

Mailing Date: MAR 15 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	Citation Nos. 09-1017C,
	:	09-1304X, 09-1457, 09-1747
	:	and 09-1792
	:	(consolidated for hearing)
	:	
	:	Incident No. W02-391795
v.	:	W02-391587
	:	W02-394309
	:	W02-394356
	:	W02-396142
	:	
	:	LID - 58706
MUNOZ CORPORATION	:	
T/A TACOS PANCHO VILLA	:	
495 S. MAIN ST.	:	
WILKES BARRE, PA 18701-2204	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-2559	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: HERMELO MUNOZ, PRO SE
(VIA PATRICIA ZUVIC, INTERPRETER)**

ADJUDICATION

BACKGROUND:

Citation No. 09-1017C

This proceeding arises out of a citation that was issued on May 8, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MUNOZ CORPORATION, License Number R-AP-SS-2559 (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 March 30, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, nineteen years of age.

The investigation which gave rise to the citation began on March 30, 2009 and was completed on April 1, 2009; and notice of the violation was sent to Licensee by Certified Mail on April 20, 2009. The notice of violation was received by Licensee.

Citation No. 09-1304X

This proceeding arises out of a citation that was issued on June 8, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MUNOZ CORPORATION, License Number R-AP-SS-2559 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)] in that Licensee, by its servants, agents or employes, issued checks or drafts dated February 20, 21 and 27, 2009, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The investigation which gave rise to the citation began on March 26, 2009 and was completed on May 6, 2009; and notice of the violation was sent to Licensee by Certified Mail on May 12, 2009. The notice of violation was received by Licensee.

Citation No. 09-1457

This proceeding arises out of a citation that was issued on June 26, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MUNOZ CORPORATION, License Number R-AP-SS-2559 (hereinafter "Licensee").

The citation contains four counts.

The first count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)] in that on May 16, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 .am.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on May 16, 2009, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on May 16, 2009, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fourth count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on May 16, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, nineteen years of age.

The investigation which gave rise to the citation began on May 16, 2009 and was completed on May 16, 2009; and notice of the violation was sent to Licensee by Certified Mail on June 1, 2009. The notice of violation was received by Licensee.

Citation No. 09-1747

This proceeding arises out of a citation that was issued on July 22, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MUNOZ CORPORATION, License Number R-AP-SS-2559 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)] in that on June 29 and 30, 2009, Licensee, by its servants, agents or employes, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

The investigation which gave rise to the citation began on May 18, 2009 and was completed on July 1, 2009; and notice of the violation was sent to Licensee by Certified Mail on July 8, 2009. The notice of violation was received by Licensee.

Citation No. 09-1792

This proceeding arises out of a citation that was issued on July 31, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MUNOZ CORPORATION, License Number R-AP-SS-2559 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(3) and Section 493(16)] in that on June 21, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 7:00 a.m.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on June 21, 2009, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on June 21, 2009, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The investigation which gave rise to the citation began on June 21, 2009 and was completed on June 21, 2009; and notice of the violation was sent to Licensee by Certified Mail on July 16, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on these matters on October 22, 2009 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

CITATION NO. 09-1017C

FINDINGS OF FACT:

1. P.D. was born on September 15, 1989, and, on March 30, 2009, he was 19 years old (N.T. 22-23).
2. On March 30, 2009, P.D. entered the licensed premises at 8:20 p.m. (N.T. 23-24).
3. Upon entry P.D. went to the bar and ordered a bottle of Coors Light beer for which he paid \$2.00 (N.T. 24).
4. P.D. was not asked to produce identification before being served the beer (N.T. 24).
5. After being served the beer, P.D. left the licensed premises, leaving the beer on the service bar (N.T. 24).

CONCLUSION OF LAW:

The charge in Citation No. 09-1017C is **sustained**.

DISCUSSION:

The record in this case establishes that on the date in question, a 19 year old minor was served beer on the licensed premises without being required to produce identification. I therefore conclude that the charge in the citation is sustained.

CITATION NO. 09-1304X

FINDINGS OF FACT:

6. On February 20, 2009, Licensee purchased malt or brewed beverages from L.T. Verrastro Beverages Distributors, Inc. In payment therefore, Licensee issued its check in the amount of \$788.33. The check was returned by Licensee's bank for insufficient funds. The check was not made good by Licensee (N.T. 34).

