

Mailing Date: FEB 23 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1329C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-413776
	:	
JUST BREW IT INC	:	
T/A JUST BREW IT	:	LID-44202
11187 PERRY HIGHWAY	:	
VERNON TWP	:	
MEADVILLE PA 16335-6557	:	
	:	
CRAWFORD COUNTY	:	
LICENSE NO. D-SS-2849	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Emily L. Gustave, Esq.

LICENSEE COUNSEL: Pro Se

BACKGROUND:

This proceeding arises out of a citation that was issued on July 9, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Just Brew It, Inc., T/A Just Brew It, License No. D-SS-2849 (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 May 28, 2010, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, twenty (20) years of age

The investigation which gave rise to the citation began on May 28, 2010, and was completed on June 2, 2010. The notice of violation letter was mailed to Licensee on June 16, 2010.

An evidentiary hearing was held on this matter on January 20, 2011, in Erie, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Crawford County, Pennsylvania and holds Malt Beverage Distributor License Number D-SS-2849. (N.T. 4).
2. On Friday, May 28, 2010, at 6:05 p.m., an enforcement officer in an undercover capacity and a twenty year old female minor entered the licensed premises. (N.T. 7).
3. The female minor picked up a 30-pack of Coors Light beer and was asked for identification by Licensee's employee. (N.T.7).
4. The female minor produced her valid Pennsylvania ID card, which was looked at by the employee, who then sold her the beer for \$23.50. (N.T. 7).
5. At 6:07 p.m, the female minor paid for the beer and departed the licensed premises with the case of beer which she surrendered to another enforcement officer. (N.T. 13-14).
6. The female minor was acting as part of the Bureau's age compliance check program. (N.T. 11-12).
7. A short time later, the supervising enforcement officer entered the licensed premises and notified the employee that he had served an underage buyer. (N.T. 17-18).
8. On June 2, 2010, a Notification of Noncompliance letter was mailed to Licensee. (N.T. 20).

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer and the minor testified in detail that on May 28, 2010, at 6:05 p.m., they entered the licensed premises as part of an age compliance check of the premises. The minor purchased a 30-pack of Coors Light beer for \$23.50 from Licensee's clerk after showing her valid Pennsylvania ID card.

Licensee's owner and clerk testified and did not dispute the sales, but stated that there were two other patrons present.

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I find the testimony of the Bureau's witness to be credible. As such, the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since June 10, 1999, and has five (5) prior violations, to wit:

Citation No. 01-0261. Fine \$75.00.

1. Advertised alcoholic beverages in a publication published for an educational institution.

Citation No. 03-0087. Fine \$1,200.00

1. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
December 19 and 26, 2002.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years.
December 26, 2002.
3. Used sales invoices that failed to include all required information.
December 19, 2002.

Citation No. 07-2575C. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.
September 25, 2007.

Citation No. 09-0762C. Fine \$1,600.00 and R.A.M.P. training mandated.

1. Sales to a minor.
March 3, 2009.

Citation No. 09-0974. Fine \$1,600.00 and 1 day suspension.

1. Sales to a minor.
December 24, 2008.
2. Delivered malt or brewed beverages in a vehicle not properly lettered. (Dismissed by ALJ).
December 24, 2008.

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.

I take administrative notice that Licensee became R.A.M.P. certified on September 15, 2009.

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Licensee shall be treated as a repeat offender.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed for the citation include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudication No's., in combination with this citation, require that license revocation or suspension be included as part of the penalty: 07-2575C, 09-0762C and 09-0974.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$2,000.00, a 1 day suspension and mandatory R.A.M.P. certification for one year will be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Just Brew It, Inc., T/A Just Brew It, pay a fine of \$2,000.00 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.

THEREFORE, it is additionally ordered that the restaurant liquor license of Just Brew It, Inc., T/A Just Brew It, License Number D-SS-2849, be suspended for a period of one day **BEGINNING** at 7:00 a.m., on Monday, March 14, 2011, and **ENDING** at 7:00 a.m. on Tuesday, March 15, 2011.

Licensee is directed on Monday, March 14, 2011, at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on Tuesday, March 15, 2011, at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

IT IS ADDITIONALLY ORDERED that Licensee remain in R.A.M.P. compliance for one year from the date of this ORDER.

Failure to comply with this Order will be grounds for modification of penalty in this case, and for that purpose jurisdiction is retained. Failure to comply may also constitute ground for issuance of a new citation as authorized by 47 P.S. §4-471(e).

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JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 9TH day of February, 2011.



Robert F. Skwaryk, J.

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.

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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