

Mailing Date: APR 08 2010

Appeal

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0391
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-388577
v.	:	
	:	LID - 54892
TIMMY'S CORPORATION	:	
5840 HARBISON AVE	:	
PHILADELPHIA PA 19135-4046	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-SS-2069	:	

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Stewart J. Berger, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on March 3, 2009. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on January 31, 2009, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

A hearing was held on Tuesday, February 23, 2010, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. On January 31, 2009, a liquor enforcement officer was maintaining a surveillance of the licensed premises at about 9:45 p.m. when he saw a young man enter the establishment. The officer got out of his car and walked towards the premises. Through the window he could see the

young man completing a transaction. When the young man left the building he had three cases of beer. The officer stopped him and requested identification. The identification produced showed that the young man's birth date was December 21, 1988 (N.T. 5-7, 13-14).

Timmy's Corporation
Citation No. 09-0391

Page 2

2. The young man's age has not been questioned by Licensee's personnel on this occasion. On a previous occasion he had used the identification of his adult brother, whom he resembles, to purchase beer in this establishment. When the officer informed Licensee's manager of the incident, the manager confirmed having received proof of legal age from this young man on a previous occasion, which was the reason he wasn't carded that night (N.T. 7-8, 14-15, 17-18, 24).

CONCLUSIONS OF LAW:

Sustained as charged

PRIOR RECORD:

Licensee has been licensed since July 8, 2005, and has had prior violations as follows:

Citation No. 05-2565. \$1,500.00 fine.

1. Sales to minors. October 15, 2005.

Citation No. 08-0018. \$1,550.00 fine.

1. Sales to a minor. December 8, 2007.
2. Sold containers of malt or brewed beverages larger than 288 fluid ounces without preparing a sales invoice. December 8, 2007.

Citation No. 09-1945. \$200.00 fine.

1. Failed to maintain records covering the operation of the licensed business for a period of two years immediately preceding July 15, 2009.

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 this type.

Since this is Licensee's third violation in a four-year period of a provision mentioned in 47 P.S. §4-471(b), the law requires that the penalty include license suspension or revocation.

ORDER

THEREFORE, it is hereby ORDERED that the Restaurant Liquor License of Licensee, Timmy's Corporation, License No. D-SS-2069, shall be suspended for a period of three (3) days BEGINNING at 7:00 a.m. on Monday, June 7, 2010, and ENDING at 7:00 a.m. on Thursday, June 10, 2010. Jurisdiction is retained.

Licensee is directed on Monday, June 7, 2010, 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 premises for compliance with this order.

Licensee is authorized on Thursday, June 10, 2010, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 1ST day of APRIL, 2010.



David L. Shenle, J.

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.