

Mailing Date: SEP 10 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-3034C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-403900
v.	:	
	:	LID - 59245
SARA512 INC	:	
T/A UNIQUE PIZZA AND SUBS	:	
RESTAURANT & LOUNGE ¹	:	
512 OHIO RIVER BLVD	:	
AVALON	:	
PITTSBURGH PA 15202-2326	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. H-AP-SS-4732	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Michael Nickles, Esquire
LICENSEE COUNSEL: Zahid Mahmud, President
Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 8, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Sara512, Inc., t/a Unique Pizza and Subs Restaurant & Lounge, License Number H-AP-SS-4732 (hereinafter Licensee).

¹On June 11, 2010, Licensee's trade name changed from East Coast Deli & Catering to Unique Pizza and Subs Restaurant & Lounge.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on December 2, 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 male minor, 20 years of age.

An administrative hearing was conducted on August 10, 2010, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee's President Zahid Mahmud 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 18, 2009, and completed its investigation on December 3, 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 18, 2009, which was sent by certified mail and received by Licensee. (Exhibit C-2)
3. The citation was issued on January 8, 2010, and was sent by certified mail and received by Licensee on January 11, 2010. (Exhibits C-3, C-4)
4. On December 2, 2009 at 10:30 p.m., a Liquor Enforcement officer entered Licensee's premises in an undercover capacity in anticipation of the entry of Underage Buyer #393 who was part of the Age Compliance Check Program. (N.T. 5-6)
5. On December 2, 2009 at 10:34 p.m., Underage Buyer #393 entered Licensee's premises and approached a female bartender later identified as Jessica Edna Stahl. (N.T. 5-6, 19)
6. Underage Buyer #393 then requested a 12-ounce bottle of Coors Light beer at which time Ms. Stahl asked for identification. Underage Buyer #393 produced his valid Pennsylvania photo driver's license, which clearly displayed his date of birth as October 10, 1989. This driver's license further stated that the person identified would not be 21 years of age until October 10, 2010. (N.T. 6, 17)
7. After inspecting the identification of Underage Buyer #393, Ms. Stahl proceeded to serve him the 12-ounce bottle of Coors Light beer. (N.T. 6, 19)
8. Underage Buyer #393 paid \$2.75 for this purchase and departed the premises at 10:36 p.m. without consuming any alcoholic beverages. (N.T. 6, 19-20)

9. At 10:40 p.m., a Liquor Enforcement officer entered Licensee's premises and identified himself to bartender Jessica Edna Stahl and advised her that she had just served a malt or brewed beverage to Underage Buyer #393 who participated in the Age Compliance Check Program. (N.T. 7, 13-14)

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 2, 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 male minor, 20 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 January 7, 2008, and has had no prior violations.

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.

In mitigation, the record discloses that this citation represents Licensee's first violation.

Moreover, Section 471(d) of the Liquor Code [47 P.S. §4-471(d)] 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 case, 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.

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For the foregoing reasons, a penalty shall be imposed in the amount of \$1,250.00 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 Sara512, Inc., t/a Unique Pizza and Subs Restaurant & Lounge, License Number H-AP-SS-4732, pay a fine of \$1,250.00 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) 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)].

Jurisdiction is retained to ensure compliance with this Order.

Dated this 2ND 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.

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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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