

Mailing Date: MAY 28 2009

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1945
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-362846
	:	
v.	:	LID - 51839
	:	
LUCKY SPEROS, INC.	:	
T/A FOUR B'S RESTAURANT &	:	
TAVERN	:	
3245 SUSQUEHANNA TRAIL	:	
YORK, PA 17402-9736	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-SS-18261	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Thomas M. Ballaron, Esquire  
Pennsylvania State Police  
3655 Vartan Way  
Harrisburg, PA 17110

For Licensee  
Theodore Aggelis  
Treasurer/Stockholder  
Director and Manager

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on September 11, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Lucky Speros, Inc., t/a Four B's Restaurant & Tavern (Licensee), License Number R-AP-SS-18261.

The citation<sup>1</sup> charges Licensee with violations of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on January 4 and 5, 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) female minor, twenty (20) years of age.

An evidentiary hearing was conducted on April 14, 2009 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee appeared at the hearing and represented himself.

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 began its investigation on September 21, 2007. (N.T. 23-24)
2. In furtherance of that investigation, Bureau Enforcement Officers took the following steps:
  - a. On September 22, 2007, a Bureau Enforcement Officer conducted an undercover visit to the premises noticing there was an individual verifying identification and age. (N.T.24)
  - b. On October 19, November 19 and 23, 2007, a Bureau Enforcement Officer conducted undercover visits to the premises, finding no violations. (N.T. 24-25)
  - c. On December 20, 2007, a Bureau Enforcement Officer conducted an undercover visit to the premises finding no violations. (N.T. 31-32)

1. Commonwealth Exhibit No. C-3, N.T. 123.

- d. On January 3, 2008, the Bureau conducted an Age Compliance Check at the licensed premises. Licensee passed. (N.T. 33)
- e. On January 7, 2008, the Bureau received an additional anonymous complaint which is the subject matter of this Adjudication. (N.T. 32)
- f. On January 12, 2008, a Bureau Enforcement Officer conducted an undercover visit to the premises finding no violations. (N.T. 33)
- g. On January 24, 2008, a Bureau Enforcement Officer attempted to contact a Detective of the Northern York Regional Police Force, in reference to the incident in question. (N.T. 34)
- h. On February 8, 2008, a Bureau Enforcement Officer conducted an undercover visit to the premises finding no violations. (N.T. 34)
- i. On February 11, 2008, a Bureau Enforcement Officer attempted to speak to the minor in question. The minor said that she wanted to speak first to her attorney. (N.T. 35)
- j. On March 7, 2008, a Bureau Enforcement Officer spoke to the mother of the person who allegedly accompanied the minor to the licensed premises.<sup>2</sup> (N.T. 40)
- k. On March 8, 2008, a Bureau Enforcement Officer noted a violation of the loudspeaker regulation by Licensee, for which a warning letter was issued.<sup>3</sup> (N.T. 35)

2. The Bureau offered no explanation as to the nature of that conversation and what was gleaned from it.
3. Because of the nature of warning letters and the inability to defend, I draw no inferences as to whether the violation actually occurred.

l. On April 3, 2008, a Bureau Enforcement Officer spoke to an attorney who represents the minor and a second attorney who represents an insurance company. The Officer was attempting to obtain a copy of the minor's statement from the insurance company.<sup>4</sup>

(N.T. 41-42)

m. On April 19, 2008, a Bureau Enforcement Officer conducted an undercover visit to the premises finding no violations.

(N.T. 42)

n. On May 14, 2008, a Bureau Enforcement Officer Supervisor called the licensed premises from his office. He spoke to Mr. M.A. The Supervisor advised Mr. M.A. about the nature of the investigation and that there was an allegation of a minor drinking on the premises. Mr. M.A. disputed the allegation. Mr. M.A. also indicated, that he had a discussion with a Police Officer while a search warrant was being served at the premises. The Police Officer was advised by someone at the licensed premises that the subject minor used false identification to enter the premises on the evening in question. (N.T. 75-77)<sup>5</sup>

o. On May 17, 2008, a Bureau Enforcement Officer spoke to a Detective of the Northern York Regional Police Force. The discussion was about a search warrant being served upon

Licensee to recover computer records. (N.T. 42)

p. On May 17, 2008, the Northern York Regional Police Force served a warrant for Licensee's computer. The computer was returned to Licensee about a month after it was seized.

