

Mailing Date: DEC 16 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1074
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-372891
v.	:	
	:	LID - 59805
4300 DK INC	:	
4300 WALNUT ST	:	
PHILADELPHIA PA 19104-5239	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-SS-1725	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.
For Licensee: John J. McCreesh, IV, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 13, 2008. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 12, 2008, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, nineteen years of age.

A hearing was held on October 21, 2008, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Ed Gartland conducted an outside surveillance of the licensed premises, beginning at about 8:20 p.m. on April 12, 2008. At about 8:40 p.m. he saw a man of questionable age enter the premises empty-handed, then leave about ten minutes later in possession of three cases of beer. The man loaded the beer into his car. Officer Gartland approached the man, identified himself, and asked for proof of age. The man provided an "identification card" not issued by any state or the armed forces. The officer looked at it and asked the man for his real age and identification (N.T. 5-8, Exhibit B-3).

2. The man's date of birth was April 28, 1988. When he entered the premises, he showed the fake ID card to the door man, who took it from him and looked at it, then scanned it with a form containing language identical to the language set forth in 47 P.S. §4-495(c). The man signed the form produced by the scanner/photocopier. He then went to the back of the store and selected three cases of beer, using a hand truck. He wheeled these to the counter and paid cash for the purchase (N.T. 14-19, Exhibit B-4).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

During the hearing I expressed the opinion that the failure to fill out the age declaration completely was not significant in light of the fact that the missing information was already present on the photocopied identification card which had been made part of the declaration, in light of the addition to 47 P.S. §4-495 of subsection (f). Counsel for the Bureau took the position that the failure to fill in the form correctly was fatal to a defense under subsection (c).

I now think that this discussion was *obiter dictum*. Every defense available under 47 P.S. §4-495 depends on compliance with subsection (a). Since the “identification” presented by the minor in this case did not comply with this standard, no defense is available.

PRIOR RECORD:

Licensee has been licensed since March 20, 2008, and has had 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 in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

It is apparent that Licensee’s owner was making a good faith attempt to prevent the sale of alcoholic beverages to minors, which I consider to be a mitigating circumstance.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 4300 DK, Inc., License No. D-SS-1725, shall pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee’s license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; www.lcb.state.pa.us) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (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. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

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).

Dated this 9TH day of DECEMBER, 2008.


David L. Shenle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

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 to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661