

Mailing Date: JUNE 28 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 10-1754
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-415872
v.	:	
	:	
PZF SOUTH MAIN STREET, W.B.-1, INC.	:	PLCB LID No.: 49052
T/A PIZZA FELLAS	:	
395 S. MAIN ST.	:	
WILKES-BARRE, PA 18701-2202	:	PLCB License No.: R-SS-EHF-15423

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

FOR LICENSEE: Sal Cagnetti, Jr., Esquire

**BACKGROUND:**

This proceeding arises out of a citation, containing one count, that was issued on August 23, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against PZF South Main Street, W.B.-1, Inc. (Licensee).

The citation charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that Licensee, by your servants, agents, or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, seventeen (17) years of age, on July 10, 2010.

I presided at an evidentiary hearing on April 17, 2012 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on July 10, 2010 and completed it on July 10, 2010. (N.T. 9)
2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on August 2, 2010. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 10)
3. On July 10, 2010, a seventeen year old entered the premises at approximately 9:15 p.m. The juvenile purchased four cans of a malt beverage from a bartender. The juvenile provided the bartender a Pennsylvania Photo drivers license (ID) issued to someone over twenty-one years of age. The juvenile received the ID from a friend who found it. (N.T. 59-64; 69-70)
4. The bartender reviewed the ID presented by the juvenile. The bartender also successfully ran the ID through a transaction scan device. (N.T. 71-74)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Licensee sold and/or furnished an alcoholic beverage to a seventeen year old as charged.
3. Licensee has satisfied the requirements of the affirmative defense in Liquor Code Section 495(g) [47 P.S. §4-495(g)].
4. I dismiss the charge.

DISCUSSION:

I should no longer be amazed when a citation compels analysis that is every bit as challenging and complicated as that associated with Constitutional Law. Never let it be said that the Liquor Code has little depth. So begins the plumb.

The record indicates the juvenile employed the ID to purchase alcoholic beverages on the juvenile's first visit. The server required the juvenile to complete a Declaration of Age Card. The server also successfully ran the ID through a transaction scan device. (N.T. 73-74)

In **BLCE v. J.K. Restaurant Corp.**, In Re Citation No. 00-0102<sup>1</sup>, I concluded the affirmative defenses of Liquor Code Section 495 insulates a licensee from liability for that sale and all subsequent sales. Furthermore, a licensee need not provide documentary evidence to prove a transaction scan device was employed.<sup>2</sup>

These conclusions are sufficient to apply the affirmative defense to the purchase in question even if Licensee failed to repeat the procedure. Because Licensee engaged the affirmative defense procedure in this matter, the reasoning of the first of the two Adjudications need not be applied.

The Bureau provided testimony to discredit the server's assertion that she scanned the ID on the visit in question. An Officer testified that he conducted an administrative inspection of the licensed premises about forty-five minutes after the sale. The Officer reviewed entries electronically recorded in the transaction scan device, finding no record of a transaction as the server claimed.

I find the Officer's testimony credible but I cannot accord his observation's significant weight. Assessing substantial weight requires me to assume the Officer had a complete understanding as to how the transaction scan device records entries. In retrospect, the Officer could have advised the server of his inability to find an entry in the transaction scan device's recordings. Had the Officer done so, the server would have either confirmed the Officer's conclusion or shown him otherwise.

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<sup>1</sup>[www.lcbapps.lcb.state.pa.us/webapp/Legal/PublicAdjudicationDisplay.asp?adjudication\\_year=2000&adjudication\\_sequence=0102&appeal=n](http://www.lcbapps.lcb.state.pa.us/webapp/Legal/PublicAdjudicationDisplay.asp?adjudication_year=2000&adjudication_sequence=0102&appeal=n)

<sup>2</sup> **BLCE v. Molly's Pub, Inc.**, Citation No. 07-2906, [www.lcbapps.lcb.state.pa.us/webapp/Legal/PublicAdjudicationDisplay.asp?adjudication\\_year=2007&adjudication\\_sequence=2906&appeal=n](http://www.lcbapps.lcb.state.pa.us/webapp/Legal/PublicAdjudicationDisplay.asp?adjudication_year=2007&adjudication_sequence=2906&appeal=n)

Moreover, the Officer was aware that Licensee maintained a video recording system, yet did not review any recordings. In my estimation, determining the existence of and reviewing security videos ought now to be a standard investigative procedure, given the wide use of such systems today. The closer to the event in question, the more likely videos will facilitate the investigative process.

