

Mailing Date: SEPT 24 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2884
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-380366
	:	
HOME PLATE CONCESSIONS LLC	:	
FALCONI FIELD	:	LID-49934
ONE WASHINGTON FEDERAL WAY	:	
NORTH FRANKLIN TWP	:	
WASHINGTON PA 15301	:	
	:	
WASHINGTON COUNTY	:	
LICENSE NO. PV-38	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Michael C. Nickles, Esq.
LICENSEE COUNSEL: Charles L. Caputo, Esq.

BACKGROUND:

This proceeding arises out of a citation that was issued on December 8, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Home Plate Concessions, LLC, License Number PV-38 (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 August 26, 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 (1) female minor, nineteen (19) years of age

The investigation which gave rise to the citation began on August 26, 2008 and was completed on November 18, 2008. The notice of violation letter was mailed to Licensee on November 25, 2008.

Evidentiary hearings were held on this matter on May 12 and July 7, 2009, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is a Pennsylvania Limited Liability Corporation operating a baseball stadium, T/A Falconi Field, located in Washington County, Pennsylvania and holds Public Venue Liquor License Number PV-38. (N.T. 5-12-09 at 4, 63-64).

2. The stadium has several vending areas for food and beverage service, including Labatts' beer sales. (N.T. 5-12-09 at 18-20, 34, 41-42, 46-47. 48-49, 61-64; N.T. 7-7-09 at 6-8, 9-12).

3. On Tuesday, August 26, 2008, at approximately 7:30 p.m. and 8:30 p.m., a 19 year old minor female, S.A.W., with a date of birth of October 14, 1988, purchased a total of two 24-oz. drafts of LaBatt's Blue Light beer for \$5.00 for each purchase from a vending area located inside the licensed stadium, near the home plate. (N.T. 5-12-09 at 21-24, 27, 31-33, 36, 46, 61, 63, 67; N.T. 7-7-09 at 11).

4. She was served the beer by Licensee's employee without being carded or questioned as to her age. (N.T. 5-12-09 at 23-24, 33-34).

5. The minor, S.A.W., had visited the baseball stadium on other occasions with family and friends, but did not purchase any alcoholic beverages on these occasions. (N.T. 5-12-09 at 24-25, 28).

6. S.A.W. rode to the baseball stadium and afterwards to another licensed beer distributor with an adult friend, where her friend purchased two cases of beer to go; however, S.A.W. did not enter the other premises. (N.T. 5-12-09 at 7-8, 25-29, 32-33, 35-36).

7. The minor, S.A.W., was subsequently stopped and questioned by an enforcement officer outside the other licensed beer distributor after he smelled alcohol on her breath. (N.T. 5-12-09 at 9, 25-26).

8. On August 27 and September 1, 2008, enforcement officers visited the baseball stadium in an undercover capacity and observed no violations. (N.T. 5-12-09 at 9, 12; N.T. 7-7-09 at 6-8).

9. On Friday, October 17, 2008, at 5:30 p.m., the enforcement officer obtained a written statement from the 19 year old female minor, S.A.W. (N.T. 5-12-09 at 10, 25-26; N.T. 7-7-09 at 6).

10. On October 23, 2008, the enforcement officer contacted the president of Home Plate Concessions LLC and was referred to corporate officer, Francine Williams. (N.T. 5-12-09 at 10, 37-38).

11. On November 18, 2008, the enforcement officer interviewed Francine William who told him that they had no completed Declaration of Age Cards on file. (N.T. 5-12-09 at 10-11, 56; N.T. 7-7-09 at 10).

12. Licensee's policy is to card anyone who is of questionable age, stop selling beer at the seventh inning, require employees to wear a staff shirt with a name tag while on duty, and they do not sell beer to minors. (N.T. 5-12-09 at 38, 43-44, 47, 56).

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

At both hearings held on the matter, the enforcement officer testified in detail as to his stopping and questioning a 20 year old female minor, S.A.W., at a beer distributor after he smelled alcohol on her breath.

S.A.W. testified at the hearing held on May 12, 2009, that she attended a baseball game at Licensee's stadium during the evening of August 26, 2008, and purchased two draft beers from a vending area near home base. There was some confusion about which of Licensee's vending areas she meant when she told the officer that it was the first vending area, which he understood as the first one upon entering the stadium, near the right field side, rather than the first vending area near home base. S.A.W. did not appear at the bifurcated hearing on July 7, 2009, due to being out of state for school.

Licensee's corporate officer testified at both hearings as to their beer sale policies and denied that S.A.W. could have been served by one of their employees.

I find the testimony of the minor witness to be more credible. As such, the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since July 19, 2002, and has no prior violations,

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.

I take administrative notice that Licensee is not currently R.A.M.P. certified, and the date of their last certification was August 23, 2004.

After due consideration of the circumstances giving rise to the citation and the Licensee's status as a first time offender, a fine of \$1,250.00 and mandatory R.A.M.P. training shall be imposed as the penalty in this case.¹

¹[47 P.S. §4-471(d)], effective June 12, 2006.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Home Plate Concessions, LLC, 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 Licensee, Home Plate Concessions, LLC, shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcoholic Management in the following manner. Licensee is directed to initiate contact with the Bureau of Alcohol Education (Telephone 1-866-275-8237; Web Site: *www.lcb.state.pa.us*) within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 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.

Failure to comply with this Order will be grounds for modification of penalty in this case, and for that purpose jurisdiction is retained. Failure to comply may also constitute ground for issuance of a new citation as authorized by 47 P.S. §4-471(e).

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 10TH day of SEPTEMBER, 2009.



Robert F. Skwaryk, J.

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.

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