

Mailing Date: JUL 16 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 11-0063
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-422898
	:	
TYCOON SOCIAL & BENEFICIAL	:	
ASSOCIATION	:	PLCB LID – 27196
1439 SOUTH ST.	:	
PHILADELPHIA PA 19146	:	
	:	PLCB License No. CC-3693
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 19, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against Tycoon Social & Beneficial Association, License Number CC-3693 (hereinafter “Licensee”).

An Administrative hearing was held on Tuesday, January 10, 2012, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Section 493(14) of the Liquor Code, 47 P.S. §4-493(14), in that on December 2, 2010, Licensee, by its servants, agents or employes, permitted thirty-eight (38) minors, ages unknown, to frequent the licensed premises.

The second count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12), in that on December 2 and 14, 2010, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises relative to a complaint about school buses carrying minors to the licensed premises (N.T. 8).
2. The officer went to the premises on December 2, 2010 arriving at approximately 11:45 p.m. The officer was part of a detail of officers (N.T. 8-9).
3. Prior to this officer entering the premises, two undercover officers from the Bureau of Enforcement had entered the premises and remained inside. This officer entered approximately thirty minutes later (N.T. 9-10).
4. Prior to going to that location, the officers met at a separate location and were given information and instructions. The undercover officers entered first and ten minutes later, the uniformed officers came into the premises (N.T. 10).
5. When the uniformed officers came in, there were twelve patrons in the lower area. There was a bar operating and alcoholic beverages were being sold. The officer identified himself to the female bartender and asked to see the person in charge. At that time, she told the officer that the person whom he needed to speak to was Frank and that he was next door. There was another licensed premises next door; a separate detail of officers had entered that premises as well (N.T. 11).
6. After the officer spoke to the female bartender, he went to the upper level where he saw a number of youthful patrons. In this area there were bottles of liquor in a speed rack, but no bartenders were behind the bar. The area was not secured or locked (N.T. 13).

7. The officer began checking identification and determining if the individuals were under the age of twenty-one (N.T. 14).

8. The officers noted that there were thirty-eight individuals, college students, who were suspected to be under the age of twenty-one (N.T. 15).

9. The officers spoke with Frank Funaro, who was identified as the person in charge, at 12:45 a.m. on December 3, 2010 (N.T. 15-16).

10. The officer went next door to interview Mr. Funaro. The officers were also conducting an investigation of the licensed premises next door (N.T. 16).

11. Mr. Funaro was identified as the president of the licensed club. He was identified as the person in charge of both licensed premises (N.T. 16-17).

12. The officer asked Mr. Funaro for documentation such as records and by-laws in order to complete the routine inspection of the licensed club. Mr. Funaro informed the officer that the day to day operations were handled by the corporate manager, Tracy Brennan. The officer obtained her contact information (N.T. 18-19).

13. The investigating officer contacted Ms. Brennan on or about December 13, 2010 and set up a meeting for December 14, 2010. At that time, the officer was able to review business records of the licensed premises, which included by-laws, phone records and other records. The officer also noted there was a contract between the licensed establishment and a Michael Gibbs (N.T. 20).

14. The officers had asked for invoices and records for beer and liquor, and liquor invoices were provided for a period of two years. No beer invoices were provided (N.T. 21).

15. There were two security personnel located on the upper level of the licensed premises (N.T. 29).

16. There were approximately 45-50 patrons inside the licensed premises (N.T. 31).

17. No non traffic citations were issued to anyone that evening (N.T. 31).

18. Frank Funaro is a member of the licensed premises and described himself as an officer and responsible party. He owns the real estate where the club is located (N.T. 36).

19. According to Mr. Funaro, Tracy Brennan is the manager at the licensed premises and in charge of the daily operations. Mr. Funaro is the president of the premises in the adjacent building, but was running both licensed establishments at the time. Tracy Brennan was not in on that day and had contacted him to keep an eye on the premises (N.T. 38-39).

20. The licensed premises was open and operating on that night (N.T. 39).

21. Mr. Funaro was aware that the party has been arranged from the University of Delaware and there would be patrons who were under the age of twenty-one. Those that were identified as over the age of twenty-one were to be given arm bands so that they could go downstairs and drink. The ones that were under twenty-one were required to stay upstairs and not allowed downstairs to access any liquor. According to Mr. Funaro, five individuals who were supposedly members of the club who were designated as chaperones for the night. They were not compensated for these jobs (N.T. 41-42).

CONCLUSIONS OF LAW:

Count No. 1 - On December 2, 2010, Licensee, by its servants, agents or employes, permitted minors, ages unknown, to frequent the licensed premises, in violation of Section 493(14) of the Liquor Code, 47 P.S. §4-493(14).

Count No. 2 - On December 2 and 14, 2010, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises, in violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12).

PRIOR RECORD:

Licensee has been licensed since November 14, 1938, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

In Re:

Citation No. 92-1756. \$1,400.00 fine.

