

Mailing Date: SEP 20 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 11-1976C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-437756
	:	
MOLLY MAGUIRES	:	
RESTAURANT & PUB INC.	:	PLCB LID - 57342
193-195-197 BRIDGE STREET	:	
PHOENIXVILLE PA 19460-3401	:	
	:	PLCB License No. R-AP-SS-16273
	:	
CHESTER COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 29, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Molly Maguires Restaurant & Pub, Inc., License Number R-AP-SS-16273 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 17, 2012, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on October 13, 2011, 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, nineteen (19) years of age.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on October 13, 2011 and ended on October 17, 2011. A notice of violation letter dated October 31, 2011 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received. A citation dated November 29, 2011 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on February 28, 2012 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received (N.T. 11-14 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. He visited the premises on October 13, 2011 for the purpose of conducting an age compliance check. The officer indicated that the age compliance check entailed sending an underage buyer into the premises to attempt to make a purchase of alcoholic beverages (N.T. 7-8).

3. At 9:10 p.m., the officer entered the licensed premises to determine whether the environment was safe for the underage buyer. The premises was open and operating. There were approximately thirty patrons and two bartenders on duty. Approximately five minutes later, the underage buyer entered the premises. She went to the end of the bar, facing the street, and waited for a bartender to approach her. She ordered a twelve ounce Coors Light beer and handed the bartender a five dollar bill. The bartender took the money, placed it in a working cash register, then handed her a beer and two dollars in change (N.T. 9).

4. The officer observed the minor in possession of a Coors Light beer (N.T. 10.)

5. Once served, the underage buyer walked away from the bar and went to a side table where she placed the beer on the table and departed the premises at approximately 9:22 p.m. (N.T. 10 and 18-20).

6. The underage buyer was a part of the underage compliance program. She was born February 19, 1992 and was under the age of twenty-one on October 13, 2011. She indicated that she made a purchase from a male bartender and ordered a Coors Light bottled beer, gave him five dollars and was given two dollars in change. She picked up the beer and put it on the side table and left the premises. She was not asked for identification. She indicated that she did have her official driver's license on her person. When she exited, she met with the officers outside the premises (N.T. 18-19).

7. A supervising officer from the Bureau of Enforcement went inside the premises, located the bartender and employee in charge that evening. The officer entered the premises at approximately 9:23 p.m. Approximately three minutes after the underage buyer exited, the employees were informed that the bartender had just served an underage buyer a twelve ounce bottle of beer, but they had not requested identification and would be receiving a notice of noncompliance letter within ten days and possibly a citation or notice of violation (N.T. 23-25).

8. A notice of noncompliance was sent to the licensed premises on October 7, 2011 (Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On October 13, 2011, 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, nineteen (19) 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 May 8, 2007, and has no record of prior violations.

DISCUSSION:

No one appeared on behalf of the licensed premises. The Licensee has one prior citation matter which is unrelated to the present offense. Under the circumstances, a \$1,250.00 monetary penalty shall be imposed and Licensee will be required to be R.A.M.P. certified.

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.

Molly Maguires Restaurant & Pub, Inc.
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That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, pertaining to Responsible Alcohol Management when, as in this matter, 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.

Accordingly, we issue the following

ORDER:

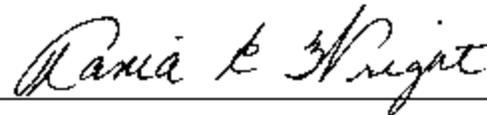
THEREFORE, it is hereby Ordered that Licensee, Molly Maguires Restaurant & Pub, Inc., License Number R-AP-SS-16273, pay a fine of One Thousand Two Hundred Fifty Dollars (\$1,250.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us) within thirty (30) days of the mailing date of this Adjudication in order to receive assistance in the compliance process. Licensee must receive Certification within ninety (90) days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

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 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.

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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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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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