

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2234
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-372538
	:	
v.	:	
	:	LID - 40262
REALE' RESTAURANT & LOUNGE INC	:	
7233-35 FRANKFORD AVE	:	
PHILADELPHIA PA 19135-1010	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-13581	:	

JUDGE SHENKLE
 BLCE COUNSEL: James E. Dailey, Esq.
 LICENSEE COUNSEL: Alfred J. Merlie, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 7, 2008. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 1, 2008, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one female minor, nineteen years of age.

A hearing was held on March 25, 2009, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Julie Kohler investigated an allegation that a woman had been attacked inside Licensee's premises on April 1, 2008. She interviewed four witnesses: the person making the complaint, his daughter, Licensee's bartender, and Licensee's doorman. She also spoke with the Philadelphia Police Department, and obtained their incident reports. No criminal proceedings resulted from the incident (N.T. 6-8).

2. On April 1, 2008, David Murphy was working at the licensed premises as a doorman. At about 11:30 p.m. a young woman and a man entered the premises. Mr. Murphy requested identification from the young woman. She produced what appeared to be a legitimate Pennsylvania Driver's License, with a photograph which resembled her. Based on his observation, Mr. Murphy was satisfied that the young woman was an adult. He allowed the two people to enter Licensee's establishment (N.T. 65-67).

3. The young woman's actual date of birth was October 14, 1988 (N.T. 12).

4. Seated at the bar, where she and the man also ate dinner, the young woman obtained service of a mixed drink containing Grey Goose vodka, which she drank (N.T. 81-82).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 1, 2008, by furnishing alcoholic beverages to one female minor, nineteen years of age.

DISCUSSION:

I should point out that in several places the transcript of the hearing in this case refers to "grape juice" as an ingredient in a drink with pineapple. The words actually used were "Grey Goose."

The Bureau's evidence reminded me of a scene early in the movie *Victor/Victoria*, in which Robert Preston and Julie Andrews attempt to get out of paying the tab in a restaurant by planting a cockroach in a salad and making a big fuss.

The big fuss in this case was an unlikely tale told by a young woman and her stepfather about her allergy to alcohol, about the server's alleged attitude towards her and the ethnic group to which she belongs, and finally about the server's alleged use of a racial slur which, in modern times, is universally received with shock and abhorrence.

The *pièce de résistance* of this tale was the physical assault and bodily removal of the pair from Licensee's premises – events denied by all other witnesses. Had the police believed this incredible story, of course, there would have been criminal charges filed.

When I say "incredible" I mean "not worthy of belief." In fact, I do not believe it.

On the other hand, the evidence presented by Licensee – which I do find credible and worthy of belief – confirms the single inescapably true fact given in the woman's testimony: that she was served a beverage containing alcohol. Together with the evidence I observed myself: the woman's face and her genuine Pennsylvania Junior Driver's License, I am unable to escape the conclusion that this woman was nineteen years old at the time she drank alcohol in Licensee's premises.

That is the end of the story for a person in Licensee's position. I think it is likely that the woman who testified – I do not hold her in high esteem – had on her person another driver's license, the document accepted by Licensee's doorman. Junior driver's licenses are so obvious, with their sideways orientation

and big bold "UNDER 21 UNTIL..." legend, that I do not believe Licensee's doorman would have made that mistake.

O that we had a copy of that other license! Without it, or an age declaration card, or a "photograph, photocopy or other visual or video presentation" of it, I am unable to afford Licensee the benefit of 47 P.S. §4-495, which provides the only defense available a licensee in this position.

The better result would be some sort of sanction against the people who instigated these events at the licensed premises. I regret that I am unable to do this, and that I must find a violation in the present case. The furnishing of alcoholic beverages to minors is an absolute liability violation: proof that the minor committed fraud, or of the licensee's pure heart, is of no help unless one of the affirmative defenses listed in 47 P.S. §4-495 can be made out.

PRIOR RECORD:

Licensee has been licensed since August 18, 1988, and has had two prior violations:

Citation No. 96-2788. \$550.00 fine.

1. Sex discrimination.
2. Permitted alcohol prices to change during a designated discount pricing period.
3. Increased volume of drink without proportionate increase in price.
4. Gambling (tickets).

Citation No. 05-0308. \$350.00 fine.

1. Unlimited or indefinite alcoholic beverages for a fixed price. January 29, 2005.

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. Subsection (b) of that statute provides that "if a licensee has been cited and found to have violated section 493(1) as it relates to sales to minors or sales to a visibly intoxicated person but at the time of the sale the licensee was in compliance with the requirements set forth in section 471.1 and the licensee had not sold to minors or visibly intoxicated persons in the previous four years," then any fine must be in the \$50.00 to \$1,000.00 range.

Licensee became certified under 47 P.S. §4-471.1 on June 27, 2005. Counsel for both parties agreed and assumed that the penalty in this case should fall into the reduced penalty category (N.T. 8689), but unfortunately Licensee's R.A.M.P. – certification expired on June 26, 2007, prior to the date of this incident. See 47 P.S. §4-471.1(f).

For this reason, notwithstanding the acquiescence of the parties, I cannot impose a penalty in the mitigated penalty range. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Reale' Restaurant & Lounge, Inc., License No. R-AP-SS-13581, 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 5TH day of AUGUST, 2009.



David L. Shenkle, 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

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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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Reale' Restaurant & Lounge