

Mailing Date: MAR 24 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1779
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-374510
v.	:	
	:	LID - 54471
DB'S SPOT, LLC	:	
279 S. RIVER ST.	:	
PLAINS, PA 18705-1135	:	
	:	
	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-10501	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Craig Strong, Esquire

For Licensee  
John P. Rodgers, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 4, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against DB'S SPOT, LLC, License Number R-AP-SS-10501 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on July 1, 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 male minor, twenty years of age.

The investigation which gave rise to the citation began on May 15, 2008 and was completed on July 2, 2008; and notice of the violation was sent to Licensee by Certified Mail on July 15, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 8, 2009 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. R.P.C. was born on November 30, 1987, and, on July 1, 2008, he was 20 years old (N.T. 18).
2. On July 1, 2008 two officers of the Bureau entered the licensed premises where they conducted an open inspection for minors (N.T. 8-9).
3. During the aforementioned inspection the officers discovered R.P.C. in possession of and consuming a mixed drink containing vodka and sprite (N.T. 9-10, 14).
4. R.P.C. had obtained the vodka at a party off the licensed premises. He brought it on to the licensed premises in a water bottle. He then purchased a sprite from employes of Licensee and poured vodka from the water bottle into the sprite and consumed the mixed drink (N.T. 19 and 20).

CONCLUSION OF LAW:

The charge in the citation is **dismissed**.

DISCUSSION:

The Bureau has failed to establish that the minor in question was furnished the alcohol that he consumed on the licensed premises while he was on the licensed premises. Therefore, the Bureau has failed to meet its burden and the charge in the citation must be dismissed.

In a liquor license case, the burden is on the Commonwealth to establish a violation by a clear preponderance of the evidence. *In re Omicron Enterprises*, 449 A.2d 857 (Pa.Cmwltth 1982).

The evidence in this case establishes that the minor in question brought the alcohol that he consumed onto the premises on the date in question in a water bottle. He then ordered sprite, a nonalcoholic beverage into which he poured the vodka that he brought in with him. It is clear, therefore, that no one on the licensed premises served the alcohol to the minor in question, nor did anyone on the licensed premises permit anyone who was on the licensed premises to furnish the alcoholic beverage to the minor in question.

This case is almost identical to a case decided by Administrative Law Judge Skwaryk in 1993. In that case, *Leo P. Vergnetti*, Selected Opinions Volume 15, page 87 (1993) a minor brought a bottle of vodka into the licensed premises in luggage. She then ordered an orange juice from employes on the licensed premises and poured some vodka from her own bottle into the orange juice and consumed it. Judge Skwaryk dismissed the charge.

The Commonwealth Court in *Appeal of Old Express, Ltd.*, 453 A.2d 679 (Pa. Cmwlth 1982) held that a liquor licensee may not be held responsible for alcohol supplied to a minor off the licensed premises.

It is clear in this case that the minor in question obtained the alcohol which he consumed off the licensed premises. Therefore, Licensee may not be held responsible for his possession and consumption of that substance.

Based on the foregoing, I conclude that the charge in the citation must be dismissed.

ORDER

IT IS HEREBY ORDERED that Citation No. 08-1779 be **DISMISSED**.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 11TH day of March, 2009.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

Daniel T. Flaherty, Jr., J.

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**MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.**