

Mailing Date: FEB 19 2009

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1042C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W09-371768
	:	
MAHARAJA HOSPITALITY INC.	:	
61 W. KING ST.	:	LID - 53117
POTTSTOWN PA 19464-5455	:	
	:	
	:	
MONTGOMERY COUNTY	:	
LICENSE NO. H-AP-SS-5765	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ROY HARKAVY, ESQ.

FOR THE LICENSEE:

PATRICK McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 19, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Maharaja Hospitality, Inc., License Number H-AP-SS-5765 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, November 18, 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 March 25, 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.

FINDINGS OF FACT:

1. Roderick Jackson is employed as an Enforcement officer. On March 25, he was working in that capacity. On that date he went to the licensed premises at approximately 8:58 p.m. in an undercover capacity and as a participant in the age compliance program. He described the age compliance program as a program where trained minors go into a licensed establishment under the supervision of Bureau officers and make purchases of alcoholic beverages (N.T. 9-10).

2. On March 25, 2008 at approximately 8:58 p.m., Officer Jackson walked into the premises and observed a female bartender, Tiffany Kalis. The officer sat at an L-shaped bar on the right hand side closest to the cash register. Shortly after the officer was inside the premises, he observed one of the minors, who was assisting in the age compliance program, approach the bar to his left. The female bartender came over and questioned the minor and he handed her his identification. She looked at the identification and handed it back. A short time later, he was served a twelve ounce bottle of Coors Light beer (N.T. 11-12).

3. Officer Jackson explained that as part of the training, the minors that participate in the age compliance program are taught that if they are asked for identification they should show their legitimate identification assigned to them by the state of Pennsylvania (N.T. 12).

4. The officer noted that the minor was served. The bartender sat the bottle of beer in front of him. At this point, he gave her an undetermined amount of U.S. currency. She returned change to him in an undetermined amount (N.T. 11-12).

5. The minor put the phone up to his ear and left the premises (N.T. 13).

6. Approximately five minutes later, the supervisor from the Bureau came in and advised the bartender that she had served a minor who was participating in the age compliance program. When the minor walked out, he left the beer on the counter (N.T. 13).

7. The supervisor stood directly in front of the bottle of beer that was left on the counter to let the bartender know that she had served a minor as part of the age compliance program. Officer Jackson remained undercover (N.T. 14).

8. The investigation ended on April 10, 2008. The officer made no further visits to the premises as a part of this investigation (N.T. 15).

9. The officer did not hear any conversation between the minor and the bartender (N.T. 20-21).

10. Earlier on the evening of March 26, 2008, Officer Jackson saw the minor's actual driver's license. The minor came into the office on that date and the Bureau officer took a picture of the driver's license and a picture of the minor in the outfit he would be wearing during the investigation. The officer did not recall the driver's license being faded. A photocopy of the license was retained, but the actual license was not retained by the Bureau (N.T. 25-26 and Exhibits L-1 and B-4).

11. The officer indicated that the license as it appeared on March 25, 2008 did not have a hole in it, was not expired and was much clearer (N.T. 27-28 and Exhibits L-1 and B-4).

12. A letter of non compliance was sent on April 10, 2008 advising Licensee that there had been a sale to an underage buyer (N.T. 34-35 and Exhibit B-3).

13. M. C. was born May 11, 1988. On March 25, 2008, he was nineteen years of age and was taking part in the age compliance program. Initially he received training and a packet with rules and regulations of the program. He was instructed that when asked for identification, he was to give the person his own Pennsylvania valid driver's license. He reflected on the packet of information which he had received. He was further instructed that he was to order the alcoholic beverage but was not to drink it. He was supposed to pay for the beverage. He was further instructed to feign a phone call and to leave the building immediately after being served (N.T. 38-39).

14. On March 25, 2008, M. C. was working as an age compliance minor. The minor went to the licensed premises at approximately 9:00 p.m. He was driven to the premises by Bureau Enforcement officers. The first officer in the premises was Officer Jackson. After Officer Jackson went into the premises, the minor followed. The minor went to the premises, took a seat at the bar and asked the bartender for a twelve ounce bottle of Coors Light beer. He identified the bartender in the Courtroom as the same woman who was identified by the Enforcement officer (N.T. 40-41).

15. The bartender asked for the minor's identification and he handed her his own Pennsylvania Driver's license. She took the driver's license and handed it back to him. The minor identified the copy of the driver's license as the one which was handed to the bartender on that evening (N.T. 42 and Exhibit B-4).

16. M. C. gave the bartender a ten dollar bill and received \$7.25 in change (N.T. 43).

17. M.C. identified his driver's license as the one that had been given to the bartender on March 25, 2008. He indicated that the actual driver's license looked different on March 25, 2008 than it did at the time of the hearing. On that day it was much clearer and had not expired (N.T. 44 and Exhibits B-4 and L-1).

18. There was a punched out section on the driver's license, which was done when the new driver's license was issued (N.T. 45-46 and Exhibits B-4 and L).

19. The minor was not asked to sign a declaration of age card nor was the driver's license scanned (N.T. 46-47).

20. After the minor was served, he put the phone up to his ear as though he had received a phone call and walked outside of the premises (N.T. 49).

