

Mailing Date: AUG 10 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 11-1736C
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-435223
	:	
v.	:	
	:	PLCB LID No.: 53114
ACE'S INN, INC.	:	
1241 GAP VIEW RD.	:	
DAUPHIN, PA 17018-9751	:	PLCB License No.: R-AP-SS-EHF-16274

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on October 13, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Ace's Inn, Inc. (Licensee).

The citation 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 August 18, 2011.

I presided at an evidentiary hearing on June 18, 2012 at the Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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

FINDINGS OF FACT:

1. The Office of Administrative Law Judge sent a notice of hearing on April 20, 2012, by certified mail, return receipt requested. The notice was received and signed for the following day.

2. The Bureau began its investigation on August 18, 2011 and completed it on August 23, 2011. (N.T. 8)

3. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on, September 12, 2011. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

4. On August 18, 2011, the Bureau engaged in the Age Compliance Program (ACP) involving Licensee. Pursuant to the ACP, a Bureau Enforcement Officer received training in the requirements. The Officer entered the premises in an undercover capacity at approximately 7:00 p.m. to determine it was safe to proceed with the ACP. (N.T. 8-11)

5. The Officer within the premises texted the underage buyer (UB) and other Enforcement Officers outside the premises that it was safe for the UB to enter. The UB entered several minutes later. The UB ordered a 12-ounce bottle of beer from the bartender. The bartender requested proof of age. The UB presented her true and valid Pennsylvania photo driver's license (ID) indicating the UB was twenty years old. After looking at the ID, the bartender returned it to the UB saying: "I thought it said 1991 but it says 1981 and your good." The bartender then served the UB a bottle of beer. While inside the premises, the UB was under the direct supervision and control of the undercover Enforcement Officer. (N.T. 11-15, 24)

6. After the UB departed the premises, leaving the bottle of beer inside, a second Bureau Enforcement Officer entered the premises. The Officer identified himself to the bartender and then notified the bartender of the sale to the UB. (N.T. 18-20)

7. The Bureau sent Licensee a notification of noncompliance on August 23, 2011. (Commonwealth Exhibit No. C-5, N.T. 15-16)

8. Prior to participating in the ACP, the UB completed training provided by the Pennsylvania State Police. The UB satisfactorily passed a test regarding the training material. (N.T. 22-23)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau complied with the requirements of the Age Compliance Program [18 Pa. C.S.A. §6308(e) and 6310(c)].
3. The violation is sustained as charged.

ADJUDICATION HISTORY:

Licensee has been licensed since August 12, 2004, and has the following Adjudication history:

In Re Citation No.: 04-2322. Fine \$1,250.00.
Sales to a minor on October 20, 2004.

In Re Citation No.: 07-2194C. Fine \$1,500.00 and R.A.M.P. training mandated.
Sales to a minor on July 26, 2007.

In Re Citation No.: 08-1266. Fine \$300.00.
Failed to comply with the order of the Administrative Law Judge mandating R.A.M.P. training during the period of February 6 through April 21, 2008.

In Re Citation No.: 09-1760. Fine \$100.00.
Failed to post signage as required by the Clean Indoor Air Act on June 6, 2009.

In Re Citation No.: 11-0628. Fine \$350.00.
1. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. on December 19, 2010.

2. Possessed or operated gambling devices or permitted gambling on the licensed premises (sports pools) on January 25, 2011.

In Re Citation No.: 11-1500X. \$1,000.00 fine.
Issued worthless checks in payment for malt or brewed beverages on June 14, 2011.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

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.

Discretionary Component(s)

As Licensee has failed to appear, obey process, or provide any mitigation, I impose a \$1,750.00 fine. I further order Licensee to become compliant with the Responsible Alcohol Management Program (RAMP).

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.

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.

I take Official Notice (40 Pa. Code §15.52), that the license is in safekeeping. Therefore, I defer the RAMP compliance until the license is removed from safekeeping.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 7TH day of August, 2012.



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

Ace's Inn, Inc.
Docket No. 11-1736C