

Mailing Date: NOV 05 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 12-0701C
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-444750
v.	:	
	:	
WTROGERS ENTERPRISES, LLC	:	PLCB LID No.: 59855
T/A MOLLYS COZY CORNER	:	
1324 PROSPECT AVE.	:	
SCRANTON, PA 18505-1788	:	PLCB License No.: R-AP-SS-EHF-14671

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on May 4, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against WTRogers Enterprises, LLC (Licensee).

The citation charges Licensee with a violation 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 one (1) minor, nineteen (19) years of age, on March 28, 2012.

I presided at an evidentiary hearing on September 28, 2012 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 28, 2012 and completed it on March 28, 2012. (N.T. 5)
2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on April 11, 2012. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)
3. A detail of Bureau Enforcement Officers was in the area of the licensed premises on the evening of March 28, 2012 to conduct Age Compliance Program checks. (N.T. 7)
4. Two Officers of the detail entered the premises in an undercover capacity at 8:40 p.m. to ensure the Underage Buyer's safety. The Underage Buyer and Enforcement Officer supervisor were waiting outside. (N.T. 7-8)
5. At 8:47 p.m., the Underage Buyer (born December 28, 1992) entered the premises. He took a seat at the bar. He ordered a twelve-ounce bottle of beer. The bartender served him the beer without question. The Underage Buyer departed the premises leaving the beer on the bar. (N.T. 7-17)
6. The Underage Buyer advised the Bureau Enforcement Officer's Supervisor, who was waiting outside, that he was served. The Supervisor entered the premises. He displayed his credentials. He advised Mr. Roger's, Licensee's President and Manager, that a bartender just served beer to a minor. (N.T. 9-10)
7. The Bureau trained the Underage Buyer in the requirements of the Age Compliance Program. The training included the Program's rules, regulations, and suggested situational responses. The Underage Buyer successfully completed training. (N.T. 11-14)
8. On April 16, 2012, the Bureau sent a Notification of Noncompliance to Licensee at the licensed premises. The Notice advised that an Underage Buyer was served on March 28, 2012. (Commonwealth Exhibit No. C-3, N.T. 24)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau complied with the requirements of the Age Compliance Program [18 Pa. C.S.A. §6308(e) and 6310(c); 37 Pa. Code, Chapter 23].
3. I sustain the violation as charged.

PRIOR RECORD:

Licensee has been licensed since June 6, 2008, and has the following Adjudication history:

In Re Citation No.: 09-1446. Fine \$500.00.

Possessed or operated gambling devices or permitted gambling on your licensed premises (machine) on May 14 and 15, 2009.

In Re Citation No.: 10-1268. Fine \$500.00 and Amusement Permit suspended 7 days.

Used loudspeakers or devices whereby music could be heard outside on May 28, 2010.

In Re Citation No.: 11-1433. Fine \$500.00 and Amusement Permit suspended 7 days.

Used loudspeakers or devices whereby music could be heard outside on July 1, 16 and 17, 2011.

In Re Citation No.: 11-1755. Fine \$500.00 and Amusement Permit suspended 7 days.

Used loudspeakers or devices whereby music could be heard outside on September 3, 2011.

In Re Citation No.: 11-1864. Fine \$500.00 and Amusement Permit suspended 7 days.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (tickets) on September 17, 2011.

2. Used loudspeakers or devices whereby music could be heard outside on September 17, 2011.

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 violation found herein.

This violation, in combination with In Re Citation No.: 09-1446, and Count No. 1, of In Re Citation No.: 11-1864, is the third within four years of the Crimes Code and Liquor Code Section 493(1), as it relates to selling alcoholic beverages to a minor. In accordance with Liquor Code Section 471(c), I am required to impose, at least, a suspension or revocation.

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)

I impose a \$1,500.00 fine and a one day suspension. I further order Licensee to become compliant with the Responsible Alcohol Management Program (RAMP).

ORDER:

In Re Citation No.: 12-0701C; Licensee, WTRogers Enterprises, LLC;
PLCB LID No.: 59855; PLCB License No.: R-AP-SS-EHF-14671

Imposition of Fine

Licensee must pay a \$1,500.00 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.

Imposition of Suspension

I suspend the license, as well as all other permits or licenses issued by the PLCB attendant to the license, for one day. Since the license has not been renewed since October 1, 2012, I defer the suspension. When the license is renewed, I will issue an Order imposing the suspension.

I direct the Licensing Bureau, PLCB, to notify the Office of Administrative Law Judge when the license is renewed.

Mandatory RAMP Compliance

I defer mandatory RAMP compliance until Licensee begins operating by renewing the license.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 1ST day of November, 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