

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.: 12-0573
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: W04-444181
v.	:	
	:	PLCB LID No.: 61023
BLACK & GOLD BEER WAREHOUSE, LLC	:	PLCB License No.: D-SS-2687
T/A BLACK & GOLD BEER WAREHOUSE	:	
1000 BRADISH ST.	:	
PITTSBURGH, PA 15203-1202	:	
	:	
	:	

BEFORE: JUDGE SKWARYK

APPEARANCES:

BLCE COUNSEL: MICHAEL NICKLES, ESQUIRE
LICENSEE COUNSEL: PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 9, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Black & Gold Beer Warehouse, LLC, t/a Black & Gold Beer Warehouse, License Number D-SS-2687, (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code,

The investigation which gave rise to the citation began on March 17, 2012 and was completed on March 17, 2012. The notice of violation letter was mailed to Licensee on March 26, 2012.

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

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, 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 Distributor license D-SS-2687.
2. On March 17, 2012, at 8:20 p.m., an enforcement officer conducted outside surveillance of the licensed premises as part of a St. Patrick's Day detail to patrol for minors. (N.T. 9-10)
3. At 9:00 p.m., the officer observed two youthful-appearing males depart the premises, each carrying a 12-pack of Pabst Blue Ribbon beer. (N.T. 10)
4. The officer identified himself to the two males and requested their identification, and found one to be a 20-year-old male minor (J.M.G.) with a date of birth of June 5, 1991. (N.T. 10-13)
5. J.M.G. did not purchase the beer, but carried one case of beer from the licensed premises. (N.T. 15-16, 22, 26)
6. J.M.G. provided a false Ohio driver's license when questioned by the officer and the store clerk as to his age. (N.T. 10-13, Ex. C-5)
7. The clerk told the officer that a Declaration of Age card file is not maintained on the premises. (N.T. 13)

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer testified in detail as to conducting outside surveillance of the premises on St. Patrick's Day, March 17, 2012, and apprehending a 20-year-old male minor (J.M.G.) carrying a 12-pack of beer. The minor had a false adult driver's license; however, the photograph did not match the minor's appearance.

J.M.G. testified that he did not purchase the beer and merely carried one 12-pack of beer to assist his adult friend who purchased the two 12-packs of beers.

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Licensee's clerk testified that she sold the two 12-packs of 24-ounce cans of beer to the adult, and carded J.M.G. when he took possession of one 12-pack. The photograph looked like J.M.G. to the clerk. The premises did not have a Declaration of Age card file. Since the citation, Licensee has obtained Declaration of Age cards and a scanner, and completed R.A.M.P. server/seller training.

On March 8, 2012, the Board issued OPN 12-075 "Distributor Pick-up by Minors," which held that a minor helping an adult carry beer from a distributor is a violation of the Liquor Code.

Because a liquor licensee is strictly liable for this type of violation, I am constrained to sustain the citation.

PRIOR RECORD:

Licensee has been licensed since April 17, 2009, and has no prior violations.

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.

I take administrative notice that on March 17, 2012, Licensee was not R.A.M.P. certified.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$1,100.00 and R.A.M.P. training will be imposed in this case.¹

ORDER:

THEREFORE, it is hereby ordered that Black & Gold Beer Warehouse, LLC, t/a Black & Gold Beer Warehouse, License Number D-SS-2687, pay a fine of \$1,100.00 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.

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

¹ [47 P.S. §4-471(d)], effective June 12, 2006.

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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 12TH 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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