7. On February 21, 2009, Licensee purchased malt or brewed beverages from L.T. Verrastro Beverage Distributors, Inc. In payment therefore, Licensee issued its check in the amount of \$280.95. The check was returned by Licensee's bank for insufficient funds. The check was replaced with cash on March 20, 2009 (N.T. 34-36 and Exhibits C-5 and C-6).

8. On February 27, 2009, Licensee purchased malt or brewed beverages from L.T. Verrastro Beverage Distributors, Inc. In payment therefore, Licensee issued its check in the amount of \$410.70. The check was returned by Licensee's bank for insufficient funds. The check was replaced with cash on March 12, 2009 (N.T. 36-37 and Exhibits C-7 and C-8).

CONCLUSION OF LAW:

The charge in Citation No. 09-1304X is **sustained**.

DISCUSSION:

The record establishes that Licensee made three purchases of malt or brewed beverages from L.T. Verrastro Beverage Distributors, Inc. In the course of making each purchase he issued a check which was returned for insufficient funds. The first two checks were not redeemed in a timely manner. The third check, although it was redeemed in a timely manner was preceded by the other two checks in the same calendar year. Therefore, no warning letter was required. I therefore conclude that the charge in this citation is sustained.

CITATION NO. 09-1457

COUNTS 1, 2, 3 AND 4

FINDINGS OF FACT

9. On May 16, 2009 an officer of the Bureau arrived in the vicinity of the licensed premises at 2:35 a.m. (N.T. 45).

10. The officer found the front door to the licensed premises locked. He looked through the front window and could see at least three people inside the premises as well as the bartender behind the bar. One of the patrons on the premises was in possession of and consuming a bottle of Heineken beer at the time. The officer watched as the patron finished the bottle of beer at about 2:42 a.m. (N.T. 45).

11. The officer went to the back door of the licensed premises which he found to be locked. He knocked on the back door, and it was opened by the gentleman who had been behind the bar (N.T. 46).

12. Immediately behind the bartender at the door was the individual who had the Heineken beer that the officer had previously seen the gentleman finish. This gentleman was now in possession of a fresh full bottle of beer (N.T. 46).

13. The officer determined that the individual with the fresh beer had obtained it from behind the bar himself but had paid the bartender for it (N.T. 47).

CONCLUSIONS OF LAW

1. Counts No. 1, 2 and 3 of the citation is **sustained**.
2. Count No. 4 of the citation is **dismissed**.

DISCUSSION:

The record discloses that an officer of the Bureau found at least three patrons on the licensed premises. One of them was in possession of a bottle of beer which the officer saw being finished by this individual. Further, when the officer entered the premises, he found this individual with a fresh bottle of beer which he was obviously served after completing the other bottle. It is clear therefore, that Counts No. 1, 2 and 3 of the citation have been sustained.

The Bureau was unable to provide evidence as to the age of the individual who had been supplied the beer as described above. Therefore, there being no evidence to establish the age of that individual, the fourth count of the citation must be dismissed.

CITATION NO. 09-1747

FINDINGS OF FACT:

14. On May 18, 2009, the Office of Administrative Law Judge issued an Opinion and Order upon Licensee's failure to pay a fine at Citation No. 08-2014. The Order suspended Licensee's restaurant liquor license for a period of two days beginning at 7:00 a.m. on Monday, June 29, 2009, and continuing thereafter until the fine of \$1,500.00 had been paid. Licensee was directed that on Monday, June 29, 2009 at 7:00 a.m. to place a placard of Notice of Suspension 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 its license from the wall and place it in a secure location (N.T. Exhibit C-4).

15. On June 29, 2009 at approximately 4:30 p.m., an officer of the Bureau arrived at the licensed premises. Upon arrival, the officer observed no placard visible from outside the licensed premises. However, the officer was not served any alcoholic beverages by Licensee (N.T. 53).

16. On June 30, 2009 at 3:30 p.m., the officer returned to the licensed premises. Upon arrival, the officer observed no placard posted outside the premises (N.T. 54).

17. The officer proceeded inside the premises to purchase alcohol, but was refused service (N.T. 54).

18. Licensee was permitted to resume business on Wednesday, July 1, 2009, which was the next day (N.T. 54).

CONCLUSION OF LAW:

The charge in Citation No. 09-1747 is **sustained**.