1. Improper admission of members.
2. Sales to nonmembers.
3. Permitted lewd, immoral or improper entertainment.
4. Permitted other persons to operate another business on the licensed premises.
5. Sold liquor and/or malt or brewed beverages on a portion of the premises not covered by the license.

Citation Nos. 95-0698 and 95-2259. (Consolidated) \$200.00 fine and two days suspension.

1. Sales to nonmembers without prior arrangement.
February 16, 25, 27, 28 and June 10, 1995.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
February 25, 1995.

3. Permitted patrons to possess and/or remove liquor or malt or malt or brewed beverages after 3:30 a.m.
February 25, 1995.
4. Permitted lewd, immoral or improper entertainment.
February 28, 1995.

Citation No. 98-1021. Three days suspension.

1. Sales to nonmembers without prior arrangement.
February 21, 1998.
2. Sales between 3:00 a.m. and 7:00 a.m.
February 21, 1998.

Citation No. 01-1246. \$200.00 fine.

1. Failed to clean coils, tap rods and connections at least once every seven days.
2. Failed to adhere to by-laws.

Citation No. 08-1224. \$2,000.00 fine.

1. Sales to nonmembers.
May 20 and June 3, 2007.
2. Interfered with an Enforcement officer in the performance of his duties.
September 15, 2007.
3. Failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.
September 16, 2007 and February 8, 2008.

DISCUSSION:

The Licensee provided testimony that an officer checked some of the identification cards in determining that there were individuals in the premises who were under the age of twenty-one. Also, there was an agreement between the XO Lounge for a college party, which provided that there would be bars designated in the club just for students over twenty-one and a juice and soda bar available for students under twenty-one. The effort was apparently an intent to have a teen party; however, it requires strict compliance with the provisions of the Liquor Code.

The alcohol was not removed or placed under lock and key during the time of the gathering. In addition, the chaperones were questionable in that they were members of the club, but Licensee did allege that they were not being paid to chaperone these individuals. Even so, the officers saw two persons who were security/personnel, who allegedly acted in the role of chaperone only, but there were 38 persons in the area designated for the underage party.

It is typical in a hearing of this nature that the Bureau would present some of the minors as witnesses. Here, the charge did not involve *consumption* of alcoholic beverages. None of the minors were issued citations. As in the case of *Vegas Nightclub, Inc.*, Citation No. 02-1304, in a matter before Administrative Law Judge Shenkle, despite the fact that no minor witnesses testified, there was sufficient evidence to satisfy the Court that there were individuals on the premises who were under the age of twenty-one. That ruling was affirmed on appeal by the Pennsylvania Liquor Control Board.

Similarly, this Court finds that there is evidence that the Bureau officers checked some identification and determined that there were some individuals under the age of twenty-one but still produced only hearsay evidence in Court of the same. However, it was an event that was specifically designated for college students and it was clear from the contract that there would or could be persons under the age of twenty-one at the affair. There were a number of persons who were segregated into the area where alcoholic beverages were not being served, even though the alcoholic beverages were not under lock and key.

The Licensee did in fact invite the underage persons onto the premises and it may be presumed under the circumstances that there were underage persons present. In addition, the Licensee's testimony indicated that he was aware that there were people who he believed to be under twenty-one years of age on the premises.

Relative to Count No. 2, the Licensee failed to produce the beer invoices although their liquor invoices, by-laws and other records seem to be in order. Under the circumstances and in light of mitigating testimony by the Licensee, moderate monetary penalties shall be imposed. Section 47 P. S. Section 4-493(14) indicates that minors may only frequent the licensed premises if they are accompanied by a parent or legal guardian or under proper supervision. In the city of first class, each supervisor can supervise up to five minors. Licensee indicates that it will comply in the future.

The Court invites Licensee to pay close attention to Section 493(14) of the Liquor Code and to seek legal advice prior to conducting such an affair.

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 \$50.00 or more than \$1,000.00, or both, for violations of the type found in Count No. 2 of this case.

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 Count No. 1 of this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,000.00.
Count No. 2 - \$200.00.

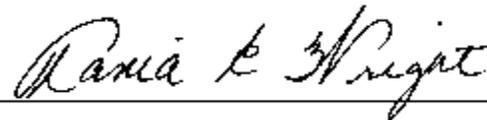
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Tycoon Social & Beneficial Association, License Number CC-3693, pay a fine of One Thousand Two Hundred Dollars (\$1,200.00) 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.

Jurisdiction of this matter is retained.

Dated this 11TH day of JULY, 2012.



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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

mm

Tycoon Social & Beneficial Association
In Re: Citation No. 11-0063

Detach Here and Return Stub with Payment

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which include business-use personal checks, are not acceptable.** 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

In Re: Citation No. 11-0063
Tycoon Social & Beneficial Association