

Mailing Date: SEP 24 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 11-1142
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-431701
	:	
J D MCGILLICUDDYS	:	
CATERING CO INC.	:	PLCB LID - 58435
111-13 COTTON ST.	:	
PHILADELPHIA PA 19127-1520	:	
	:	PLCB License No. R-AP-SS-7333
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, 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 June 28, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against J D McGillicuddys Catering Co., Inc., License Number R-AP-SS-7333 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 17, 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 charges Licensee with violation of Sections 406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), in that on June 5, 2011, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. He went to the premises on June 5, 2011 at 10:30 a.m. He determined the time through the use of his AT&T cellular phone. While on the licensed premises, the officer noted a large white tent set up on the sidewalk. The tent had J D McGillicuddys labeled on it. The officer observed that other labels stated Bud Light, Bud Light Lime and Landshark beers (N.T. 7-8).

2. The officer also observed a male approximately sixty years of age occupying the tent. The officer saw numerous patrons walking around the street and around the tent. The officer approached the tent and was greeted by the above described individual who requested his identification. The officer provided him with identification and the individual asked him what he liked. The officer indicated a Bud Light Lime and he was served the beer in a clear plastic cup (N.T. 7-8).

3. The officer presented a driver's license which had been issued to him for undercover work (N.T. 8-9).

4. The individual obtained the beer from a keg which had a tap system. He then requested three dollars from the officer. The officer provided him with a twenty dollar bill. The individual gave him seventeen dollars in change. The officer gave the individual a dollar tip and departed the area (N.T. 9-10).

5. The officer concluded his investigation on June 6, 2011, the same date (N.T. 10).

6. The officer was part of a large detail enforcing liquor laws in the Manayunk area, during a bike race. The details consisted of thirty to forty officers, however, when the officer went to this location, he was alone (N.T. 11).

CONCLUSIONS OF LAW:

On June 5, 2011, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m., in violation of Sections 406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16).

PRIOR RECORD:

Licensee has been licensed since June 18, 2007, and has a record of prior violations as follows:

In Re:

Citation No. 07-2116C. \$1,250.00 fine.

1. Sales to a minor.
August 9, 2007.

Citation No. 07-2841. \$300.00 fine.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages.
September 7, 2007.

Citation No. 08-2061. \$200.00 fine.

1. Failed to comply with the Order of the Administrative Law Judge mandating R.A.M.P. training.
June 30 through August 5, 2008.

Citation No. 10-0845. \$350.00 fine.

1. Sold and/or served more than one alcoholic beverage at one time to one person for the price of one drink.
March 30, 2010.

Citation No. 10-2317X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
June 4, 2010.

DISCUSSION:

The Licensee has participated every year from 2007 to 2012 in the Manayunk event. The Licensee indicated that he was never advised that alcoholic beverage service could not be rendered before 11:00 a.m. on the day of this race. The Licensee indicated that while he has several businesses and also has a Sunday Sales Permit, none of the other establishments open before twelve noon and that he made an honest mistake in terms of the time of service. In that this was a Sunday, Licensee was not permitted to sell alcoholic beverages between 2:00 a.m. and 11:00 a.m.

Licensee has other violations, but none of this nature. Under the circumstances, a minimum monetary penalty shall be imposed.

J D McGillicuddys Catering Co., Inc.
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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, J D McGillicuddys Catering Co., Inc., License Number R-AP-SS-7333, 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.

Jurisdiction of this matter is retained.

Dated this 14TH day of September, 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.

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J D McGillicuddys Catering Co., Inc.
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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

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