

Mailing Date: MAY 5 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0506C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-369284
	:	
GEOLAS INC	:	
T/A WEST END CAFE	:	LID-46919
408 S MAIN ST	:	
PITTSBURGH PA 15220-5514	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-4129	:	

**BEFORE:** JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:  
Emily L. Gustave, Esquire

For Licensee:  
George E. Brice, Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on March 17, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Geolas, Inc., T/A West End Cafe, License Number R-AP-SS-4129 (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on February 7, 2008, 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, nineteen (19) years of age.

The investigation which gave rise to the citation began on February 7, 2008 and was completed on February 8, 2008. The notice of violation letter was mailed to Licensee on February 22, 2008.

An evidentiary hearing was held on this matter on April 1, 2009, in Pittsburgh, Pennsylvania.

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Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Allegheny County, Pennsylvania and holds Restaurant Liquor License Number R-AP-SS-4129. (N.T. 4)
2. On Thursday, February 7, 2008, at 10:54 p.m., an enforcement officer entered the licensed premises in an undercover capacity and found a barmaid rendering service of alcoholic beverages to eleven patrons. (N.T. 8-9)
3. At 11:00 p.m., a nineteen year old female minor (V.S.) with a date of birth of October 10, 1988, entered the establishment and purchased a 12-ounce bottle of beer for \$2.25 from the barmaid. (N.T. 9, 23)
4. The barmaid asked the female minor for identification and she provided her valid Pennsylvania driver's license. (N.T. 9-10, 24, Exhibit C-3)
5. The barmaid looked at her ID and served her the bottle of beer. (N.T. 9, 24)
6. The female minor paid for the beer, and at 11:08 p.m., departed the licensed premises without consuming any of it. (N.T. 9-10)
7. The female minor was acting as part of the Bureau's age compliance check program. (N.T. 10)
8. At 11:10 p.m., two enforcement officers entered the licensed premises and told the barmaid of the minor's purchase. (N.T. 9)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d (Pa. Cmwlth. 1982). The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. Black's Law Dictionary, Fifth Edition, West Publishing Company, Copyright 1979, Page 1064.

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At the hearing held on the matter, two enforcement officers and the underage buyer (V.S.) testified as to her purchasing a bottle of beer from Licensee's bartender on February 7, 2008. A redacted photocopy of her driver's license was entered as exhibit C-3. Licensee's bartender testified in defense that she carded the minor and thought her license said 1980 as her date of birth before serving her a Coors Lite beer. A drawing of the inside of the bar was entered as Exhibit L-1.

Licensee's president appeared without counsel and was not present during the minor's visit on February 7, 2008. He testified from his viewing of a security tape of the minor's visit, without submitting the tape for review. Counsel for the Bureau objected to his testimony. Licensee's statements are hearsay and are given no weight. He also argued that he was entrapped, but offered no basis for this argument.

Title 18 Pa. C.S., Section 313 provides a criminal defense of entrapment if the person charged shows by a preponderance of the evidence that a law enforcement official or a person co-operating with the official induces a person to engage in the offense by either making false statements to induce belief that the conduct is not prohibited or using methods of persuasion to create a substantial risk that an offense will be committed by persons other than those ready to commit it.

The instant case is not criminal in nature, and Licensee did not meet his burden of proof. Therefore, his entrapment defense fails in this case.

I find the Bureau's witnesses to be more credible. As such, the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since October 31, 2000, and has 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.

After due consideration of the circumstances giving rise to the citation and Licensee's status as a first time offender, a fine of \$1,250.00 and mandatory R.A.M.P. training will be imposed as the penalty in this case.<sup>1</sup>

ORDER:

THEREFORE, it is hereby ordered that Licensee, Geolas, Inc., T/A West End Cafe, pay a fine of \$1,250.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is

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<sup>1</sup>[47 P.S. §4-471(d)], effective June 12, 2006.

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not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that Licensee, Geolas, Inc., T/A West End Cafe, shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcoholic Management in the following manner. Licensee is directed to initiate contact with the Bureau of Alcohol Education (Telephone 1-866-275-8237; Web Site: *www.lcb.state.pa.us* within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 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.

Failure to comply with this Order will be grounds for modification of penalty in this case, and for that purpose jurisdiction is retained. Failure to comply may also constitute ground for issuance of a new citation as authorized by 47 P.S. §4-471(e).

**JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.**

Dated this 28th day of April, 2009.



Robert F. Skwaryk, J.

**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

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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 17110-966

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