

Mailing Date: DEC 12 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0489
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-369012
	:	
METEORA CORPORATION	:	
T/A SAMS PIZZA ISLAND	:	LID - 56218
445 HANNUM AVE.	:	
WEST CHESTER PA 19380-2524	:	
	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. E-SS-1642	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

MARY LOU HOGAN, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 11, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Meteora Corporation, t/a Sams Pizza Island, License Number E-SS-1642 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, October 2, 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 contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on February 2, 2008, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

The second count charges Licensee with violation of Section 442(a)(1) of the Liquor Code, 47 P.S. Section 4-442(a)(1), in that on February 2, 2008, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. On Saturday, February 2, 2008 at 9:45 p.m., Enforcement Officer E. Gartland arrived at the licensed premises and conducted an outside surveillance for minors. The officer parked in the lot outside the premises in an unmarked vehicle (N.T. 7-8).

2. At 10:05 p.m., Officer Gartland observed a youthful appearing white male enter the licensed premises, empty handed. At 10:10 p.m., the officer observed the same white male exit the premises, five minutes later, in possession of two six-packs of sixteen-ounce cans of Coors Light beer. The white male placed these six packs into a car and reentered the licensed premises. He then exited the licensed premises in possession of two six-packs of sixteen-ounce cans of Coors Light beer. He placed these six-packs into the same car and reentered the licensed premises. The white male exited the licensed premises in possession of a twelve-pack of twelve-ounce cans of Miller Lite beer (N.T. 8-9).

3. After placing the twelve pack into the same car, the white male again reentered the licensed premises. Officer Gartland followed him into the licensed premises and requested proof of age. The white male produced a Pennsylvania Driver's License in the name of C. K. The picture on this license resembled the white male, however, the eye color was different. The driver's license indicated that the bearer had brown eyes, when in fact the eyes were blue. The officer was able to ascertain that the white male was in fact a nineteen year old minor, named D. L. The minor eventually produced his own driver's license (N.T. 9-11).

4. Officer Gartland spoke to the employee that had served the minor, identified as Dimitrio Paffas. Mr. Paffas admitted to serving the minor, after requesting identification and swiping it through the licensed premises' identification verification system. Mr. Paffas was given C. K.'s driver's license. Mr. Paffas also admitted that he rang the minor's purchase of 528 fluid ounces of beer as a single sale, but had the minor take the beer out in three trips (N.T. 11-14).

5. The license produced by D. L. on February 2, 2008 was in the name of C. K., the date of birth is stated as August 11, 1986. The photo looks like D. L. and the height is very close. The address is Wilkes-Barre, PA; however, the establishment is in West Chester, PA. The primary difference is that the color of eyes on the license is stated as brown and D. L. has blue eyes (N.T. 16-21 and Exhibit B-3).

6. The premises is located close to West Chester University (N.T. 19).

7. A male minor, D. L., born February 26, 1988, stated that on February 2, 2008, he was twenty years of age. He is a student at West Chester University. He went to the licensed premises by car at approximately 10:00 p.m. D. L. purchased four six packs of sixteen-ounce cans of Coors Light beer and one twelve pack of twelve-ounce cans of Miller Lite beer and paid for all of this beer at one time. He presented an identification belonging to another when asked by Mr. Paffas. The clerk scanned the identification and he was permitted to purchase the alcoholic beverages and carried it out in several trips to the car (N.T. 21-26 and Exhibit B-3).

8. Adamos Vasilios is the owner/manager of the licensed premises. He was not on the premises on February 2, 2008 at the time of the purchases by D. L. He did, however, maintain records of the transactions for that day. The records indicated that there was a scan for C. K. (N.T. 32-34).

9. The printout indicates that the identification of C. K. was scanned on February 2, 2008 at 2308 hours. However, all witnesses testified that the time was between 10:00 and 10:15 p.m. on February 2, 2008. The printout does not show the photo, but shows all other information contained on the license. It indicated that eye color as brown. The expiration date on the license is August 12, 2010; however, it scanned August 28, 2010. Licensee explained that the worn magnetic strip might account for the discrepancy. Also, Licensee says he has to manually change from Daylight Savings Time and had not done it (N.T. 45 and Exhibit L-1).

10. On February 21, 2008, Officer Gartland sent, or caused to be sent, a notice of violation letter, under the signature of Michael J. Dever, Acting District Commander, to the Licensee (Exhibit B-3).

CONCLUSIONS OF LAW:

Count No. 1 – On February 2, 2008, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), however, no penalty shall be imposed in that Licensee established a good faith defense under Section 47 P.S. Section 4-495.

Count No. 2 - On February 2, 2008, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises, in violation of Section 442(a)(1) of the Liquor Code, 47 P.S. Section 4-442(a)(1).

PRIOR RECORD:

Licensee has been licensed since June 16, 2006, and has no record of prior violations.

DISCUSSION:

The Bureau made much of the fact that the expiration date scanned differently. Both indicate that the license of C. K. was valid until August of 2010. In this instance, the difference in the dates is not a fatal flaw. The fact is the scanner indicated that the license was valid. There is no proof that the machine substantially malfunctioned. It seems more likely that the information was misread because of the much worn strip. However, Licensee can manually input the information but only does so if there is a no magnetic strip. In this case, the license automatically scanned.

For a defense under Section 495, there must a valid license, good faith reliance and visible proof. Licensee has made a prima facie case for the validity of the license. Licensee had no known reason not to rely on the machine, unless some flaw was known to Licensee. The Bureau has it within their means to disprove the validity of the license by comparison to the records of the Department of Motor Vehicles. No such proof was offered. Even so, Licensee's reliance could still have been justified.

The real question is whether Licensee acted in good faith in accepting the license. All things considered, I believe Licensee took some substantial steps - if not all - to prevent the sale to the minor. Although the case will be DISMISSED relative to sales to minors, the charge is sustained relative to Count No. 2.

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 Count No. 2 of this case.

Meteora Corporation
t/a Sams Pizza Island
Citation No. 08-0489

Therefore, penalties shall be assessed as follows:

Count No. 1 - DIMISSED.
Count No. 2 - \$250.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Meteora Corporation, t/a Sams Pizza Island, License Number E-SS-1642, pay a fine of Two Hundred Fifty Dollars (\$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.

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

Dated this 1ST 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.

mm

Meteora Corporation
t/a Sams Pizza Island
Citation No. 08-0489

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

Citation No. 08-0489
Meteora Corporation