DISCUSSION:

The record establishes that Licensee did not comply with the Order of the Office of Administrative Law Judge suspending its license in that it did not post the required placard while its license was suspended. I therefore, conclude that the charge in this citation is sustained.

CITATION NO. 09-1792

COUNTS 1, 2 AND 3

FINDINGS OF FACT:

19. On June 21, 2009, an officer of the Bureau arrived in the vicinity of the licensed premises at 3:00 a.m. (N.T. 61).

20. As the officer passed the licensed premises he observed that the parking lot was full and that an adjacent parking lot was also full. He also observed lights on inside the licensed premises (N.T. 61).

21. The officer walked up to the front window of the licensed premises where he could see clearly into the bar and dining room area. He observed over 20 people inside the licensed premises. He observed six patrons drinking bottles of Heineken beer (N.T. 61).

22. The officer went around the building to the back entrance and walked into the kitchen where he saw Mr. Munoz, president of Licensee corporation whom he knew from prior encounters (N.T. 61).

23. The officer walked into the bar with Mr. Munoz and counted 18 patrons inside. Seven of those eighteen patrons possessed bottles of Heineken beer. Mr. Munoz stated that all the alcohol was sold before 2:00 a.m. At that point the officer picked up a bottle of Heineken beer that was full, unopened, cold to the touch and had not yet had any condensation form on the outside of it. Mr. Munoz stated that patrons had bought the beer before 2:00 a.m. and asked that it be kept in the cooler and was given to them while they were eating (N.T. 62).

24. Administrative notice is taken that as of June 21, 2009, Licensee did not possess an extended hours food permit.

CONCLUSIONS OF LAW:

Counts No. 1, 2 and 3 of the citation are **sustained**.

DISCUSSION:

The record clearly establishes that Licensee allowed patrons to be on the licensed premises after 2:30 a.m. Further, Licensee permitted the patrons to possess alcoholic beverages after 2:30 p.m.

The record also clearly establishes that patrons were furnished alcoholic beverages after 2:00 a.m.

Under these circumstances, I conclude that Counts No. 1, 2 and 3 of the citation are sustained.

PRIOR RECORD:

Licensee has been licensed since September 12, 2007, and has had five prior violations:

Citation No. 08-0166X. Fine \$150.00.

1. Issued worthless checks in payment for purchases of malt or brewed beverages. November 16 and 19, 2007.

Citation No. 08-0546. Fine \$500.00.

1. Supplied false information on application for restaurant liquor license. June 21, 2007.

Citation No. 08-2014. Fine \$1,500.00.

1. Sales between 2:00 a.m. and 7:00 a.m. May 17, 2008.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time. May 17, 2008.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. May 17, 2008.

Citation No. 08-2988. Fine \$500.00.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years. November 29, 2008.
2. Failed to keep records on the licensed premises. November 29, 2008.

Citation No. 09-0751X. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. January 16, 23, 27 and February 9, 2009.

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 Citation No. 09-1017C.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Citation No. 09-1304X.

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 Count 1 of the Citation No. 09-1457.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Counts 2 and 3 of Citation No. 09-1457.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Citation No. 09-1747.

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 Count 1 of Citation No. 09-1792.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Counts 2 and 3 of Citation No. 09-1792.

Under the circumstances of this case, the penalty imposed shall be as follows:

Citation No. 09-1017C

Count 1 - \$1,250.00 fine and mandatory RAMP training

Citation No. 09-1304X

Count 1 - \$300.00 fine

Citation No. 09-1457

Count 1 - \$1,250.00 fine

Counts 2 & 3 merged - \$500.00 fine

Count 4 - Dismissed

Citation No. 09-1747

Count 1 - \$300.00 fine

Citation No. 09-1792

Count 1 - \$1,250.00 fine

Counts 2 & 3 merged - \$500.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee MUNOZ CORPORATION, pay a fine of \$5,350.00 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 shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@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. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the liquor Code [47 P.S. §4-471(d)].

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 26TH day of February, 2010.



Daniel T. Flaherty, Jr., J.

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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.

Detach here and submit 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.** Make 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

Citation No. 09-1017C, 09-1304X,
09-1457, 09-1747, 09-1792
Munoz Corporation