

Mailing Date: May 6, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 08-1042C
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
MAHARAJA HOSPITALITY, INC.	:	License No. H-5765
61 W. KING ST.	:	
POTTSTOWN, PA 18464-5455	:	
MONTGOMERY COUNTY	:	

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OPINION

Maharaja Hospitality, Inc. (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge Tania E. Wright (“ALJ”), wherein the ALJ sustained the citation, imposed an aggregate fine in the amount of two thousand dollars (\$2,000.00) and ordered that Licensee remain in compliance

with the requirements set forth in Liquor Code Section 471.1 pertaining to the Responsible Alcohol Management Program (“RAMP”) for a period of one year from the mailing date of the Order.

The citation charged that on March 25, 2008, Licensee, by its servants, agents or employees, violated section 493(1) of the Liquor Code by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) 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 her discretion, or if 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 two (2) issues on appeal. First, Licensee complains that the ALJ failed to properly credit the Licensee's complete and ongoing compliance with RAMP by not imposing the minimum enhanced penalty. Second, Licensee avers that it had an electronic age identification machine on the premises which was not working. Although Licensee has not been clear in its presentation of the second issue, the Pennsylvania Liquor Control Board ("Board") assumes for the purposes of this appeal that Licensee contends that it had a valid, good faith defense to the charge of sales to a minor, since the Licensee had an electronic age identification machine on the premises. The Board will address the issues raised in reverse order.

Section 493(1) of the Liquor Code provides that it shall be unlawful "[f]or any licensee . . ., or any employee, servant or agent of such licensee. . ., 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)]. Section 495(g) 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 the licensee relied in good faith on the results of a scan of the identification card by a transaction scan device. [47 P.S. § 4-495(g)].

The record reveals that on March 25, 2008, the Pennsylvania State Police, Bureau of Liquor Control Enforcement, (“Bureau”) was conducting investigations pursuant to the Age Compliance Check Program. [N.T. 9, 10]. Liquor Enforcement Officer Roderick Jackson was assigned to go into the premises in question and observe the actions of a minor who had been specially trained to participate in the program. [N.T. 10]. Liquor Enforcement Officer Jackson saw the minor enter the bar and purchase a beer from the bartender, Tiffany Kalis. [N.T. 11, 12]. Sitting at the bar approximately four (4) to ten (10) feet from the minor, he observed the following actions regarding the unlawful sale. [N.T. 20]. The bartender approached the age compliance minor at the bar and engaged in conversation. [N.T. 12, 20, 22]. Liquor Enforcement Officer Jackson saw the minor pass the bartender identification which she examined. [N.T. 12, 20, 36]. The bartender then served the minor a twelve (12) ounce bottle of Coors Light and the minor handed her some money. [N.T. 12, 20]. Without drinking the beer, the minor left the bar while appearing to talk on his cell phone. [N.T. 12].

The age compliance minor testified that when participating in an age compliance check, he was required to use his own valid Pennsylvania driver’s license when asked to present identification. [N.T. 39]. On the date in

question, he gave the bartender his valid vertical Pennsylvania driver's license that showed his date of birth as May 11, 1988, and that he was under twenty-one (21) until May 11, 2009. [N.T. 42, 45, 46, Exh. B-4]. The license also had a red stripe indicating the license-holder was not 21. [N.T. 54, 55]. The bartender did not ask any questions about the license nor did she scan it with an electronic device. [N.T. 42, 47, 52].

Tiffany Kalis, a bartender employed by Licensee, was working on the evening of March 25, 2009, and admitted she served the age compliance minor a beer after requesting and examining the minor's vertical driver's license. [N.T. 77, 78, 81]. Ms. Kalis also admitted that she did not scan the license on the Licensee's electronic identification machine because the machine was not working. [N.T. 78]. Kuldip Kasari, president of Maharaja Hospitality, Inc., and Rose Gruver, general manager for Maharaja Hospitality, Inc., also admitted that the electronic identification device was malfunctioning and was not in use. [N.T. 61, 71].

There is no doubt that Tiffany Kalis, an employee of the Licensee, sold a twelve (12) ounce bottle of Coors Light to a minor on March 25, 2008. The only remaining question is whether Licensee acted in good faith when checking for the required identification. For this defense to be applicable, the licensee must

show that 1) it requested an identification card from the minor, 2) that a transaction scan device was used to determine whether the identification card was valid, and 3) the licensee relied on the results of the scan in good faith. [47 P.S. § 4-495(g)]. Licensee is unable to satisfy prongs two (2) and three (3) of the test. The uncontradicted evidence shows that, while Licensee did possess an electronic scan device in the bar, it was not operational on the night in question. Since the device was not operational, Licensee could not use it to determine the validity of the identification card. Therefore, the Licensee did not have any information upon which it relied in good faith. The ALJ properly refused to credit the good faith defense in this case.

Having found that the ALJ properly refused to consider the good faith defense alleged in this case, we turn our attention to Licensee's second issue. Licensee contends that the ALJ should have imposed a fine in the mitigated range available for licensees who are in compliance with the requirements set forth in Section 471.1 (RAMP certification) and who have not sold to minors or visibly intoxicated persons in the past four (4) years. [47 P.S. § 4-471]. RAMP certification alone is not sufficient to trigger the application of the minimum enhanced penalties. The licensee must also have been violation-free for four (4) years. Licensee was RAMP certified at the time of this incident. [N.T. 66].

However, the Prior Citation Record shows that Licensee had an adjudicated citation for selling to a minor on November 9, 2006. Thus, Licensee was not violation-free for four (4) years and the ALJ did not err when she imposed a fine of two thousand dollars (\$2,000.00).

ORDER

The decision of the ALJ in regard to Citation 08-1042C is affirmed.

The appeal of Licensee is denied.

The fine has not been paid.

It is hereby ordered that Licensee, Maharajah Hospitality, Inc., pay a fine of two thousand dollars (\$2,000.00) within twenty (20) days of the mailing date of this Order.

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

The case is hereby remanded to the ALJ for enforcement of the penalty consistent with this Opinion and Order.

Board Secretary