

Mailing Date: JAN 07 2011

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0163
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-403313
	:	
KILDARE'S WEST CHESTER INC.	:	
18-22 W. GAY ST.	:	LID - 50713
WEST CHESTER PA 19380-3011	:	
	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. R-AP-SS-9557	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

Kildare's West Chester, Inc. Citation
No. 10-0163

This proceeding arises out of a citation that was issued on February 2, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Kildare's West Chester, Inc., License Number R-AP-SS-9557 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 13, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a), in that on January 6 and 13, 2010, Licensee, by its servants, agents or employees, discounted the price of alcoholic beverages for a period or periods other than a consecutive period of time not to exceed two (2) hours in a business day.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement who has been employed as an Enforcement officer for approximately ten years visited the licensed premises in November of 2009 relative to a complaint (N.T. 7).
2. The November visit resulted in no violations (N.T. 8).
3. On Wednesday, January 6, 2010, the officer arrived at the premises at approximately 6:00 p.m. and saw a chalkboard outside the premises which indicated the drink special for the day. The chalkboard stated, "\$3 for Blue Moons, \$3 for Three Olives, any drink containing vodka, Three Olives, and \$5 for a drink called a Dirty Hoe, which is two types of beer" (N.T. 910).
4. The officer knew Blue Moon to be a brewed beverage or beer (N.T. 10-11).
5. The officer observed the sign as she entered the premises. There were approximately ten to fifteen people inside the premises. The officer ordered a Blue Moon. She gave the bartender five dollars and was given two dollars in change (N.T. 11).
6. The officer departed the premises at approximately 7:00 p.m. On January 13, 2010 at approximately 6:30 p.m., the officer arrived at the licensed premises. The officer noted that there were bartenders on duty (N.T. 11-12).
7. The officer conversed with the bartender named Melissa. The officer ordered a Blue Moon and paid three dollars for it. The officer gave the bartender five dollars and she received two dollars in change (N.T. 12).

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8. The officer then asked the bartender what a Dirty Hoe was and questioned her about the price of the drink. The bartender indicated that a Blue Moon was normally \$4.50, but indicated that the price of three dollars was contingent on what type of alcohol was served in it. The bartender further indicated that when a Dirty Hoe was not on special, it cost \$8.50 (N.T. 1213).

9. On January 13, 2010, the officer observed the same sign that he had observed on his January 6 visit to the licensed premises (N.T. 11-13).

10. The bartender informed the officer that the drink special ran until midnight (N.T. 13).

11. In addition to the Blue Moon, the officer ordered a Dirty Hoe for which he paid five dollars (N.T. 14).

12. The officer left the premises at 7:40 p.m. with patrons remaining inside, which numbered between fifteen and twenty (N.T. 14).

CONCLUSIONS OF LAW:

On January 6 and 13, 2010, Licensee, by its servants, agents or employes, discounted the price of alcoholic beverages for a period or periods other than a consecutive period of time not to exceed two (2) hours in a business day, in violation of Section 13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a).

PRIOR RECORD:

Licensee has been licensed since January 23, 2003, and has a record of prior violations as follows:

Citation No. 05-1521. \$200.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
May 27, 28, June 24 and 25, 2005.

Citation No. 06-1529C. \$1,250.00 fine and R.A.M.P. training mandated.

1. Permitted lewd entertainment. (Withdrawn by Bureau).
February 28, 2006.
2. Sales to a minor.
May 4, 2006.

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Citation No. 07-0826. \$200.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside. March 17, 2007.

Citation No. 07-2100C. \$2,000.00 fine.

1. Sales to a minor.
July 19, 2007.

Citation No. 08-1014C. \$4,000.00 fine.

1. Sales to a minor.
March 14, 2008.

DISCUSSION:

The evidence was sufficient to establish that the Licensee did in fact violate Section 13.102(a) of the Liquor Control Board Regulations. Although the officer did not actually make purchases of alcoholic beverages before and after the time of the discounted specials, he clearly established that the specials were running. First, the officer visited the premises and saw an advertisement at the licensed premises indicating the drink special. Secondly, he did speak to an employee of the premises, a bartender, who had every reason to know what specials were available. Finally, the officer bought a drink at the discounted price. The Licensee advertised a special, that information was confirmed by the bartender. The officer was there from 6:00 p.m. – 7:00 p.m. on January 6, 2010 and from 6:30 p.m. – 7:40 p.m. on January 13, 2010.

In that Licensee's prior history does not include any violations for discount pricing practices, a moderate monetary penalty shall be imposed. However, it is noted that Licensee does have several other prior violations, albeit none since 2008.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Kildare's West Chester, Inc., License Number R-AP-SS-9557, pay a fine of Three Hundred Dollars (\$300.00) within twenty (20) days of the

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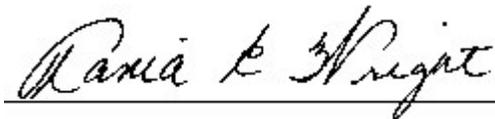
mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Dated this 13TH day of December, 2010.



Tania E. Wright, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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

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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, along with any required documentation, to:

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