

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that Licensee, by your servants, agents, or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, twenty (20) years of age, on July 28, 2011.

The second count charges Licensee with a violation of Section 491(10) of the Liquor Code [47 P.S. §4-491(10)]. The charge is that Licensee, by your servants, agents, or employees, refilled liquor bottles, on August 1, 2011.

The third count charges Licensee with a violation of Section 5.23(a) of the Liquor Control Board Regulations [40 Pa. Code §5.23(a)]. The charge is that Licensee, by your servants, agents, or employees, failed to appoint a Board-approved full-time manager for the licensed premises, during the period January 1 through August 2, 2011.

I presided at an evidentiary hearing on February 13, 2012 at 2221 Paxton Church Road, Harrisburg, Pennsylvania.

The matter was submitted by way of agreement of facts. Licensee agreed with the applicable and investigatory requirements of the Liquor Code.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

Count No. 1

1. Pursuant to the Bureau's Age Compliance Check Program, on July 28, 2011, an underage buyer (twenty years old) removed a six pack of beer from the cooler and took the beer to the counter to purchase. The bartender asked for identification. The underage buyer showed the bartender his authentic driver's license. The bartender served the underage buyer. (N.T. 24-27)

Count No. 2

2. On August 1, 2011, Licensee's authorized representative admitted to purchasing higher priced liquor and placing the contents into less expensive containers of different brands. Licensee further explained that the practice went on for three months because of financial problems. (N.T. 9-15)

Count No. 3

3. On August 2, 2011, two Bureau Enforcement Officers conducted a routine inspection. The Officers confirmed that the Manager listed with the Pennsylvania Liquor Control Board was no longer in that position for a period of at least one year. (N.T. 34-35)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count Nos. 1 through 3

2. The violations are sustained as charged.

ADJUDICATION HISTORY:

Licensee has been licensed since March 1, 2001, and has the following Adjudication history:

Docket No. 04-1314. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages dated May 24, 2004.

Docket No. 05-1069X. Fine \$200.00.

Issued worthless checks in payment for malt or brewed beverages dated March 14, 2005.

Docket No. 07-2954X. Fine \$250.00.

Issued worthless checks in payment for malt or brewed beverages dated October 2 and 9, 2007.

Docket No. 09-2952X. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages dated October 9 and 13, 2009.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Count No. 1

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 the violation found herein.

Further, Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to responsible alcohol management, mandates that Licensee participate in the Pennsylvania Liquor Control Board's Responsible Alcohol Management Program (RAMP), since this is Licensee's first violation as herein found.

Count Nos. 2 and 3

Liquor Code Section 471 prescribes a penalty of license suspension, or revocation, or a fine of not less than \$50.00, or more than \$1,000.00, or both for the violations found herein.

Discretionary Component(s)

Count No. 2

What I find most disturbing is Licensee's practice as identified in this Count. Licensee has been stealing from customers and excuses that behavior because of financial difficulties. I then suppose that anyone claiming financial difficulties has some right to steal from others.

This behavior is demonstrative of the lack of character and integrity of Licensee's corporate officials. One may wonder why it is not appropriate to require Licensee to place a sign, visible to the public, on the licensed premises, stating that Licensee has been stealing from customers.

If Licensee's principles are truly contrite and remorseful, in addition to ensuring that the conduct in question will never be repeated, Licensee's principles should acknowledge their behavior to their customers and offer restitution.

I am very clear on one point. The imposed fine is no more than a token punishment as the more significant violation is Licensee's betrayal to its customers. Were I a customer, my next thought would be whether Licensee has cheated me in other ways. This Adjudication is a matter of public record. As such, it may be widely disseminated within the community Licensee serves.

Before assessing the within penalty, I considered ordering a lengthy license suspension subject to the possibility of vacating that suspension should Licensee voluntarily agree to place a sign on its premises, visible to the public for thirty days, with the following words: "WE ARE THIEVES!" In addition, Licensee would have had to agree to place a copy of this Adjudication on the licensed premises, in a location visible to the public.

I impose:

Count No. 1 - \$1,250.00 fine.

Count No. 2 - \$250.00 fine.

Count No. 3 - \$250.00 fine.

ORDER:

Imposition of Fine

Licensee must pay a \$1,750.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Mandatory RAMP Compliance

I order Licensee to comply with Liquor Code Section 471.1, pertaining to responsible alcohol management, for one year from the date of Bureau of Alcohol Education (BAE) certification.

Licensee must contact the BAE, Pennsylvania Liquor Control Board: toll free telephone No.: 1-866-275-8237; web site: www.lcb@pa.gov; email address: LBEducation@pa.gov within thirty days of the mailing date of this Adjudication to effect full RAMP compliance. Licensee has ninety days from the mailing date of this Adjudication to be fully certified by the BAE.

Failure to comply may cause the Bureau to issue a citation alleging Licensee's noncompliance. Alternatively, the Bureau may request a modification of the penalty imposed in this Adjudication.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 23RD day of April, 2012.

A handwritten signature in cursive script that reads "Felix Thau". The signature is written in black ink and is positioned above a horizontal line.

Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.

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.** Make 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

Midtown Pizza of Middletown, Inc.
Docket No. 11-1650C