

Mailing Date: DEC 21 2009

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 08-2287
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-378259
 :
 v. :
 : LID - 56178
 :
SULTRY LLC :
1218 N 30th ST :
PHILADELPHIA PA 19121-4506 :
 :
PHILADELPHIA COUNTY :
LICENSE NO. R-AP-SS-15483 :

JUDGE SHENKLE
BLCE COUNSEL: Erik Shmukler, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 14, 2008. There are three counts in the citation.

The first count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on August 15 and 16, 2008, and on divers other occasions within the past year, by permitting three female minors and one male minor, nineteen to twenty years of age, to frequent its licensed premises.

The second count alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on August 3 and 16, 2008, by operating the licensed premises without a valid health permit or license, which expired on April 30, 2008.

The third count alleges that Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), on August 16, 2008, by failing to keep records on the licensed premises.

At the hearing scheduled for November 4, 2009, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period July 21 through August 18, 2008, and sent written notice of the results of its investigation to the licensed premises by certified mail on September 11, 2008 (N.T. 8, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on October 14, 2008 (N.T. 8-9, Exhibit B-2).

3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on September 18, 2009.

4. On August 3, 2008, a liquor enforcement officer purchased an alcoholic beverage in the licensed premises (N.T. 15).

5. On August 16, 2008, a liquor enforcement officer entered the licensed premises at about 12:10 a.m. and saw approximately fifteen patrons served by one bartender. In the back section of the bar there were four people who looked youthful. There was no health permit on display and there were no beer or liquor invoices in the premises (N.T. 5-7).

6. One of the young patrons was a woman whose birth date was January 2, 1989 (N.T. 12, Exhibit B-4).

7. Another of the young patrons was a woman whose birth date was October 16, 1988. She told an officer that she had been to the premises before, two or three times in the preceding year, but made no mention of her parents or guardians (N.T. 17-19, Exhibit B-3).

CONCLUSIONS OF LAW:

The evidence did not prove that Licensee violated 47 P.S. §4-493(14), as alleged, by permitting minors to frequent its licensed premises.

Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on August 16, 2008, by operating without a valid health permit or license posted in the licensed premises.

Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), on August 16, 2008, by failing to keep records in the licensed premises.

DISCUSSION:

The only evidence of frequenting fails to mention the crucial element, that the minor was not accompanied by a parent or guardian during the present or the previous visits. In addition, the statement of the woman with a birth date of October 16, 1988, as to her previous visits was uncorroborated hearsay, which is insufficient to support an administrative determination. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976).

As to the other minor there was no evidence, hearsay or otherwise, that she had frequented the premises within the meaning of *Appeal of Speranza*, 206 A.2d 292 (Pa., 1965).

The status of Licensee's health permit was proven only as to August 16, 2008.

The penalty in this case is based on the fact that the license has been revoked. It does not represent an assessment of the culpability of the conduct found to have occurred.

PRIOR RECORD:

Licensee has been licensed since August 1, 2006, and has had prior violations as follows:

Citation No. 08-0131. \$150.00 fine.

1. Sold, furnished or gave liquor for consumption off premises.
August 8, September 9 and October 20, 2007.

Citation No. 08-1582. \$500.00 fine. License revoked effective October 5, 2009, for nonpayment of fine.

1. Failed to require patrons to vacate the premises by the required time.
January 5, 12, February 17 and 24, 2008.
2. Permitted patrons to enter the premises between 2:30 a.m. and 7:00 a.m. without an extended hours food permit. January 5 and February 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, or both, for violations of the type found in this citation. For violations of the type found in the second and third counts, any fine must be in the \$50.00 to \$1,000.00 range. Penalties are assessed as follows:

Count 1 – DISMISSED.

Count 2 – LICENSE REVOKED.

Count 3 – LICENSE REVOKED.

ORDER

THEREFORE, it is hereby ORDERED that the Restaurant Liquor License of Sultry, LLC, License No. R-AP-SS-15483, having been previously revoked under Citation No. 08-1582, is hereby REVOKED for the administrative purpose of permitting the matter captioned above to be closed.

Dated this 9TH day of December, 2009.



David L. Shenkle, J.

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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.