

Mailing Date: JAN 20 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1343C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-373697
v.	:	
	:	LID - 58064
KILDARES MONTAGE MOUNTAIN,	:	
INC.	:	
T/A KILDARES	:	
8031 SHOPPES BLVD.	:	
MOOSIC, PA 18507	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-2793	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 27, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Kildares Montage Mountain, Inc., t/a Kildares (Licensee), License Number R-AP-SS-2793.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on April 30, 2008, Licensee, by 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.

An evidentiary hearing was conducted on December 17, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear at the hearing or have any representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau complied with the applicable investigatory notice requirements. The Bureau complied with the applicable requirements of the Age Compliance Check Program.

2. A citation hearing notice was mailed by the Office of Administrative Law Judge on October 30, 2008 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was signed for on November 3, 2008.

3. The Bureau began its investigation on April 30, 2008 and completed it on May 1, 2008. (N.T. 8)

4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on May 21, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)

5. The Bureau conducted an Age Compliance purchase at the subject premises on the date in question. Pursuant to that Program, a Bureau Enforcement Officer entered the premises in, an undercover capacity, at about 7:40 p.m. (N.T. 9-10)

6. While seated at the bar, the Officer observed the underage buyer enter the premises. The underage buyer ordered a bottle of beer. The bartender served the beer to the underage buyer who was not questioned as to age. The underage buyer departed the premises leaving the beer behind. (N.T. 11-12)

1. Commonwealth Exhibit No. C-2, N.T. 9.

7. An Enforcement Officer Supervisor entered the premises and explained to the bartender and the Manager that an underage buyer had just been served a bottle of beer. (N.T. 14)

8. While the undercover Enforcement Officer was inside the premises, an Enforcement Officer Supervisor who was outside the premises with the underage buyer directed the underage buyer to enter the premises. The Enforcement Officer Supervisor remained in the parking lot. After a few minutes, the underage buyer returned to the Enforcement Officer Supervisor. The underage buyer advised the Enforcement Officer Supervisor that he was able to purchase beer. (N.T. 15-16)

9. In addition to the verbal notification given immediately after the sale to the underage buyer, the Bureau sent Licensee a notification of noncompliance letter dated May 1, 2008 (Commonwealth Exhibit No. C-3). (N.T. 17-18)

10. The Enforcement Officer Supervisor verified the minor had no alcoholic beverages prior to allowing him to enter. As part of the Program, the Bureau took photographs of the underage buyer at the District Office. The Bureau also verified the underage buyer had no false identification. (N.T. 19-20)

11. The underage buyer (born November 5, 1988) was nineteen years old on April 30, 2008. Before engaging in the Program, the minor was trained and tested. (N.T. 22-24)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since March 24, 2007, and has had four prior violations:

Adjudication No. 07-1561X. Fine \$150.00.
Issued worthless checks in payment for malt
or brewed beverages.
April 6 and 7, 2007.

Adjudication No. 07-1961. Fine \$250.00.

Discounted the price of alcoholic beverages for a period or periods in excess of 2 hours in a business day.
July 18, 2007.

Adjudication No. 07-2227. Fine \$250.00.

1. Failed to notify the Board within 15 days of a change of manager.
April 13, 2007.
2. Manager failed to devote full time and attention to the operation of the licensed business.
April 13 through August 19, 2007.

Adjudication No. 08-0222. Fine \$400.00.

Discounted the price of alcoholic beverages for a period or periods in excess of two hours in a business day.
November 14, December 17, 2007 and
January 17, 2008.

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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

I impose a \$1,750.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,750.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

R.A.M.P. Requirements

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. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 15th day of January, 2009.



Felix Thau, A.L.J.

pm

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

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

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KILDARES MONTAGE
MOUNTAIN, INC.