

Mailing Date: MAR 15 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2724
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-370814
v.	:	
	:	LID - 56073
THOMLAN ENTERPRISES, INC.	:	
26 W. MAIN ST.	:	
MECHANICSBURG, PA 17055-6249	:	
	:	
	:	
	:	
CUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-10261	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL BALLARON
LICENSEE: STEVE C. NICHOLAS, ESQUIRE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 10, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against THOMLAN ENTERPRISES, INC., License Number R-AP-SS-10261 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on November 9, 10, 2007, March 14 and 15, 2008, and divers other occasions, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to three female minors, eighteen to nineteen years of age.

The second count charges Licensee with violation of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)] in that on November 9, 10, 2007, March 14 and 15, 2008, and divers other occasions, Licensee, by its servants, agents or employes, permitted three female minors, eighteen to nineteen years of age, to frequent the licensed premises.

The investigation which gave rise to the citation began on March 7, 2008 and was completed on November 4, 2008; and notice of the violation was sent to Licensee by Certified Mail on November 7, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 22, 2009 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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:

COUNTS 1 AND 2

1. K.R.P. was born on April 14, 1989, and, in March of 2008, she was 18 years old (N.T. 22-23).
2. On March 14, 2008, K.R.P. went to the licensed premises with two friends, S.S. and M.P. (N.T. 23-24).
3. Upon entry, K.R.P. was asked for identification, and showed an expired identification card belonging to another young lady (N.T. 26 and Exhibit C-4).
4. On March 14 into March 15, 2008, K.R.P. was not asked to sign a Declaration of Age card, nor was the identification that she provided swiped through an ID checker, nor was it photocopied (N.T. 27).
5. K.R.P. took a seat at the bar where she ordered and consumed several alcoholic drinks. The first was beer. She then had several alcoholic mixed drinks and some shots of alcohol. She had more than one of each type of drink (N.T. 29-30). K.R.P. left the licensed premises in the early morning hours of March 15, 2008, after having been involved in a physical altercation with one of the employes on the licensed premises (N.T. 31-33).
6. S.S. was born on November 9, 1989, and, on March 15, 2008, she was 17 years old (N.T. 41).
7. On November 9, 2007, S.S. went to the licensed premises with her girlfriend M.A.P. (N.T. 50).

8. Upon entry, S.S. was carded by a doorman, and she handed him an expired ID belonging to another individual who was over 21 years of age. The doorman examined the identification card, but did not swipe it through a machine nor photocopy it. Further, S.S. was not required to sign a Declaration of Age card (N.T. 51-52).

9. Upon entry, S.S. and M.A.P. went to the bar where S.S. drank Miller Lite beer which was served to her (N.T. 52).

10. S.S. and M.A.P. left the licensed premises at 2:00 a.m. on November 10, 2007 (N.T. 52).

11. On March 14, 2008, S.S. went to the licensed premises with K.R.P. and M.A.P. (N.T. 42). They arrived at the licensed premises around 11:00 p.m. (N.T. 43).

12. Upon entry, S.S. was carded by the doorman and showed him an expired identification card (N.T. 43).

13. Upon entry, S.S. went to the bathroom and then to the bar. At the bar she ordered and was served Miller Lite draft beer. When she was served, she paid for it (N.T. 44-45). Upon being served the beer, S.S. was not asked about her age or to produce identification (N.T. 45-46).

14. On the night of March 14 into March 15, 2008, S.S. was served and consumed three beers (N.T. 46).

15. S.S. was on the licensed premises on one other occasion between November 9, 2007 and March 14, 2008. During this visit she again consumed alcoholic beverages.

16. M.A.P. was born on July 6, 1988, and, in March of 2008, she was 19 years old (N.T. 60).

17. On November 9, 2007, M.A.P. went to the licensed premises with S.S., to celebrate the birthday of S.S. (N.T. 65). Upon entry, M.A.P. showed the doorman an expired identification card belonging to another individual which showed that individual to be over 21 years old. The ID card was not photocopied nor was it put through an ID scanner. Further, M.A.P. was not asked to sign a Declaration of Age card (N.T. 69).

18. While on the licensed premises on November 9, 2007, M.A.P. consumed several mixed drinks including Long Island Iced Tea and Tequila Sunrises (N.T. 69).

19. On March 14 into March 15, 2008, M.A.P. was on the licensed premises with S.S. and K.R.P. (N.T. 70).

20. M.A.P. did not consume any alcoholic beverages on the evening of March 14 into March 15, 2008 (N.T. 70).

21. Between November of 2007 and March of 2008, M.A.P. was on the licensed premises between five and six times. On two of these occasions she was asked for identification and showed the expired identification previously mentioned. The card was not swiped through an ID checker nor was it photocopied and she was not asked to sign a Declaration of Age card. On these occasions she consumed mixed alcoholic beverage such as Tequila Sunrises and Long Island Iced Teas (N.T. 70-71).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

DISCUSSION:

The record in this case clearly establishes that three female minors using expired ID's belonging to other people were on the licensed premises on the dates in question and consumed alcoholic beverages. The minors were not requested to sign Declaration of Age cards, and the identification cards they used were not swiped through appropriate machines and were not photocopied. In addition, the minors had been on the licensed premises on multiple occasions. Consequently, I conclude that the Bureau has met its burden, and the charges in the citation are sustained.

PRIOR RECORD:

Licensee has been licensed since July 20, 2006, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

This office takes notice that Licensee was RAMP certified effective June 8, 2009.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,500.00 and Licensee must remain RAMP compliant.

ORDER

THEREFORE, it is hereby ordered that Licensee THOMLAN ENTERPRISES, INC., pay a fine of \$1,500.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

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. Licensee must remain in compliance until **February 23, 2011**.

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

Dated this 26TH day of February, 2010.



Daniel T. Flaherty, Jr., J.

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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 submit stub with payment

The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make 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

Citation No. 08-2724
Thomlan Enterprises, Inc.