

Mailing Date: OCT 26 2012

[Appeal](#)

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

PENNSYLVANIA STATE POLICE	:	In Re Citation No.: 11-2106
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
:	:	BLCE Incident No.: W03-428573
v.	:	
	:	
LIL' BIT OF CHICAGO, INC.	:	PLCB LID No.: 19013
T/A LIL' BIT OF CHICAGO	:	
20 MCKINLEY AVE.	:	
HANOVER, PA 17331-2023	:	PLCB License No.: R-AP-SS-17919

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE: Gerald Gesiorski, Sole Corporate Officer

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on December 15, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Lil' Bit of Chicago, Inc. (Licensee).

The first count charges Licensee with violations 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 five (5) minors, between eighteen (18) and twenty (20) years of age, on March 18, June 18, 29, 2011, and various dates between September 2010 and March 2011.

The second count charges Licensee with violations of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)]. The charge is that Licensee, by your servants, agents, or employees, permitted five (5) minors, between eighteen (18) and twenty (20) years of age, to frequent your licensed premises, on March 18, June 18, 29, 2011, and various dates between September 2010 and March 2011.

I presided at an evidentiary hearing on August 29, 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 Bureau began its investigation on March 30, 2011 and completed it on November 3, 2011. (N.T. 38)
2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on November 23, 2011. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-2, N.T. 37)

Count Nos. 1 and 2

3. On March 18, 2011, a twenty year old (born April 28, 1990) purchased a six-pack of beer without question as to age. He frequented the premises on two prior occasions during which he was also served alcoholic beverages either by Mr. Gesiorski, Sole Corporate Officer, or his wife. (N.T. 110-120)
4. On June 29, 2011, a Bureau Enforcement Officer conducted an outside surveillance of the premises beginning at 7:20 p.m. At 7:40 p.m. a vehicle pulled into the parking lot. The Officer saw two youthful appearing persons exit the vehicle and enter the premises. The Officer entered the premises in an undercover capacity about ten minutes later. The Officer saw the two youthful appearing patrons seated at a booth with a third customer. All three were drinking beer. The Officer walked over to the three and displayed his credentials. (N.T. 52-56)

5. After processing the three and releasing them outside the premises at his vehicle, the Officer reentered the premises at approximately 8:30 p.m. He displayed his credentials. He notified the bartender, Mr. Gesiorski's wife, that she had served beer to three minors. Ms. Gesiorski responded that the three produced identification showing them to be of age. The Officer explained that he had extensive conversations with the three; they all denied showing Ms. Gesiorski any identification. Ms. Gesiorski then remarked that the three had been there before and that she thought they were of age. Ms. Gesiorski admitted that she served the three beer. (N.T. 57-59)

6. One of the three was eighteen years old (born September 29, 1992). He arrived at the premises at approximately 7:30 p.m. He ordered a bottle of beer from Ms. Gesiorski without question. (N.T. 138-150)

7. The second minor was eighteen years old on June 29, 2011 (born August 10, 1992). He arrived at the premises somewhere between 6:00 to 7:00 p.m. Ms. Gesiorski served him beer without question. He frequented the premises three to four times prior to June 29, 2011. On all visits, he was served alcoholic beverages without question. (N.T. 152-158)

8. The third minor was twenty years old on June 29, 2011 (born July 7, 1991). He purchased several containers of beer from Ms. Gesiorski without question. He frequented the premises nearly twenty times prior to June 29, 2011. On every occasion he was served without question either by Mr. or Ms. Gesiorski. (N.T. 166-171)

CONCLUSIONS OF LAW:

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

Count No. 1

2. Licensee, by servants, agents, or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to minors on March 18, June 29, 2011 and divers other occasions within one year of June 29, 2011.

3. I dismiss the charge as to June 18, 2011.

Count No. 2

4. Licensee, by servants, agents, or employees, permitted minors to frequent the licensed premises, on March 18, June 29, 2011 and divers other occasions within one year of June 29, 2011.
5. I dismiss the charge as to June 18, 2011.¹

DISCUSSION:

Attributed by some to Abraham Lincoln, the adage: "A person who represents himself has a fool for a client," must have been born out of a case such as this. Exercising one's right in a judicial process is often more financially draining than it ought to be. To some degree, a case such as this counters that observation. When judicial process is virtually cost free, frivolity and waste easily overcome sound judgment. In defending, not only did Mr. Gesiorski demonstrate a lack of understanding of the law, but he infused a mountain of unnecessary paperwork into a case having insubstantial factual disagreements.

Ultimately, Ms. Gesiorski acknowledged serving minors when the Officer questioned her on June 29, 2011 and at the hearing. Moreover, during cross-examination, Mr. Gesiorski posed questions that buttressed the Bureau's case by intending to show that Ms. Gesiorski did not question the minors on June 29, 2011 because they were challenged as to age on earlier visits and subsequently served alcoholic beverages.

Mr. Gesiorski's presentation was further misguided by an extraordinary focus on one or two occasions prior to June 29, 2011. Mr. Gesiorski attempted to discredit the testimony of one minor regarding a purchase of beer on a date earlier than June 29, 2011 by introducing Licensee's records which purportedly prove that Licensee did not sell the product the minor claimed to have purchased. Looking at those records, I find them to be unreliable. In the context of the instant facts, challenging the minutia of one purchase completely misses the point. Mr. Gesiorski and Ms.

¹ The Bureau's witness identified June 17, 2011 as the date he was served at the licensed premises in a written statement provided on August 10, 2011. That discrepancy raises a concern about the witness' ability to recall.

Gesiorski have consistently neglected their obligation to avoid selling alcoholic beverages to minors.

PRIOR RECORD:

Licensee has been licensed since December 11, 1987, and has the following Adjudication history:

In Re Citation No.: 00-1960. Fine \$250.00.

The Corporate President consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages on November 3, 2000.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [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 violations 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.

Discretionary Component(s)

Mr. and Ms. Gesiorski do not have a sufficient grip upon the business. This record betokens an operation in which it is exceedingly easy for minors to frequent the premises and receive alcoholic beverages. Mr. Gesiorski's claim that Licensee has operated prudently to avoid selling to minors for twenty-five years is difficult to believe.

Ms. Gesiorski is clearly overwhelmed. She and her husband have been struggling to keep the business afloat while trying to sell it. I am sympathetic to their plight but I cannot condone their inability to operate lawfully by imposing an excessively mild penalty.

Therefore, I impose:

Count Nos. 1 and 2 merged - \$2,000.00 fine. I further order Licensee to become compliant with the Responsible Alcohol Management Program (RAMP).

ORDER:

In Re Citation No.: 11-2106; Licensee, Lil' Bit of Chicago, Inc.; PLCB LID No.: 19013; PLCB License No.: R-AP-SS-17919

Imposition of Fine

Licensee must pay a \$2,000.00 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 October, 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

Lil' Bit of Chicago, Inc.
In Re Citation No.: 11-2106