

Mailing Date: FEB 15 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 12-0468
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: W04-438947
v.	:	
	:	PLCB LID No.: 29724
UNCLE TOAD'S TAVERN, INC.	:	PLCB License No.: R-AP-SS-16385
T/A DRINKS	:	
346-348 CENTER AVE.	:	
WEST VIEW, PA 15229-1959	:	
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	:	
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	:	

BEFORE: JUDGE SKWARYK

APPEARANCES:

BLCE COUNSEL: EMILY GUSTAVE, ESQUIRE
LICENSEE COUNSEL: DANIEL BRIAN HARGROVE,
ESQUIRE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 21, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Uncle Toad's Tavern, Inc., t/a Drinks, License Number R-AP-SS-16385, (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, [47 P.S. 4-493(1)], in that on November 3, 2011, Licensee, by its 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.

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The investigation which gave rise to the citation began on November 10, 2011 and was completed on February 14, 2012. The notice of violation letter was mailed to Licensee on March 7, 2012.

An evidentiary hearing was held on this matter on Thursday, January 10, 2013, in Pennsylvania.

Upon review of the transcript of the hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Allegheny County, Pennsylvania, and holds Restaurant liquor license R-AP-SS-16385. (N.T. 4)
2. On November 3, 2011, J.J. was a 20-year-old male minor with a date of birth of December 22, 1990. (N.T. 18-19)
3. On November 3, 2011, at approximately 12:15 a.m., J.J., with three friends, entered the licensed premises, sat in a booth, and drank beer purchased for him. (N.T. 20-21)
4. On November 3, 2011, J.J. was not carded by Licensee's doorman or bartender. (N.T. 22-23, 26, 29)
5. J.J. had been carded on a prior visit to the licensed premises, and showed a false adult identification card. (N.T. 23-24, 26, 28)
6. On November 3, 2011, at 1:07 a.m., a West View Borough police officer (J.C.) entered the licensed premises looking for a minor (J.J.) and found him inside the bathroom drinking two bottles of Miller Lite beer. (N.T. 12-13, 16-18)
7. Officer J.C. observed the minor (J.J.) to be highly intoxicated and placed him under arrest. (N.T. 13)
8. Officer J.C. did not find a false identification card on J.J. (N.T. 17)
9. On November 3, 2011, an enforcement officer (B.T.) was notified that a minor (J.J.) was arrested for underage drinking at the premises by a patrolman of the West View Police Department. (N.T. 9)
10. On January 12, 13, 21 and February 1, 2012, Officer B.T. visited the licensed premises and found no violation. (N.T. 9)
11. Licensee has a scanner and a Declaration of Age card file. (N.T. 27-28)

CONCLUSIONS OF LAW:

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Sustained as charged.

DISCUSSION:

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. *Pa. Liquor Control Board v. PPC Circus Bar, Inc.*, 506 A.2d (Pa.Cmwlth. 1986); *In Re: Omicron Enterprises*, 499 A.2d (Pa.Cmwlth. 1982). The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. Black's Law Dictionary, Fifth Edition, West Publishing Company, Copyright 1979, Page 1064.

At the hearing held on the matter, the enforcement officer testified that he had no personal knowledge of the case and visited the premises on four dates and found no violations.

A local police officer, J.C., testified in detail that he entered the licensed premises during the early morning hours of November 3, 2011, and found a minor, J.J., in the bathroom consuming two bottles of Miller Lite beer. J.J. was very intoxicated and did not have a false identification card on him.

The minor, J.J., testified that on November 3, 2011, he visited the premises with three friends and consumed beers purchased for him. He admitted to being very intoxicated that evening because he was at a house drinking liquor. He had also visited the premises on prior dates and used a false identification card.

Licensee testified that the minor had visited the premises on a prior date and was carded, and looked to be over 21 years of age. He has a scanner and a Declaration of Age card file.

I take administrative notice that Licensee was R.A.M.P. certified on October 5, 2009.

Based on the record, I will sustain the citation.

PRIOR RECORD:

Licensee has been licensed since June 26, 1992, and has eight (8) prior violations, to wit:

IN RE:

Citation No. 95-2515. Fine \$450.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machine).

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Citation No. 00-0121. Fine \$100.00.

1. Operated the licensed establishment without a valid health permit or license.

Citation No. 01-0557. Fine \$1,400.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines and sports pool).
2. Failed to keep records on the licensed premises.
3. Not a bona fide restaurant in that food items were insufficient.
4. Failed to clean coils, tap rods and connections ta least once every 7 days.
5. Sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.

Citation No. 05-2618. Fine \$150.00.

1. Failed to keep records on the licensed premises.

Citation No. 06-1149. Fine \$875.00.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises (machines).
February 15, 2006.
2. Refused an authorized employee of the enforcement bureau access to records covering the operation of the licensed business when the request was made during business hours.
February 17, March 7 and 31, 2006.

Citation No. 08-0270. Fine \$1,100.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Sales between 2:00 a.m. and 7:00 a.m.
December 29, 2007.

Citation No. 09-0863C. Fine \$1,250.00, 1 day suspension and R.A.M.P. training mandated.

1. Sales to a Minor.
March 24, 2009.

Citation No. 11-0973. Fine \$300.00.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.
January 7, February 9, March 5, 21, April 1, 2 and 15, 2011.
2. Failed to post signage as required by the Clean Indoor Air Act.
January 7, February 9, March 5, 21, April 1, 2 and 15, 2011.

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PENALTY:

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 violations of the type found in this case.

Licensee shall be treated as a repeat offender.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed for the citation include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or Crimes Code within a four year period. The following Adjudications, in combination with this Citation, require that license revocation or suspension be included as part of the penalty: 09-0863C and 08-0270.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$1,500.00 and one (1) day suspension and R.A.M.P. training will be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that Uncle Toad's Tavern, Inc., License Number R-AP-SS-16385, pay a fine of \$1,500.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

THEREFORE, IT IS HEREBY ORDERED that the Restaurant liquor license of Uncle Toad's Tavern, Inc., t/a Drinks, (including all permits and Licensee Discount Card), License No. R-AP-SS-16385, be suspended for a period of one (1) day **BEGINNING** at 7:00 a.m. on Monday, April 8, 2013, and **ENDING** at 7:00 a.m. on Tuesday, April 9, 2013.

Licensee is directed on Monday, April 8, 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 aforementioned licensed premises for compliance with this Order.

Licensee is authorized on Tuesday, April 9, 2013, at 7:00 a.m., to remove the placard of suspension and return the license to its original wall location.

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IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Section 471.1 of the Liquor Code [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management in the following manner: 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 30 days of the mailing date of this Adjudication in order to seek assistance in the compliance process. Licensee must receive Certification within 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.

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) or (e) of the Liquor Code [47 P.S. §4-471(d) or §4-471(e)].

Jurisdiction is retained.

Dated this 13TH day of February, 2013.



Robert F. Skwaryk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

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 CHIEF COUNSEL'S OFFICE 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 to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

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