

Mailing Date: SEP 23 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2388C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-420200
	:	
KILDARE'S WEST CHESTER INC.	:	
18-22 W. GAY ST.	:	LID - 50713
WEST CHESTER PA 19380-3011	:	
	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. R-AP-SS-9557	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 16, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Kildare's West Chester, Inc., License Number R-AP-SS-9557 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, March 9, 2011, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on September 23, 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 (1) male minor, eighteen (18) years of age.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement visited the licensed premises as a part of a compliance check investigation. The officer from the Bureau arrived at the premises at approximately 9:04 p.m. along with Underage Buyer No. 474. There was a supervisor and another Enforcement officer who were also a part of the detail (N.T. 5-6).

2. When the officers arrived at the premises, they spoke with the Underage Buyer before they went in. The Underage Buyer had a Pennsylvania Driver's License on his person (N.T. 7).

3. The officer went in and observed one male bartender on duty at a bar to the left and a male and female bartender at a bar to the right. The officer went near the bar to the left but did not purchase an alcoholic beverage. Right after the officer entered, the Underage Buyer entered, went to the left and sat at the bar (N.T. 8).

4. The officer went in first in order to observe the transaction (N.T. 9).

5. The officer was approximately five feet away from the Underage Buyer and had a clear line of sight. The officer observed the bartender serve the Underage Buyer a twelve ounce bottle of Yuengling Lager. The Underage Buyer gave the bartender what appeared to be a five dollar bill and received change. The Underage Buyer grabbed his drink and walked towards the officer. The Underage Buyer put his beer on the table that was located behind the officer and to the right. The two departed the premises at approximately 9:10 p.m. (N.T. 8-9).

6. The officer did not recall the Underage Buyer showing the bartender any identification prior to the purchase (N.T. 10).

7. The detail did not enter the premises immediately because they were conducting a compliance check on several bars in the area. They did not wish to tip off the other bars that they were in the neighborhood (N.T. 10).

8. A detail of officers returned to the bar later at approximately 9:55 p.m., but this officer was not a part of that detail (N.T. 11-12, 46).

9. The officer met with two Enforcement officers and the Underage Buyer outside the premises (N.T. 15)

10. M. A. was born on January 16, 1992. On September 23, 2010, he was eighteen years old and was a part of the age compliance program for the State Police in West Chester, PA (N.T. 30-31).

11. On September 23, 2010, he entered the licensed premises at approximately 9:00 p.m. He was in the premises for one to three minutes. He was not challenged as to age nor was he required to show any identification. He had his driver's license and his college identification on his person. The driver's license shows his true age (N.T. 33).

12. M. A. purchased a bottle of twelve ounce bottle of Yuengling Lager beer from a bartender at a cost of four dollars. He paid with a five dollar bill and a dollar was returned to him (N.T. 34-35).

13. An officer from the Bureau of Enforcement was part of the investigation of the licensed premises, as well as others near West Chester University. The officers did compliance checks on approximately ten licensed premises in the area on that same evening (N.T. 43-44).

14. The initial investigation on that evening took approximately four hours (N.T. 44-45).

15. The Underage Buyer and other officers returned to the premises at approximately 9:55 p.m. to notify the bartender and the manager that they had served the Underage Buyer that evening (N.T. 45-49 and Exhibit B-3).

CONCLUSIONS OF LAW:

On September 23, 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 (1) male minor, eighteen (18) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

PRIOR RECORD:

Licensee has been licensed since January 23, 2003, and has a record of prior violations as follows:

Citation No. 05-1521. \$200.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
May 27, 28, June 24 and 25, 2005.

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Citation No. 06-1529C. \$1,250.00 fine and R.A.M.P. training mandated.

1. Permitted lewd entertainment. (Withdrawn by Bureau).
February 28, 2006.
2. Sales to a minor.
May 4, 2006.

Citation No. 07-0826. \$200.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
March 17, 2007.

Citation No. 07-2100C. \$2,000.00 fine.

1. Sales to a minor.
July 19, 2007.

Citation No. 08-1014C. \$4,000.00 fine.

1. Sales to a minor.
March 14, 2008.

Citation No. 10-0163. \$300.00 fine.

1. Discounted the price of alcoholic beverages for a period or periods in excess of 2 hours in a business day.
January 6 and 13, 2010.

Citation No. 10-0523. \$250.00 fine.

1. Discounted the price of alcoholic beverages for a period or periods in excess of 2 hours in a business day.
February 24, 2010.

Citation No. 10-1265. \$350.00 fine.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages.
May 26, 2010.

Citation No. 10-2370X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
September 14, 2010.

DISCUSSION:

37 Pa. Code Section 23.23 (2011) indicates that a Bureau officer will be responsible for insuring notification is made as the result of the age compliance check. In that the licensed premises was not in compliance, immediate verbal notification is to be provided followed by written notification within ten days. In this instance, the notification was reasonable and acceptable in accordance with our interpretation of the statute. Here, the investigation involved several premises on a single evening; the notification was given immediately following the conclusion of several transactions at different properties rather than the single transaction at this licensed premises.

Under the circumstances, the Court finds that the Bureau was in compliance with the requirements of the statute and that Licensee was in violation. Licensee has two prior violations for sales to minors from 2007 and 2008. Licensee was R.A.M.P. certified on May 17, 2010.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, 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. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Kildare's West Chester, Inc., License Number R-AP-SS-9557, pay a fine of One Thousand Dollars (\$1,000.00) 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).

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IT IS ALSO ORDERED that the Restaurant Liquor License of Kildare's West Chester, Inc., License Number R-AP-SS-9537, be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, December 12, 2011 and **ENDING** at 7:00 a.m. on Wednesday, December 14, 2011.

Licensee is directed on Monday, December 12, 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.

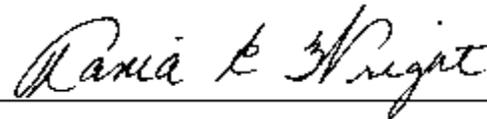
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

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

The Licensee is authorized on Wednesday, December 14, 2011 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction of this matter is retained.

Dated this 16TH day of September, 2011.



Tania E. Wright, J.

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.

If you wish to appeal the decision of the Administrative Law Judge's Order, the appeal must be filed within 30 days of the mailing date of the Order. Please contact Chief Counsel's Office at 717-783-9454.

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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. 10-2388C
Kildare's West Chester, Inc.