

Mailing Date: AUG 14 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2778C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-383770
v.	:	
	:	LID - 39512
EN FUEGO INC	:	
T/A PLAYERS BAR AND GRILL	:	
275 SENECA STREET	:	
OIL CITY PA 16301-1303	:	
	:	
	:	
VENANGO COUNTY	:	
LICENSE NO. R-AP-SS-13118	:	

BEFORE: JUDGE FRISK
BLCE COUNSEL: NADIA VARGO
LICENSEE COUNSEL: MICHAEL HADLEY

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 21, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against En Fuego, Inc., t/a Players Bar and Grill, License Number R-AP-SS-13118 (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 October 29, 2008, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, 19 years of age.

An administrative hearing was conducted on July 16, 2009, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee was represented by Michael Hadley, Esquire.

The Bureau began its investigation of this matter on October 29, 2008, and completed its investigation on October 31, 2008. Thereafter, Licensee was notified of the nature of the violation(s) disclosed by the investigation by letter sent by certified mail on November 12, 2008. Counsel for Licensee stipulates that the notice provisions of Section 471 of the Liquor Code have been satisfied.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. On October 29, 2008 at 11:27 p.m., two Liquor Enforcement officers entered Licensee's premises in undercover capacities to assure that the premises was secured for Underage Buyer #205 who was participating in the Age Compliance Check Program. (N.T. 11)

2. Underage Buyer #205 is a male having been born on February 20, 1989 and was 19 years of age on October 29, 2008. (N.T. 24)

3. On October 29, 2008 at 11:34 p.m., Underage Buyer #205 entered Licensee's premises and approached the bar where he ordered a 12-ounce bottle of Coors Light beer from a male bartender without question relative to his age. Upon request, the male bartender removed the cap from the bottle of beer and placed it immediately in front of Underage Buyer #205 in exchange for the payment of \$2.75. (N.T. 11-12, 26, 32-33)

4. Underage Buyer #205 then placed his hand on the bottle of beer, pulled it closer to him and then departed the premises at 11:36 p.m. without consuming any of its contents. (N.T. 12, 33)

CONCLUSIONS OF LAW:

1. On October 29, 2008, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, 19 years of age, in violation of Section 493(1) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has presented sufficient facts to establish the violation as charged in this citation. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

PRIOR RECORD:

Licensee has been licensed since November 22, 1996, and has had five prior violations, to wit:

Citation No. 97-2013. Fine \$150.00.

1. Not a bona fide restaurant in that Licensee failed to provide food upon request.
2. Not a bona fide restaurant in that food items eating utensils and dishes were insufficient.

Citation No. 98-1524. Fine \$400.00.

1. Not a bona fide restaurant in that Licensee failed to provide food upon request.
2. Used loudspeakers or similar devices whereby music could be heard outside.
3. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises.

Citation No. 00-1038. Fine \$100.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m.

Citation No. 02-0099. Fine \$1,000.00 and 7 days suspension of amusement permit.

1. Used loudspeakers or similar devices whereby music could be heard outside.
2. Noisy and/or disorderly operation.

Citation No. 08-0635C. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.
February 14, 2008.

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.

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The record discloses that Licensee has had a prior violation of this type at Citation No. 08-0635C. Therefore, Licensee shall be treated as a repeat offender.

The record further discloses that Licensee received R.A.M.P. certification on December 2, 2008.

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,250.00 and Licensee's restaurant liquor license shall be suspended for a period of two days.

ORDER:

THEREFORE, it is hereby ordered that En Fuego, Inc., t/a Players Bar and Grill, License Number R-AP-SS-13118, pay a fine of \$1,250.00 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 License No. R-AP-SS-13118 be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, October 5, 2009 and **ENDING** at 7:00 a.m. on Wednesday, October 7, 2009.

Licensee is directed on Monday, October 5, 2009 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on Wednesday, October 7, 2009 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

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Jurisdiction is retained to ensure compliance with this Order.

Dated this 5TH day of AUGUST, 2009.



Roderick Frisk, J.

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NOTE: 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.

Detach Here and Return Stub with Payment

The 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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En Fuego, Inc.