

Mailing Date: NOV 04 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2767
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No.W04-410397
v.	:	
	:	LID - 57348
KSK ENTERPRISES INC	:	
T/A BOBS DISTRIBUTING	:	
616 OLD CLAIRTON ROAD	:	
PLEASANT HILLS	:	
PITTSBURGH PA 15236-4313	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. D-SS-965	:	

BEFORE: JUDGE SKWARYK

APPEARANCES:

BLCE COUNSEL: Nadia Vargo, Esquire
LICENSEE COUNSEL: Louis Caputo, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 7, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against KSK Enterprises, Inc., t/a Bob's Distributing, License Number D-SS-965 (hereinafter Licensee).

The citation contains three (3) counts.

Count One of the citation charges Licensee with violation of Section 9.106(c) of the Liquor Control Board Regulations, [40 Pa. Code §9.106(c)], in that on February 12, 2010, Licensee, by its servants, agents or employees, sold four (4) or more cases of malt of brewed beverages without preparing a sales invoice.

Count Two of the Citation charges Licensee with violation of Section 493(12) of the Liquor Code, [47 P.S. §4-493(12) and Sections 9.101 and 9.105 of the Liquor Control Board Regulations, [40 Pa Code §§9.101 and 9.105], in that on February 12, 2010, Licensee, by its servants, agents or employees, failed to maintain records in conformity with the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.

Count Three of the citation charges Licensee with violation of Section 493(1) of the Liquor Code, [47 P.S. §4-493(1)] in that on February 12, 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) male minor, seventeen (17) years of age.

An administrative hearing was conducted on August 30, 2011, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania.

The Bureau began its investigation on March 22, 2010, and completed it on December 8, 2010. Thereafter, Licensee was notified of the violation(s) by letter sent by certified mail on December 21, 2010, and received on December 23, 2010

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

Counts One, Two and Three

FINDINGS OF FACT:

1. Licensee is a corporation located in Allegheny County, Pennsylvania and holds Distributor License Number D-SS-965. (N.T. 4)
2. On March 22, 2010, a Bureau enforcement officer received a telephone call from the Jefferson Borough Police Department about minors at an underage drinking party. (N.T. 8, 16)
3. On March 23, 2010, an enforcement officer received by fax the police reports of the underage drinking party which indicated that the alcoholic beverages may have come from Licensee. (N.T. 8-9)
4. On April 13, 2010, the enforcement officer conducted a criminal history check of Licensee which came back negative. (N.T. 9)
5. On May 8, and 31, 2010, enforcement officers conducted outside surveillance of the licensed premises and found no violations. (N.T. 9-10)
6. During the months of June through December, 2010, the Bureau's investigation was continuous and ongoing. (By Stipulation N.T. 10)

7. On February 12, 2010, S.M. was a 17 year old minor with a date of birth of August 2, 1992. (N.T. 25-27)
8. S.M. had visited the licensed premises in the past and was denied service by License. (N.T. 56, 78)
9. On February 12, 2010, J.C. was an 18 year old minor with a date of birth of October 1, 1991. (N.T. 30-40)
10. On February 12, 2010, J.C. hosted a Natural Light beer –drinking party for 33 minors at his home in Jefferson Hills, Pa. (N.T. 40-41)
11. Licensee sells Natural Light Beer 12-ounce cans in 20-pack cases. (N.T. 60)
12. The licensed premise is located near a Uni-Mart which was frequented by the minors, J.C. and S.M., and their friends. (N.T. 28, 31-35, 42-42, 45, 50-51)

CONCLUSIONS OF LAW:

Counts One, Two and Three are dismissed.

DISCUSSION:

The Burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d 857 (Pa. Cmwlth. 1982).

At the hearing held on the matter, the enforcement officer testified in detail as to his investigation giving rise to the citation. He had no firsthand knowledge of the under-age drinking party hosted by a minor, J.C., and attended by a minor, S.M., who allegedly purchased the beer at the licensed premises.

A Jefferson Hills Police Department officer testified to arresting 33 minors including J.C. and S.M. on February 12, 2010 at an under-age drinking party and finding cases of beer in cans at J.C.'s home.

The minors, J.C. and S.M., testified that S.M. bought the beer at the licensed premises with money collected from minors, and the beer was transferred to J.C.'s car, parked at a nearby Uni-Mart, for transport to his home and the party.

Licensee testified that he did not sell beer to the minor, S.M., and had refused to serve him on prior occasions. He also testified that the Uni-Mart is down a hill from the premises and he can only see its roof from his office.

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As fact-finders, it is our responsibility to resolve conflicts in the evidence and to determine witness credibility and evidentiary weight. Willard Agri-Service, Inc. v. Department of Agriculture, 554 A.2d 596 (Pa. Cmwlth. 1989); Commonwealth of Pa. State Correctional Institute at Dallas v. Robison, 561 A.2d 82 (Pa. Cmwlth. 1989). We may give testimony such consideration as it may deserve, and accept it or reject it in whole or in part. McFarland Landscape Service v. Workmen's Compensation Board of Appeal, 557 A.2d 816, 817-18 (Pa. Cmwlth. 1989); Hollenbach v. North Wales Foundry Company, 136 A.2d 148, 150 (Pa. Super. 1957); Las Vegas Supper Club, Inc. v. Pa. Liquor Control Board, 237 A.2d 253 (Pa. Super. 1967).

It is proper for fact-finders to consider a witness' bias in weighing his/her testimony. Kearns by Kearns v. DeHaas, 546 A.2d 1226 (Pa. Super. 1988); Panczak v. Com. Unemployment Compensation Board of Review, 409 A.2d 929, 931 (Pa. Cmwlth. 1980).

I find the testimonies of the enforcement officer, the Jefferson Township Police Department officer and Licensee to be credible and give them great weight.

I find the testimonies of the two minors, J.C and S.M., to not be credible. There are too many inconsistencies in their testimonies to give them any weight. The minors changed their stories after cross-examination to bolster the Bureau's case. They also received reduced criminal charges at a District Judge's office for testifying favorably for the Bureau at this hearing. Therefore, the Bureau did not meet its burden of proof in this case.

As such, Counts One, Two, and Three are dismissed.

ORDER:

Citation Number 10-2767 is dismissed.

KSK ENTERPRISES, INC.
Citation No. 10-2767

Dated this 20TH day of OCTOBER, 2011.



Robert F. Skwaryk, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.