

Mailing Date: APR 28 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1136C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-412258
v.	:	
	:	LID - 62026
AMERICAN PIE PIZZERIA, INC.	:	
T/A AMERICAN PIE	:	
7839 ALLENTOWN BLVD.	:	
SUITE 600	:	
HARRISBURG, PA 17112-3765	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. E-SS-986	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 3, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against AMERICAN PIE PIZZERIA, INC., License Number E-SS-986 (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 April 30, 2010, 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, twenty years of age.

The investigation which gave rise to the citation began on April 30, 2010 and was completed on May 4, 2010; and notice of the violation was sent to Licensee by Certified Mail on May 20, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 10, 2011 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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

FINDINGS OF FACT:

1. A.C. was born on March 3, 1990, and, on April 30, 2010, he was 20 years old (N.T. 16).
2. On April 30, 2010, A.C. entered the licensed premises at 6:55 p.m. He walked to a cooler where he picked up a six pack of 12 ounce bottles of Budweiser beer. He took the beer to the cash register (N.T. 16). At the cash register, A.C. paid for the beer and left the premises taking the beer with him (N.T. 16-17).
3. A.C. was not asked for identification prior to purchasing the aforementioned beer (N.T. 17).
4. The individual who sold the beer to A.C. was not a formal employe of Licensee, but had been called in to help the one employe on duty, due to the fact that the other employe scheduled to work on that date had left.

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

Licensee is deemed to have permitted the furnishing of alcoholic beverages to a minor in that Licensee acquiesced to the service of the alcohol by failing to prevent its occurrence. *PLCB v. Abraham*, 541 A.2d 1161 (Pa. Cmwlth 1988). Therefore, the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since August 11, 2009, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00 and mandatory RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee AMERICAN PIE PIZZERIA, INC., 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 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)].

IT IS FURTHER ORDERED that since Licensee's license is in safekeeping, so much of this Adjudication as it relates to mandatory compliance with Liquor Code Section 471.1 pertaining to Responsible Alcohol Management is deferred pending reactivation of Licensee's license at which time further Order will be issued.

Jurisdiction is retained.

Dated this 6TH day of April, 2011.



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

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American Pie Pizzeria, Inc.