In order to address the possibility I might draw a negative inference from Licensee's failure to produce a video, at the hearing, Licensee explained why the video recording of the transaction in question was no longer available. Licensee destroyed the recording in the normal course of Licensee's business.

Licensee saw no need to preserve the recording because of a conversation between the Officer and the server during the administrative inspection. As best as I can determine, the employee asked the Officer if Licensee was "in trouble." The server testified that the Officer responded in the negative. The Officer testified that he made no such assertion.

What I believe is likely to have occurred is that the server posed a question regarding the likelihood of "trouble." I suspect the Officer responded negatively, with the understanding the question related to the server's personal, criminal liability. The server interpreted the response more broadly to apply to Licensee. (N.T. 105-108)

Liquor Code Section 495, provides for the presentation of a "valid" ID. Regrettably, that provision does not tell us what the predicates of a "valid" ID are. In **BLCE v. Ellis Beer Distributors, Inc.**, In Re Citation No. 01-1088<sup>3</sup>, I concluded a "valid" ID is one presented as purportedly lawfully issued. I hasten to add an additional condition not expressed in **BLCE v. Ellis Beer Distributors, Inc.**, above. The ID must also appear to be lawfully issued. Given these factors, the ID the juvenile presented is "valid."

What remains to be considered is the element of good faith. The Officer testified that he rather easily was able to determine the ID was not the juvenile's. He did so partly based on a hand writing comparison of the signature on the ID to a sample the juvenile provided him. (N.T. 19-20)

I sense the Officer's evaluation was tempered by a sometimes necessary suspicious inclination. In any event, I conducted an independent signature comparison; I discerned no glaring distinctions.<sup>4</sup> Finally, handwriting analysis is the domain of experts. Whether mine or the Officer's, a non-expert opinion must be accorded no weight.

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<sup>3</sup>[www.lcbapps.lcb.state.pa.us/webapp/Legal/PublicAdjudicationDisplay.asp?adjudication\\_year=2001&adjudication\\_sequence=1088&appeal=n](http://www.lcbapps.lcb.state.pa.us/webapp/Legal/PublicAdjudicationDisplay.asp?adjudication_year=2001&adjudication_sequence=1088&appeal=n)

<sup>4</sup> The juvenile practiced copying the signature to prepare to be questioned by the server when she attempted to purchase alcoholic beverages. (N.T. 89)

I also examined the ID, finding no indication of any alteration. The Officer agreed with my assessment. Remembering that appearance changes, especially after two years and with one so young, comparing the appearance of a purchaser at a hearing to that of an ID photograph is not the correct standard for assessing good faith. Rather, an Administrative Law Judge is tasked with reconstructing a purchaser's appearance at the time of the sale in question, in comparison to the ID's photograph. (N.T. 22-23; 25-26)

Photographs are far from the truth resolving tool we think them to be. In reality, photographs do nothing more than support testimony. Photographs depict an instant in time, defined by a camera's settings and quality. Photographs taken for identification purposes are generally images of small size and quality. They are light years apart from a photograph taken by a professional, using precise lighting and equipment to capture an image appropriate to be displayed in one's home.

I am not suggesting that an ID photograph has no value. I merely acknowledge deficiencies in order to place a photograph's value for determining good faith in meaningful relationship to other criteria. If the photograph, more or less, bears some reasonable resemblance to the witness and any distinctions, such as hair style and etc., are explained, I will be sufficiently steered in the direction of good faith.

My inclination is first to evaluate good faith by examining the ID's quality, that is, is there anything about the ID that ought to alert a server of reasonable experience and intelligence<sup>5</sup>, that the ID is not legitimate. I next tend to compare the ID's descriptive information to the witness. I verify eye color and height, all the while remembering that some young adults may still experience a growth spurt or two between the ID's issue date and the observations I make at the hearing. I last compare the ID's photograph to the witness's appearance at the hearing.

Applying these criteria, I am well satisfied the server exercised good faith.

ORDER:

In Re Citation No.: 10-1754; Licensee, PZF South Main Street, W.B.-1, Inc.;  
PLCB LID No.: 49052; PLCB License No.: R-SS-EHF-15423

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<sup>5</sup> It would be patently unreasonable to apply a standard of knowledge and experience of an Enforcement Officer to a server.

### Dismissal

I dismiss the citation for the reasons above stated.

Dated this 27<sup>TH</sup> day of June, 2012.



Felix Thau, A.L.J.

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### General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

### Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

### Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us). The full requirements for an appeal can be found in 47 P.S. §4-471.