

Mailing Date: FEB 17 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1894
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-414705
v.	:	
	:	LID - 54136
NORTHEAST CONCESSIONS, LP	:	
1280 STATE HWY. RTE. 315	:	
WILKES-BARRE, PA 18702-7002	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-EHF-15046	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Francis X. O'Brien, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 8, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Northeast Concessions, LP (Licensee), License Number R-AP-SS-EHF-15046.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on June 9, 2010, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

1. Commonwealth Exhibit No. C-2, N.T. 7.

The second count charges Licensee with violations of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)]. The charge is that on June 9, 2010, and two (2) other unknown dates within the past year, Licensee, by servants, agents or employees, permitted one (1) male minor, nineteen (19) years of age, to frequent its licensed premises.²

An evidentiary hearing was conducted on January 11, 2011 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on June 16, 2010 and completed it on August 23, 2010. (N.T. 6)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 24, 2010. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)
3. On June 9, 2010, a nineteen year old (born September 23, 1990) went to the licensed premises, along with two friends. He entered at approximately midnight. He was questioned as to age by a security guard. He produced identification. (N.T. 13-16)
4. The identification was a Photo Identification Card issued by the Pennsylvania Department of Transportation which was lawfully issued to someone else. (Commonwealth Exhibit No. C-3)
5. The security guard allowed the young man to enter the casino. The minor began gambling. He was seated at a black jack table with a friend. A cocktail waitress came by and asked if he and his friend wanted a drink. He received a bottle of Miller Light. (N.T. 16-19)

2. By Order dated September 14, 2010, Chief Judge Maunus granted the Bureau's Motion to withdraw Count No. 2 of the Citation.

6. After 2:00 a.m., the minor was questioned by casino staff. He was removed from the gaming floor. He was questioned as to his age. It was determined that the card he used was false and that he was underage. (N.T. 20-22)

7. It is Licensee's policy for all staff to obey the law. Licensee does not promote sales of alcoholic beverages to minors. Licensee's staff is fully trained to avoid any violation. (N.T. 50-55, 70-75)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. **Withdrawn** by the Bureau.

PRIOR RECORD:

Licensee has been licensed since January 25, 2005, and has had two prior violations (Commonwealth Exhibit No. C-4):

Adjudication No. 07-0316. Fine \$250.00.

Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
November 28, 2006.

Adjudication No. 10-0346. Fine \$8,000.00

1. Sales to minors.
August 26, 2009.
2. Sales to a visibly intoxicated person.
January 30, 2010.

PENALTY:

Liquor Code Section 471 [47 P.S. §4-471], as well as, Pennsylvania Race Horse Development and Gaming Act Section 1521(b.1) [4 Pa. C.S.A. §1521(b.1)], prescribe a penalty of license suspension, revocation and/or a fine of not less than \$250.00 nor more than \$25,000.00.

Licensee is subject to a fine range which is distinct from other Restaurant Liquor licensees. I well recognize Licensee's efforts in complying with the law. I also recognize Licensee's security guard did not comply with the law or with Licensee's policies. As I indicated to Licensee's representatives at the hearing, there still is a breach in Licensee's system. Licensee assures me that measures have been taken to avoid any repetition. Licensee now has sufficient ID scanners to ensure that every time an individual is asked for identification, that individual's identification will be scanned.

Given that this is the first offense under the new penalty guidelines, I impose a \$1,250.00 fine.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee 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.

R.A.M.P. Requirements

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 must remain in compliance for a period of one year from the mailing date of this Adjudication.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 31ST day of January, 2011.



Felix Thau, A.L.J.

pm

NOTICE: 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 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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