

Mailing Date: JAN 25 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0914
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-411098
	:	
SHAKE AND BEVS INC.	:	
5765 WISTER ST.	:	LID - 55796
FIRST FLOOR & BASEMENT	:	
PHILADELPHIA PA 19138-2822	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-SS-3072	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 4, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Shake and Bevs, Inc., License Number D-SS-3072 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, August 18, 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 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 April 8, 2010, and divers other occasions within the past year, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (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 April 8, 2010, Licensee, by its servants, agents or employes, delivered malt or brewed beverages in a vehicle not properly lettered.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises on April 8, 2010. The officer arrived at the premises at approximately 6:30 p.m. and parked in a lot across the street from the premises. At approximately 7:05 p.m., he observed a male loading a white cargo van. The individual was later identified as Michael Powell (N.T. 6-7).
2. On April 8, 2010, the officer observed a male loading a white cargo van. The officer eventually ran the tags and the plate came back to Beverly Hudson, who is listed as the secretary on the liquor license. The van had no markings, which is required by the PLCB for use for delivery. The male loaded approximately ten to fifteen cases of alcoholic beverages in the van. They both departed the vicinity of the premises and the officer followed the van in his unmarked police car (N.T. 9-10).
3. The officer indicated that he followed the van, because there was a large quantity of beer inside and the van had no markings. The officer followed the van for a short distance to the 5700 block of North Lombard Street. The van pulled up and stopped in the middle of the narrow one way street. The officer was directly behind the van and could not pass it because it was blocking the street (N.T. 10).
4. The officer observed Mr. Powell get out of the driver's seat and go to the rear of the van and obtain a thirty pack of Natural Light Beer. He then went to 5716 North Lombard Street to a rowhouse. The individual went up approximately fifteen to twenty steps. A white male came to the door. The officer then followed the individual up the steps (N.T. 10-11).

5. Mr. Powell went to the door and asked if anyone ordered beer. C. N. approached the door and opened it and C. N. gave Mr. Powell U.S. currency. Mr. Powell returned his change. C. N. provided what appeared to be a tip. The officer then identified himself and asked C. N. how old he was. C. N. stated he was twenty years of age and the officer asked him to step outside onto the porch (N.T. 11-12).

6. At this point, the beer was inside the house. He brought the beer outside to the porch. C. N. was given a citation for underage drinking, possession and purchase of alcoholic beverages (N.T. 12).

7. C. N. was also requested to fill out a statement and questionnaire (N.T. 12).

8. The officer did not see C. N. provide the delivery person with any identification (N.T. 13).

9. The officer stopped Mr. Powell and informed him that he could not deliver any more beer because the van was not properly marked, as required by the PLCB (N.T. 13-14).

10. The officer looked inside the cargo part of the van, but saw no signage (N.T. 15-16).

11. C. N. was born June 27, 1989 and was twenty one years old at the time of the hearing, but was twenty years old at the time of alleged offense (N.T. 22).

12. C. N. called and placed an order for beer. He asked for "Natty Light," that is to say Natural Light Beer. C. N. indicated that he was told it would be delivered in approximately fifteen minutes (N.T. 23).

13. C. N. indicated that a black male delivered the beer to him, that he was told how much it was, paid, was given change and then tipped the delivery person. He was not asked for identification either on the phone or in person. He went to the establishment and purchased beer once or twice on prior occasions (N.T. 25).

14. Beverly Hudson is the co-owner of the licensed establishment. She indicated that there is a magnet which goes on the truck, which was broken. She informed the officer that the remainder of the one sign was on the dashboard. She received the new sign shortly after the incident (N.T. 29-30 and 32).

15. Michael Powell occasionally helps out at the licensed premises. He also indicated that the sign was broken, but was on the front dash. He testified that he asked the customer for identification, but the minor denied that he was asked (N.T. 25 and 35-36).

CONCLUSIONS OF LAW:

Count No. 1 - On April 8, 2010, and divers other occasions within the past year, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

Count No. 2 - On April 8, 2010, Licensee, by its servants, agents or employes, delivered malt or brewed beverages in a vehicle not properly lettered, in 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.

PRIOR RECORD:

Licensee has been licensed since April 6, 2006, and has a record of prior violations as follows:

Citation No. 09-2429. \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.
September 26, 2009.

DISCUSSION:

In this instance, the Court found the testimony of the officer and the minor to be credible and that the driver of the vehicle did not ask the minor for identification. The minor was twenty years of age and should not have been permitted to receive the beer or to pay for the beer. Persons who are delivering beer should be well versed as to how to detect and deter minors. It is noted that Licensee became R.A.M.P. certified shortly after this incident, i.e. July 27, 2010.

With regard to Count No. 2, it is unlawful for a Licensee to deliver or transport any malt or brewed beverage in a vehicle other than one which bears the name, address and license number of such licensee and that signage must be painted or affixed on each side of the vehicle in letters no smaller than four inches in height. 40 Pa. Code §9.22 further indicates that the license identification number shall be preceded by the letters PLCB.

Licensee has a prior violation for sales to minors in September of 2009. Under the circumstances, a \$2,500.00 monetary penalty shall be imposed with regard to the sales to minors. Any future violations of this nature will likely result in a suspension. With regard to the signage, a \$250.00 penalty shall be imposed.

Shake and Bevs, Inc.
Citation No. 10-0914

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 Count No. 2 of this case.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 1 of this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$2,500.00.
Count No. 2 - \$250.00.

Accordingly, we issue the following

ORDER:

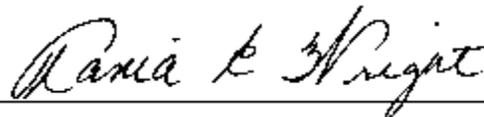
THEREFORE, it is hereby Ordered that Licensee, Shake and Bevs, Inc., License Number D-SS-3072, pay a fine of Two Thousand Seven Hundred Fifty Dollars (\$2,750.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that Licensee shall remain in compliance with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management for a period of one year from the mailing date of this Order.

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. Section 4-471(d).

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

Dated this 12TH day of January, 2011.



Tania E. Wright, J.

Shake and Bevs, Inc.
Citation No. 10-0914

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

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:

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

Citation No. 10-0914
Shake and Bevs, Inc.