

Mailing Date: NOV 30 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0974
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-386635
v.	:	
	:	LID - 44202
JUST BREW IT INC	:	
T/A JUST BREW IT	:	
11187 PERRY HIGHWAY	:	
MEADVILLE PA 16335-6557	:	
	:	
	:	
CRAWFORD COUNTY	:	
LICENSE NO. D-SS-2849	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: EMILY GUSTAVE
LICENSEE COUNSEL: PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 1, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Just Brew It, Inc., t/a Just Brew It, License Number D-SS-2849 (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 December 24, 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, 20 years of age.

The second count charges Licensee with violation of Section 492(9) of the Liquor Code [47 P.S. §4-492(9)] and Section 9.22 of the Liquor Control Board Regulations [40 Pa. Code §9.22], in that on December 24, 2008, Licensee, by its servants, agents or employees, delivered malt or brewed beverages in a vehicle not properly lettered.

An administrative hearing was conducted on October 29, 2009, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee's sole Corporate Officer Jonathan Levine appeared on behalf of Licensee.

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. The Bureau commenced its investigation of Licensee's premises on December 31, 2008, and completed its investigation on March 1, 2009. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated March 26, 2009, which was sent by certified mail and received by Licensee on March 27, 2009. (Exhibit C-1)
3. The citation was issued on May 1, 2009, and was sent by certified mail and received by Licensee on May 4, 2009. (Exhibits C-2)

COUNTS 1 AND 2

4. On December 24, 2008 at approximately 9:20 p.m., two Pennsylvania State Police troopers conducted a traffic stop on a vehicle being driven with only one functional headlight. (N.T. 19-22, 30-31)
5. During the course of this traffic stop, the troopers observed an unopened case of Yuengling beer consisting of 24 12-ounce bottles located in the passenger compartment behind the driver's seat partially covered by a sweatshirt. The male operator of the subject vehicle did not have a driver's license on his person. The troopers later determined that his driver's license was invalid as it had expired in early December 2008. (N.T. 20-25, 33, 36)
6. The aforementioned male was then identified and determined to be 20 years of age, having been born on December 3, 1988. (N.T. 36-37, 42)
7. The troopers noted that the 20-year-old male was wearing a T-shirt bearing the name of Licensee's distributorship. Upon questioning, this male indicated that he was employed at Licensee's distributorship and had been working that evening from approximately 2:00 p.m. to 7:00 p.m. (N.T. 23, 34, 38, 44, 48-49, 91)

8. Upon further questioning, the 20-year-old male provided somewhat conflicting details about the manner in which he came to possess the case of beer found in his vehicle. It is unclear from the testimony whether this case of beer was purchased for his father with money provided by his father, or was purchased by his father who then placed the beer in his son's vehicle instead of placing it in his own vehicle. (N.T. 22-23, 33-35, 46, 50-57, 66-69)

DISCUSSION:

This court notes at the onset it is well established that the Bureau must prove its case by a fair preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

It has been further established that it is for this court to decide the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robison*, 561 A.2d 82 (Pa. Cmwlth. 1989). Further, this court may accept or reject, in whole or in part, the testimony of any witness. *Kubler v. Yeager*, 150 A.2d 383 (Pa. Super 1959). It is with these principles in mind that further analysis of this case is conducted.

Upon thorough review of the testimony provided by the two Pennsylvania State Police troopers, the 20-year-old male, his father and Licensee, this court does not view as credible the testimony that the 20-year-old male employee's father entered Licensee's premises on the evening in question, purchased the case of Yuengling beer and then placed it in his son's vehicle rather than his own vehicle. Instead, this court believes that it is more probable than not that the 20-year-old male employee purchased or came into possession of the case of Yuengling beer as the result of his own actions at Licensee's distributorship thus resulting in a violation of Section 493(1) of the Liquor Code.

As to Count two of this citation, this court finds the charge that Licensee delivered malt or brewed beverages in a vehicle that was not properly lettered to be without merit. Licensee's Corporate Officer testified that his distributorship has never engaged in the delivery of malt or brewed beverages. Moreover, the facts of this case simply do not support the violation as charged in Count two.

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On December 24, 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, 20 years of age, in violation of Section 493(1) of the Liquor Code.

3. The testimony and evidence presented does not support the violation as charged in Count two of this citation.

PRIOR RECORD:

Licensee has been licensed since June 10, 1999, and has had four prior violations, to wit:

Citation No. 01-0261. Fine \$75.00.

1. Advertised alcoholic beverages in a publication published for an educational institution.

Citation No. 03-0087. Fine \$1,200.00.

1. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code. December 19 and 26, 2002.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years. December 26, 2002.
3. Used sales invoices that failed to include all required information. December 19, 2002.

Citation No. 07-2575C. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor. September 25, 2007.

Citation No. 09-0762C. Fine \$1,600.00 and R.A.M.P. training mandated.

1. Sales to a minor. March 3, 2009.

PENALTY:

With respect to Count one, 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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Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

Official notice is taken that Licensee was R.A.M.P. certified on September 15, 2009.

For the foregoing reasons, fine in the amount of \$1,600.00 and a suspension of Licensee's distributor malt beverage license for one day shall be imposed.

ORDER:

THEREFORE, it is hereby ordered that Just Brew It, Inc., t/a Just Brew It, License Number D-SS-2849, pay a fine of \$1,600.00 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. D-SS-2849 be suspended for a period of one (1) day **BEGINNING** at 7:00 a.m. on Monday, January 25, 2010 and **ENDING** at 7:00 a.m. on Tuesday, January 26, 2010.

Licensee is directed on Monday, January 25, 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 aforementioned licensed premises for compliance with this Order.

Licensee is authorized on Tuesday, January 26, 2010 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

IT IS FURTHER ORDERED that Count two of this citation be dismissed.

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Jurisdiction is retained to ensure compliance with this Order.

Dated this 19TH day of November, 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 cashier's check, certified check or money order. Personal and business checks are not acceptable unless bank certified. 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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