

Mailing Date: DEC 06 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0554C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-426892
v.	:	
	:	LID - 13508
VEN-BAR INC	:	
T/A VEN-BAR	:	
107-109 STATE STREET	:	
REAR 111 STATE STREET	:	
OIL CITY PA 16301-2343	:	
	:	
VENANGO COUNTY	:	
LICENSE NO. R-SS-8947	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily Gustave, Esquire
LICENSEE COUNSEL: Peter J. Nelson, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 6, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Ven-Bar, Inc., t/a Ven-Bar, License Number R-SS-8947 (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, [47 P.S. §4-493(1)], in that on February 22, 2011, 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) minor, eighteen (18) years of age.

An administrative hearing was conducted on October 20, 2011, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee was represented by Peter J. Nelson, Pro Se.

The Bureau began its investigation of this matter on February 22, 2011, and completed its investigation on February 24, 2011. Thereafter, Licensee was notified of the nature of the violation(s) disclosed by the investigation in a letter sent by certified mail on March 17, 2011. Counsel for Licensee stipulates that the notice provisions of Section 471 of the Liquor Code have been satisfied.

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

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on February 22, 2011, and completed its investigation on February 24, 2011. (N.T. 6, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated March 17, 2011, which was sent by certified mail and returned unclaimed by Licensee. (N.T. 6, Exhibit C-2)
3. The citation was issued on April 6, 2011, and was sent by certified mail and received by Licensee. (N.T. 8, Exhibits C-3, C-4)
4. On February 22, 2011, at 5:59 p.m., two Liquor Enforcement officers entered Licensee's premises in undercover capacities and observed a male bartender, later identified as James C. Davis III rendering service to 12 patrons. Having entered as part of the Bureau's Age Compliance Check Program, the Enforcement officers determined that the premises was secure for the entry of underage buyer #502. (N.T. 8, Exhibits C-5)
5. At 6:15 p.m., underage buyer #502 (date of birth August 19, 1992) entered Licensee's premises and took a seat at the bar. Underage buyer #502 ordered a bottle of Bud Light beer, at which time the bartender requested identification. (N.T. 9, Exhibit C-5)
6. Underage buyer #502 furnished the bartender with her true and correct Pennsylvania photo driver's license clearly indicating that she was under 21 years of age. After examining this photo driver's license, the bartender returned it to underage buyer #502 and served the requested bottle of Bud Light beer for \$2.75. (N.T. 11, Exhibit C-5)
7. Upon receiving service of the bottle of Bud light beer, underage buyer #502 turned the bottle with the label facing the Liquor Enforcement Officers who were also seated at the bar and remained in an undercover capacity. (N.T. 1, Exhibit C-5)

8. Underage buyer #502 departed Licensee's premises a few minutes later without consuming any alcoholic beverages. (N.T. 12, Exhibit C-5)

9. Immediately following the departure of underage buyer #502, a supervising Liquor Enforcement officer entered Licensee's premises and identified himself to the bartender James C. Davis III and advised him of the alleged violation. (N.T. 12, Exhibit C-5)

10. The Bureau mailed a Notice of Non-compliance to Licensee's premises on February 24, 2011. (N.T. 30, Exhibit C-6)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On February 22, 2011, Licensee, by its bartender, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, eighteen (18) years of age, in violation of Section 493(1) of the Liquor Code, [47 P.S. §4-493(1)].

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

PRIOR RECORD:

Licensee has been licensed since November 22, 1973, and has had five (5) prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 98-0310. Fine \$50.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 00-0963. Fine \$125.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 00-1122. 1 day suspension.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 00-1719. 1 day suspension.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 01-0101. Fine \$125.00 and 1 day suspension.

1. Issued worthless checks in payment for malt or brewed beverages.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or 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.

After due consideration of the circumstances giving rise to the citation and Licensee's status as a first-time offender, a fine of \$1,100.00 and mandatory R.A.M.P. training will be imposed as the penalty in the case.

Licensee's sole corporate officer Peter J. Nelson appeared Pro Se at the Administrative Hearing. Mr. Nelson testified that as the result of this investigation, Licensee had purchased an electronic scanning device for use in scanning identification and has received R.A.M.P. certification. Mr. Nelson further advises that Mr. Davis is no longer employed by Licensee.

Moreover, Section 471(d) of the Liquor Code [47 P.S. §4-471(d)] provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this case, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

ORDER:

THEREFORE, it is hereby ordered that Ven-Bar, Inc., t/a Ven-Bar, License Number R-SS-8947, pay a fine of \$1,100.00 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.

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 the Order.

VEN-BAR, INC.
Citation Number 11-0554C

Jurisdiction is retained to ensure compliance with this Order.

Dated this 28TH day of November, 2011.



Roderick Frisk, J.

ddj

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.

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 to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

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Ven-Bar, Inc.