21. The licensed premises is located inside of a hotel (N.T. 50).

22. Kuldip Kasuri is an attorney-at-law and president and shareholder of the licensed premises. The premises has been licensed since June of 2004. Mr. Kasuri received notice of this violation when the general manager of the hotel faxed him a notice of violation and a notice of non-compliance. As a result he went to the hotel and spoke to the general manager (N.T. 57-59).

23. Relevant to an incident in 2006, Mr. Kasuri spoke with the general manager, investigated the incident and confirmed that a violation was committed. Subsequent to that violation, the bar personnel received Responsible Alcohol Management Training. He instructed the general manager to be sure that the rules and regulations were clear and understood by the bartender. The Licensee also indicated that he secured a scanner, however it was not operating properly on March 25, 2008 (N.T. 59-60).

24. The Licensee has a written policy for managers and employees, which is posted and easily accessible to employees (N.T. 61).

25. Rose Gruver is employed by the Licensee as the general manager of the licensed premises. She was responsible for investigating an incident of sales to minors in 2006. She took action so that the employees would receive R.A.M.P. training. She indicated that she is also TIPS certified, as well as the rest of the employees at the premises (N.T. 68-69).

26. Ms. Gruver stated that they have house rules and policies relative to service, and that after 2006, they purchased a swipe machine to check identification (N.T. 70-71).

27. Mr. Gruver was not on the premises on the evening of March 25, 2008, the time of the incident. She stated that the swipe machine was not working on that evening (N.T. 71).

28. Tiffany Kalis is employed by the Licensee and has been so employed for almost six years. She was on duty on the evening of March 25, 2008. When she was hired, she had training relative to service of alcoholic beverages. She indicated that M. C. ordered a beer and that she asked for identification. She served him the beer because she believed that his identification verified that he was twenty-one years of age (N.T. 76-77).

29. She did not recall seeing Officer Jackson on the premises (N.T. 79).

CONCLUSIONS OF LAW:

On March 25, 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 4493(1).

PRIOR RECORD:

Licensee has been licensed since June 28, 2004, and has a record of prior violations as follows:

Citation No. 06-2882C. \$1,250.00 fine and R.A.M.P. training mandated.

1. Sales to a minor.
November 9, 2006.

DISCUSSION:

It is within the province and the responsibility of the Administrative Law Judge to determine credibility of witnesses and the weight to be given to their testimony. *State Correctional Institution v. Robinson*, 561 A.2d 82 (Pa.Cmwlth. 1989). Fact finder may give testimony such consideration as it may deserve and accept or reject it in whole or in part.

McFarland Landscape Services v. Workman's Comp Board of Appeals, 557 A.2d 816, 817-18 (Pa.Cmwlth. 1989); *Hollenbach v. North Wales Foundry Company*, 136 A.2d 148, 150 (Pa.Super 1957).

The Court found Officer Jackson's testimony to be entirely credible. He testified that he came into the premises, sat at the bar and observed the transaction between the minor and bartender, wherein the minor presented identification to the bartender and the bartender served the minor. The minor also confirmed that Officer Jackson went into the premises shortly before he did. The minor presented his own identification card, which at the time of the incident, was sufficiently legible for the bartender to determine that he was under the age of twenty-one. But even if it had not been legible, the bartender should have asked for backup identification if she could not confirm his date of birth or had any confusion or distrust of the identification card. The Licensee, the general manager and employee all indicated that they have a scanning device on the premises, but the scanning device was not operational on that date.

This Court also found the minor credible. Further, the testimony of the bartender is not *inconsistent* with that of the minor. The bartender does not deny that she served the minor, only that she believed that the minor was twenty-one years of age. The identification card was photocopied by the Bureau of Enforcement that night, so as to be able to demonstrate its condition on that particular night. The fact that the identification card is now worn is of little or no significance to the incident on March 25, 2008. The bartender had an opportunity to examine the identification card. Despite the fact that it said that the minor was under the age of twentyone, she did in fact serve the minor alcoholic beverages.

This Licensee was R.A.M.P. certified at the time of this incident. However, a prior sales to minors occurred in 2006. There has not been four years since the last incident, so Licensee is not entitled to any consideration for the lesser range of penalties. Licensee, after the first incident, would have been required to have R.A.M.P. training. At this time, Licensee is not mandated under the statute to have R.A.M.P. training but the Court will Order the Licensee to remain certified throughout the next year in addition to the monetary penalty.

Under the circumstances, a \$2,000.00 penalty shall be imposed.

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.

Accordingly, we issue the following

ORDER:

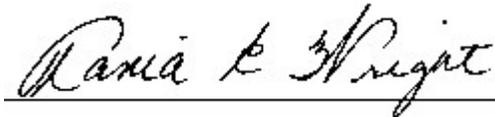
THEREFORE, it is hereby Ordered that Licensee, Maharaja Hospitality, Inc., License Number H-AP-SS-5765, pay a fine of Two Thousand Dollars (\$2,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

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

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 13th day of February, 2009.



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

Maharaja Hospitality, Inc.
Citation No. 08-1042C

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. 08-1042C Maharaja
Hospitality, Inc.