

Mailing Date: August 12, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 08-0191
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
SPANISH MOON CAFÉ, INC.	:	
t/a SPANISH MOON CAFÉ	:	License No. R-6029
320 E. Lincoln Ave.	:	
McDonald, PA 15057-1430	:	
	:	

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OPINION

Spanish Moon Café, Inc. t/a Spanish Moon Café (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge Robert F.

Skwaryk (“ALJ”), wherein the ALJ sustained the citation and imposed a fine in the amount of one thousand two hundred fifty dollars (\$1,250.00).

The citation charged Licensee with violating section 493(1) of the Liquor Code in that, on July 22, 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 (1) female minor, eighteen (18) years of age. [47 P.S. § 4-493(1)].

Pursuant to section 471 of the Liquor Code, the appeal in this case must be based solely on the record before the ALJ. [47 P.S. § 4-471]. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his/her discretion, or if his/her decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

Licensee raises a single issue on appeal. Licensee contends that the ALJ's Findings of Fact were based upon inconsistent information and cannot

support the citation. Specifically, Licensee asserts that the testimony of the minor is not credible.

The Board has reviewed the record, including the ALJ's Adjudication and Order, with Licensee's contention in mind, and has concluded that the ALJ's decision is supported by substantial evidence.

The record reveals that on July 22, 2007, at approximately 2:18 a.m., Officer James Michael Falconer observed a female hanging out of the back driver's side door of a vehicle parked in front of the Spanish Moon Café, vomiting into the street. [N.T. 1/27/2009, 21]. Upon investigation, Officer Falconer learned that the young woman was eighteen (18)-year-old Kayla Maiolie. [N.T. 1/27/2009, 22]. While interviewing the minor, Officer Falconer smelled a very strong odor of alcohol coming from her person and breath. [N.T. 1/27/2009, 21]. He also noted that her speech was slurred, she had difficulty understanding and responding to questions, and had difficulty standing without falling over. [N.T. 1/27/2009, 21, 22]. The minor told Officer Falconer that she had been drinking in the bar across the street from the car. [N.T. 4/1/2009, 29].

On the evening in question, the minor went into the Spanish Moon Café to find her mother. [N.T. 4/1/2009, 25-27]. The minor was in the establishment for approximately forty-five (45) minutes to one (1) hour and she consumed approximately three (3) alcoholic drinks that were purchased by someone she did not know. [N.T. 4/1/2009, 8, 26, 27]. The minor was not required to provide identification to prove her age, nor was she asked to sign a declaration of age card. [N.T. 4/1/2009, 10, 27].

The minor's mother, Tina Goodwin, stated that she saw her daughter in the Spanish Moon Café but did not see her drink. Ms. Goodwin said that she left the bar because she was ill and that she waited for her daughter in the car outside the bar. [N.T. 4/1/2009, 8, 11, 12]. Approximately one (1) hour later, the minor joined her mother in the car. [N.T. 4/1/2009, 11]. When the minor was in the car and throwing up, her mother asked her why she was sick. The minor told her mother she was sick because she had been drinking. [N.T. 4/1/2009, 12].

Section 493(1) of the Liquor Code provides that it shall be unlawful “[f]or any licensee or the board or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or

brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given,... to any minor....” [47 P.S. § 4-493(1)].¹

In its appeal, Licensee asserts that the minor and her mother are not credible. Essentially, this is a challenge that amounts to nothing more than dissatisfaction with how the ALJ accorded evidentiary weight. Licensee invites the Board to engage in a reevaluation of witness credibility on a cold record. Such an invitation has been previously rejected by the Commonwealth Court, and is similarly rejected by the Board in regard to this case. See Thorpe v. Pub. Sch. Employee’s Ret. Bd., 879 A.2d 341 (Pa. Cmwlth. 2005). It is well-settled that matters of witness credibility are the sole prerogative of the ALJ, and the ALJ’s findings on credibility will not be disturbed absent a showing of insufficient evidence. Borough of Ridgway v. Pennsylvania Public Utility Comm’n, 83 Pa. Cmwlth. 379, 480 A.2d 1253 (1984). In the instant case, the ALJ found the testimony of the female minor to be more credible and adequate to support the charge in the citation. The Board will not overturn the ALJ’s well-

¹ For the sake of completeness, it should be noted that section 495(f) of the Liquor Code provides that a licensee who has provided alcohol to a minor may, nonetheless, escape liability if the licensee required the minor to provide proper identification and if the licensee acted in good faith. [47 P.S. § 4-495(f)]. In the present case, Licensee has chosen not to set forth an affirmative defense and, instead, argues that the minor was never inside the licensed premises.

reasoned opinion on nothing more than mere speculation and a suggestion that the minor was not credible.

The Commonwealth Court has previously held that evidence, including the testimony of minors who illegally purchase liquor, is sufficient to support a finding that a liquor licensee served alcoholic beverages to minors. New Sorrento, Inc. v. Com., Pennsylvania Liquor Control Bd., 440 A.2d 676 (Pa. Cmwlth. 1982). In the instant matter, the Bureau presented the minor's testimony that she was less than twenty-one (21) years of age, and that she was served alcoholic drinks on the licensed premises on July 22, 2007. The ALJ found the minor's testimony to be credible and adequately supported the charge in the citation.

Based upon the foregoing, the Board finds that the ALJ's decision is supported by substantial evidence and shall not be disturbed. The decision of the ALJ is, therefore, affirmed.²

² Since the Board has decided the underlying appeal, the issue of whether to grant a supersedeas has been rendered moot.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee must adhere to all other conditions set forth in the ALJ's Order issued May 13, 2009.

Board Secretary