

Mailing Date: SEP 14 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2948C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-404340
v.	:	
	:	LID - 53856
THE LANTERN TAVERN INC	:	
T/A NIGHT FLIGHTS	:	
4707 W LAKE ROAD	:	
ERIE PA 16505-3017	:	
	:	
ERIE COUNTY	:	
LICENSE NO. R-AP-SS-3514	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** Emily Gustave, Esquire

**LICENSEE COUNSEL:** Thomas Kiehl, President  
Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on December 28, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against The Lantern Tavern, Inc., t/a Night Flights, License Number R-AP-SS-3514 (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 November 28, 2009, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one female minor, 19 years of age.

An administrative hearing was conducted on July 29, 2010, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee's President Thomas Kiehl appeared on behalf of Licensee corporation.

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 November 28, 2009, and completed its investigation on December 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 December 8, 2009, which was sent by certified mail and received by Licensee on December 9, 2009. (Exhibit C-2)
3. The citation was issued on December 28, 2009, and was sent by certified mail and received by Licensee on January 11, 2010. (Exhibits C-3, C-4)
4. On November 28, 2009, at 8:55 p.m., two Liquor Enforcement officers entered Licensee's premises and took seats at the bar in anticipation of the entry of Underage Buyer #411 who was participating in the Age Compliance Check program. (N.T. 8, 17)
5. Upon entering, the Enforcement officers noted that a male and a female were tending bar to approximately 25 patrons. (N.T. 8)
6. At 9:05 p.m., Underage Buyer #411 proceeded to the bar at which time Licensee's doorman requested identification. Underage Buyer #411 produced her current and valid Pennsylvania photo identification. (N.T. 9, 13, 17)
7. Upon inspecting the photo identification, the doorman returned the identification to Underage Buyer #411 and stated, "O.K." (N.T. 9, 13-14, 17-18)
8. The true and correct photo identification produced by Underage Buyer #411 stated that her date of birth was December 1, 1989, having been 19 years of age on November 28, 2009. (N.T. 12)
9. Underage Buyer #411 then proceeded to purchase a 12-ounce bottle of Bud Light beer for \$2.50 from the female bartender later identified as Taylor M. Styduhar without further question relative to her age. (N.T. 10, 14, 18)

10. Following the departure of Underage Buyer #411, an Enforcement Officer 3 entered Licensee's premises and advised Ms. Styduhar that she had just served a malt or brewed beverage to a 19-year-old female who had been participating in the Age Compliance Check program. (N.T. 20, 21)

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 November 28, 2009, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one female minor, 19 years of age, in violation of Section 493(1) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violation as charged by a clear 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).

PRIOR RECORD:

Licensee has been licensed since October 27, 2004, and has had one prior violation, to wit:

Citation No. 06-3044C. Fine \$1,200.00 and  
R.A.M.P. training mandated.

1. Sales to a minor.  
December 4, 2006.

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.

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Moreover, licensees who have been cited and found to have violated Section 493(1) of the Liquor Code for a second or subsequent offense as it relates to sales to minors or sales to a visibly intoxicated person may be required to comply with the requirements set forth in Section 471(e) of the Liquor Code [47 P.S. §4-471(e)] pertaining to responsible alcohol management (R.A.M.P.)

Official notice is taken that Licensee has been R.A.M.P. certified on May 18, 2007, however such certification is valid for a period of two years.

The record discloses that Licensee has had a prior violation of this type at Citation No. 06-3044C. Therefore, Licensee shall be treated as a repeat offender.

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,800.00 and Licensee is directed to participate in mandatory Responsible Alcohol Management (R.A.M.P.) training as set forth in Section 471.1 of the Liquor Code.

ORDER:

THEREFORE, it is hereby ordered that The Lantern Tavern, Inc., t/a Night Flights, License Number R-AP-SS-3514, pay a fine of \$1,800.00 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 Section 471.1 of the Liquor Code [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management in the following manner: Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No. 1-866-275-8237; Web Site: [www.lcb.state.pa.us](http://www.lcb.state.pa.us)) within 30 days of the mailing date of this Adjudication in order to seek assistance in the compliance process. 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) or (e) of the Liquor Code [47 P.S. §4-471(d) or §4-471(e)].

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Jurisdiction is retained to ensure compliance with this Order.

Dated this 3<sup>RD</sup> day of September, 2010.



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

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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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