

Mailing Date: APR 20 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0662
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-428097
	:	
JAY AMBAA INC.	:	
7324 CASTOR AVE.	:	LID – 58808
PHILADELPHIA PA 19152-4205	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-SS-935	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 19, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against Jay Ambaa, Inc., License Number D-SS-935 (hereinafter “Licensee”).

An Administrative hearing was held on Tuesday, October 18, 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 March 16, 2011 and divers other occasions in the past year, 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) minor, twenty (20) years of age.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. He and his then partner visited the premises on March 16, 2011 at approximately 7:20 p.m. The two officers set up a surveillance in the front of the premises. Shortly thereafter, they moved to the rear of the premises (N.T. 6-7).

2. At approximately 7:40 p.m., the officer observed a Chevrolet Astro van arrive at the premises. Two youthful appearing patrons exited the van and entered the licensed premises through a rear door (N.T. 7).

3. Approximately two or three minutes later, one of the youthful appearing males exited the premises through the rear door. The officer approached the youthful appearing individual and identified himself and requested identification (N.T. 7).

4. One of the youthful appearing individuals was in possession of a thirty pack of Natural Ice beer (N.T. 7).

5. The officer requested identification and was provided with a Delaware personal identification card. The officer immediately recognized it as being fictitious. There was a disclaimer indicating that the information had been provided by the signatory, and something appeared to have been rubbed off the back of the card (N.T. 8-10 and Exhibit B-5).

6. After questioning the individual, the officer determined that the card contained his correct name and photo but not his actual birth date (N.T. 9 and Exhibit B-5).

7. A certified driving record from the Pennsylvania Department of Transportation indicate that B.G. was born July 14, 1990 and was twenty years old on March 16, 2011 (N.T. 10-11 and Exhibit B-3).

8. The officer walked inside the premises with the minor and presented the identification to Manav Patel, the employee in charge. Mr. Patel indicated that B.G. had been in the premises in the past and that he had carded him on other occasions. He then showed the officer what appeared to be a declaration of age card. He showed the information from the identification card that the officer now had in possession, that is to say the false Delaware identification card. The Delaware personal identification card was printed on to the age declaration statement and contained the signature of the patron and a witness (N.T. 11-13 and Exhibits B-4 and B-5).

9. Mr. Patel is the manager of the licensed premises and indicated that the individual purchased beer from him five or six times. Mr. Patel indicated that he asked everyone who appeared to be under thirty years of age for identification. He indicated that he further questioned him with regard to his date of birth asking his address and height. He was able to answer all of the questions. Mr. Patel made a copy of the identification card and had him sign the declaration of age form (N.T. 17-18).

10. On March 16, 2011, because Mr. Patel recognized his face, he did request identification but did not further question him nor have him sign a declaration of age card (N.T. 19).

11. Licensee had him sign a declaration of age card on October 31, 2010, January 22, 2011 and another unknown date. Licensee did not have him sign a declaration of age card on March 16, 2011 (N.T. 20-21 and Exhibit L-1).

CONCLUSIONS OF LAW:

On March 16, 2011 and divers other occasions in the past year, 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) minor, twenty (20) 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 November 5, 2007, and has a record of prior violations as follows:

Citation No. 10-1176. \$1,250.00 fine and R.A.M.P. training mandated.

1. Sales to a minor.
April 22, 2010.

DISCUSSION:

According to the Court in *Timmy's Corporation v. Bureau of Liquor Enforcement*, 997 A.2d 419 (Pa. Cmwlth. 2010), the identification presented must be *valid*, i.e. issued by the Department of Transportation. Clearly, this identification was invalid on its face and could be so determined simply by examination of the document itself. Though it contained the picture and date of birth of the holder, there was no indication on the card that it was issued by the state of Delaware or any other authority or that the information had been verified as correct. Licensee stated that he questioned the individual, at some point in time, with regard to the information, however, in that the license was clearly invalid on its face, that was insufficient. Licensee articulated that it exercises good practice and procedure, but failed to establish an affirmative defense.

Licensee was R.A.M.P. certified at the time of the offense. However, Licensee has a prior violation from April of 2010. Under the circumstances, a monetary penalty shall be imposed. Licensee should be aware that its license is in jeopardy of suspension and/or revocation should Licensee again be found in violation of an offense of this nature.

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.

Accordingly, we issue the following

ORDER:

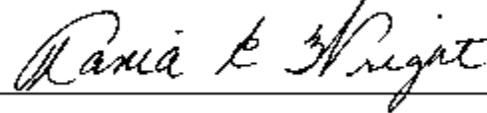
THEREFORE, it is hereby Ordered that Licensee, Jay Ambaa, Inc., License Number D-SS-935, pay a fine of Three Thousand Dollars (\$3,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this 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).

Jurisdiction of this matter is retained.

Dated this 12TH day of APRIL, 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 on 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