

Mailing Date: DEC 14 2012

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

PENNSYLVANIA STATE : In re Citation No. 12-0173
POLICE, BUREAU OF :
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W01-427348
 :
v. : PLCB LID No. 57373
 :
CMJ SHEFFIELD INC T/A PADDY WHACKS : PLCB License No. R-AP-SS-8510
2711 COMLY RD :
PHILADELPHIA PA 19154-2101 :

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 14, 2012. There are two counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on February 24, 25 and September 29, 2011, and on divers other occasions within the past year, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to five minors, twenty years of age.

The second count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on February 24, 25 and September 29, 2011, and on divers other occasions within the past year, by permitting five minors, twenty years of age, to frequent its licensed premises.

A hearing was held on November 13, 2012, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On September 29, 2011, a woman whose birth date was February 18, 1991, entered the licensed premises with friends. She purchased a brewed alcoholic beverage. She does not recall being asked about her age. The only identification she had on her person was her genuine driver's license, which would have proven that she was 20 years old. She had been to the licensed premises once before, when she was also served alcoholic beverages (N.T. 29-32).

2. On September 29, 2011, a woman whose birth date was July 19, 1991, entered the licensed premises with friends. She does not recall being asked about her age. She had the identification card of someone else, an adult, in her possession, but she does not recall presenting it to anyone or its being scanned or completing an age verification. She stood next to an adult friend at the bar who purchased beer and handed it to her. She and the friend walked to a standing table, on which the woman placed the beer. She had been served alcoholic beverages in the licensed premises once or twice previously (N.T. 37-43).

3. On September 29, 2011, a woman whose birth date was August 22, 1991, entered the licensed premises with friends. Her age was not questioned. An adult bought a pitcher of beer which was placed near her on the table, but she didn't have any of it (N.T. 45-48).

4. Licensee had a recording video camera installed in the premises which was operational on September 29, 2011. The recording shows the interior of the premises as seen from behind the bar. An employee is seen at the entrance requesting identification from entering patrons, including the undercover liquor enforcement officers whose investigation resulted in this citation. Licensee had a transaction scan device in the premises which was operational on September 29, 2011, and which was used to verify the ages of the undercover liquor enforcement officers (N.T. 77-83).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on September 29, 2011, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to two minors, twenty years of age.

The evidence did not prove that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), by permitting minors to frequent its licensed premises.

DISCUSSION:

I am dismissing the second count because the evidence did not establish the fact that the prior visits to the licensed premises of the witnesses mentioned in the first two findings of fact occurred within the preceding year.

While it is not essential to establish a precise date on which a minor previously frequented a licensed premises, it is essential to prove that any such previous visit occurred within the year preceding the issuance of a citation, because of the one-year limitation found in 47 P.S. §4-471(a).

Licensee's evidence caused me to believe that it has made good faith effort to attempt to prevent violations of the type found in this case. Notwithstanding its efforts and good intentions, these violations occurred, and Licensee's system for obtaining proof of age does not preserve evidence sufficient to establish a defense under 47 P.S. §4-495.

PRIOR RECORD:

Licensee has been licensed since June 14, 2007, and has had prior violations as follows:

In re Citation No. 08-0587. \$400.00 fine.

1. Failed to require patrons to vacate the premises by the required time. February 10, 2008.

In re Citation No. 08-0899. \$750.00 fine. Continued R.A.M.P. compliance mandated.

1. Sales to minors. March 19, 2008.
2. Unlimited alcoholic beverages for a fixed price. March 20, 2008.

In re Citation No. 10-0340. \$1,250.00 fine.

1. Sales to minors. November 15, 2009.

In re Citation No. 11-0253. \$1,500.00 fine and 1 day suspension.

1. Sales to minors. January 3, 2011.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case.

Since this is Licensee's fourth violation of a provision mentioned in 47 P.S. §4-471(b) in a four-year period, the law requires that the penalty include license suspension or revocation.

Licensee was R.A.M.P. – certified on the date of the violation in this case, but is not in a position to benefit from the reduced penalty provisions of 47 P.S. §4-471(b) (fourth sentence) because of the violations of March 19, 2008, November 15, 2009, and January 3, 2011.

ORDER

THEREFORE it is hereby ORDERED that the Restaurant Liquor License of Licensee, CMJ Sheffield, Inc., t/a Paddy Whacks, License No. R-AP-SS-8510, shall be suspended for a period of four (4) days (including all permits and Licensee Discount Card) BEGINNING at 7:00 a.m. on Monday, February 4, 2013, and ENDING at 7:00 a.m. on Friday, February 8, 2013. Jurisdiction is retained.

Licensee is directed on Monday, February 4, 2013, at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Friday, February 8, 2013, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 12TH day of December, 2012.



David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.