

Mailing Date: July 21, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 08-1649C  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

COAL CRACKER TAVERN, INC. : License No. R-2901  
T/A COAL CRACKER TAVERN :  
561-563-565 ALTER STREET :  
HAZLETON, PA 18201 :

Counsel for Licensee: Carol Sheman, Sole Corporate Officer

Counsel for Bureau: Craig A. Strong, Esquire  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
7448 Industrial Parkway  
Macungie, PA 18062

**OPINION**

Coal Cracker Tavern, Inc. t/a Coal Cracker Tavern (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ sustained the citation and imposed a one thousand dollar (\$1,000.00) fine.

The citation charged that, on June 19, 2008, Licensee, by its servants, agents or employees violated section 493(1) of the Liquor Code [47 P.S. § 4-

493(1)] by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one (1) male minor, eighteen (18) years of age.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his 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).

On appeal, Licensee generally contends that the ALJ abused his discretion. To that end, Licensee raises a series of objections regarding the ALJ's demeanor. First, Licensee contends that the ALJ treated her unfairly and generally failed to take her explanations into account. Second, Licensee offers a series of mitigating circumstances for consideration.

The record reveals that on June 19, 2008, at approximately 8:30 p.m., Thomas Hess, an officer with the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"), entered Licensee's premises in an

undercover capacity and observed Licensee's sole corporate officer, Carol Sheman, on duty. (N.T. 24-25). Officer Hess observed the designated underage purchaser enter the premises shortly afterward. (N.T. 25).

As part of the Age Compliance Check Program, at approximately 8:32 p.m., an eighteen (18) year old male minor identified as U.B. entered Licensee's premises and removed a forty (40) ounce Coor's Light bottle of beer from the cooler and placed it on the register. (N.T. 31-32). The male minor paid Mrs. Sheman two dollars and seventy-five cents (\$2.75) without being asked for any identification (N.T. 32).

The sole corporate officer represented the Licensee without assistance of counsel.

During Mrs. Sheman's cross examination of the male minor, Mrs. Sheman admitted to the ALJ that she does not deny making the sale, but that she was distracted because of the "unnatural" behavior of the Bureau agent and the minor while they were inside the licensed premises. (N.T. 39-40).

In response to the first allegation raised by the Licensee, the Board has reviewed the record with the Licensee's objections in mind and although the ALJ's tone and commentary may appear a bit harsh, a review of the record reveals that the ALJ did not commit an error of law or an abuse of discretion.

In response to the second allegation raised by Licensee, Section 493(1) of the Liquor Code provides that it shall be unlawful “[f]or any license . . ., 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(f) 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 if the licensee acted in good faith. [47 P.S. § 4-495(f)].

To escape liability for the violation of selling and furnishing alcohol to minors, Licensee must establish an affirmative defense by proving that it complied with all of the requirements set forth in section 495 of the Liquor Code. In the present matter Licensee has failed to meet its burden.

In order to assert an affirmative defense for sales of alcohol to minors the Licensee must show that the minor in question provided a valid photo driver’s license or identification card issued by the Department of Transportation or by any other state. [47 P.S. § 495(a)]. Once Licensee has established that a valid form of identification was presented, Licensee must utilize one (1) of three (3) processes to escape liability. After establishing that

a valid form of identification was requested Licensee must require that the minor complete and sign a Declaration of Age Card pursuant to section 495(c)(e); or Licensee can make a photograph, photocopy or other visual or video presentation of the valid identification card presented pursuant to section 495(f); or the Licensee can use a transaction scan device (Licensee can swipe the valid identification card) pursuant to section 495(g). Further, all of these three (3) methods, and their results, must be relied upon in good faith by the Licensee to then allow the person to purchase alcohol. [47 P.S. § 495(c)(e)(f)(g)].

In the present matter, the minor in question was never asked to present any form of identification, nor was he asked to sign a declaration of age card. None of the circumstances set forth in mitigation by the Licensee can be accepted as a valid defense to the charge in question.

Accordingly, the Board finds that the ALJ's decision is supported by substantial evidence and shall not be disturbed.

The decision of the ALJ is, therefore, affirmed.

## ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid the fine in the amount of one thousand dollars (\$1,000.00).

It is further ordered that Licensee shall comply with the requirements set forth in Liquor Code section 471.1 [47 P.S. § 4-471.1] pertaining to Responsible Alcohol Management in the following manner. Licensee must receive Responsible Alcohol Management certification from the Board's Bureau of Alcohol Education within ninety (90) days after the mailing date of this Opinion and Order. Licensee must remain in compliance with the Responsible Alcohol Management certification requirements for a period of one (1) year from the date such certification is issued.

Licensee must adhere to all conditions set forth in the ALJ's Orders in this matter.

This case is remanded to the ALJ to ensure compliance with this order.

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Board Secretary