DISCUSSION:

The Licensee sold malt or brewed beverages to two minors on December 29, 2007. One of the minors presented false identification in the nature of a card, which purported to be a New York government identification card. The information contained a real picture, but otherwise the information contained on the identification was false. The clerk did not make a photocopy of the identification, did not request back up identification, did not scan it nor require the minor to complete a declaration of age card.

The Licensee did not rely upon the identification card in good faith in that the identification clearly indicates that it is a Class C card, which is supported only by the pledge of the bearer and not by documentation.

In that Licensee has no prior violations, a \$1,250.00 monetary penalty shall be imposed. Licensee will be required to attend the Responsible Alcohol Management Program (R.A.M.P.).

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, pertaining to Responsible Alcohol Management when, as in this matter, 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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 1305 Joe, Inc., License Number D-SS-3152, pay a fine of One Thousand Two Hundred Fifty Dollars (\$1,250.00) 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.

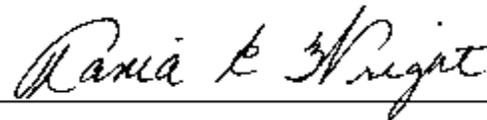
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IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us) within thirty (30) days of the mailing date of this Adjudication in order to receive assistance in the compliance process. Licensee must receive Certification within ninety (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. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

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) of the Liquor Code, 47 P.S. Section 4-471(d).

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

Dated this 31st day of December, 2008.



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

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, along with any required documentation, to:

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

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