(N.T. 44-48)

4. The record is devoid of any information as to whether that attempt was successful.
5. The information provided the Officer through Mr. M.A. is triple hearsay. Mr. M.A.'s statement is not only inadmissible but inherently unreliable. Also see *Walker v. Unemployment Comp. Board of Review*, 367 A.2d 366 (Pa.Cmwlth. 1976), for the contours of the Legal Residuum Rule. The Rule provides, in administrative hearings, otherwise inadmissible hearsay, even if unobjected to, may not form the basis of a finding of fact absent corroborating evidence.
  - q. The Supervisor spoke to Mr. M.A. again on May 19, 2008 via telephone. Although the Supervisor did not make a note of what Mr. M.A. said and did not have a recollection of exactly what Mr. M.A. said, in paraphrased form, Mr. M.A. indicated the minor and her boyfriend were on the premises drinking alcoholic beverages on the date in question. At all relevant times, Mr. M.A. was not a Corporate Officer. (N.T. 80-81)
  - r. On May 29, 2008, a Bureau Enforcement Officer attempted to contact the minor in question but was unsuccessful. (N.T. 48)
  - s. On June 11, 2008, a Bureau Enforcement Officer conducted another undercover visit to the premises finding no violations. (N.T. 48)
  - t. On June 18, 2008, a Bureau Enforcement Officer attempted to contact the attorney for the minor in question. The attorney advised the minor not to provide any statement to the Bureau. (N.T. 56-57)
  - u. On January 26, 2009, a full six months after the Bureau claims the investigation ended (July 15, 2008). The Bureau interviewed the minor. (N.T. 59-60)
3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 6, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 123)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau **failed** to prove that on January 4 and 5, 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) female minor, twenty (20) years of age.

DISCUSSION:

Very recently, I was shocked into remembering an unpleasant behavioral truth. When a message contains critical, but accurate observations, some of us prefer to attack the messenger. In this way, we successfully avoid accepting any responsibility for the truth within a message; in our self-righteous indignity, we place all of the blame on the messenger who, in our minds, conveniently turns out to be nothing but a scoundrel who is entirely motivated by ill will. Nonetheless, I am hopeful there are those who can separate the message from the messenger and find within that message valuable observations.

**Investigation**

It is disturbing to hear about a lengthy investigation during which a paucity of resources was actually dedicated to gathering information concerning the events of the evening in question. The Bureau did not take the opportunity to visit the licensed premises for the purpose of reviewing records. Those records could have lead to interviews of employes who were on duty that evening in question. There was a possibility also of gathering at least some names of customers for the purpose of getting statements and collecting information.

Unfortunately, at the time the Bureau alleges the investigation closed, the entire case rested on two very slender threads. The first was a document prepared by the Northern York Regional Police Force in which there is some indication that the minor admitted to drinking on the premises that evening.

The second component is the telephone call of May 19, 2008 [Finding of Fact No. 2(q)]. The information gathered in that telephone call was not recorded in any formal manner. The best that was provided was a paraphrasing of what the Bureau contends constitutes an admission by a party opponent, a well recognized exception to the Hearsay Rule. Unfortunately, the declarant was not a Corporate Officer and therefore had no authority to speak on behalf of Licensee.

Relationships by blood are not a recognized basis in the law for one person to speak on behalf of another.

Even if the declarant had the authority to speak on behalf of Licensee, I would have great difficulty in accepting what is no more than paraphrase in place of the actual words used. My experience tells me that paraphrasing may be easily swayed by the paraphraser's interpretation.

**Weight and Sufficiency**

I make no findings regarding the substantive portion of the Bureau's case. I am convinced both witnesses were truthful as they know it. I am particularly concerned the minor's drunken condition which gave rise to the DUI charge and a very serious automobile accident, may have clouded her memory.

I am further troubled that the minor's memory may have been subsequently fixed. At the hearing, the minor remembered very accurately what she drank on the night in question. I inquired as to why her memory was so accurate. The minor responded she had been questioned any number of times about the incident<sup>6</sup> (N.T. 98). I have similar difficulties with the corroborating witness, the minor's partner on the evening in question.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 08-1945, issued against Lucky Speros, Inc., t/a Four B's Restaurant & Tavern, is DISMISSED.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 18th day of May, 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.**

6. That Licensee passed an Age Compliance Check in addition to ten undercover visits where no violations were observed, indirectly counters the possibility that Licensee served alcoholic beverages to a minor.