

Mailing Date: DEC 23 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-3087
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-384647
v.	:	
	:	LID - 56178
SULTRY LLC	:	
1218 N 30 th 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 January 13, 2009. 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 December 4, 2008, and on divers other occasions within the past year, by permitting one male minor and one female minor, twenty years of age, to frequent its licensed premises.

The second count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on December 4, 2008, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

The third count alleges that Licensee violated §§491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), on December 4, 2008, by selling alcoholic beverages after its Restaurant Liquor License expired on October 31, 2008, and had not been renewed and/or validated.

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 November 7 through December 6, 2009, and sent written notice of the results of its investigation to the licensed premises by certified mail on December 22, 2008 (N.T. 26-27, Exhibit B-1).
2. A copy of this citation was mailed to the licensed establishment by certified mail on January 13, 2009 (N.T. 27-28, 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 December 4, 2008, a liquor enforcement officer entered the licensed premises at 7:10 p.m. There were seven patrons, and alcoholic beverages were being sold. There was a young man seated at the bar with his mother (N.T. 21-23).
5. The young man had been born on October 8, 1988 (N.T. 29, Exhibit B-3).
6. A liquor enforcement officer spoke with the young man, who admitted that the drink in front of him contained vodka. The man's mother had purchased it for him. The young man smelled of vodka (N.T. 33-34).
7. This license expired on October 31, 2008. Licensee did not have authority to operate on December 4, 2008 (Exhibit B-4).

CONCLUSIONS OF LAW:

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

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

Licensee violated §§491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), on December 4, 2008, by selling alcoholic beverages after its Restaurant Liquor License expired on October 31, 2008, and had not been renewed and/or validated.

DISCUSSION:

There was no evidence that any minor frequented the premises within the meaning of *Appeal of Speranza*, 206 A.2d 292 (Pa., 1965).

I am satisfied, based on a liquor enforcement officer's first-hand observations and the J-NET certification submitted by the Bureau, that the evidence was sufficient to sustain the charge of permitting the furnishing of alcoholic beverages to one male minor, twenty years of age.

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 in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this citation. 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. Shenle, 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.