

Mailing Date: MAY 23 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-1651C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-451145
	:	
5207 HO INC.	:	
5207-09-11 FRANKFORD AVE.	:	PLCB LID - 63073
PHILADELPHIA PA 19124-1910	:	
	:	
	:	PLCB License No. R-AP-SS-2227
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 4, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 5207 HO, Inc., License Number R-AP-SS-2227 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, June 5, 2013, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on October 24, 2012, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, twenty (20) years of age.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement was originally assigned this investigation and made a visit on September 12, 2012 to the licensed premises. He remained in his vehicle and conducted an outside surveillance of the licensed premises. The officer was in the area for approximately an hour and a half and did not see any youthful appearing patrons enter or exiting the premises. The officer was there with regard to a complaint for sales to minors. In addition, another officer visited the premises on October 18, 2012 and was at the premises for approximately one hour and found no violations. The officer has been employed as a Bureau officer since January of 2005. He conducted an investigation of the licensed premises visiting the premises on October 24, 2012 for the purpose of conducting an age compliance check (N.T. 8-9).

2. The officer indicated that he and another officer, also from the Bureau of Enforcement, were assigned to enter the establishment in an undercover capacity to insure that it would be a safe environment for an underage buyer to enter and make an attempt to purchase alcoholic beverages. The two officers entered the premises at approximately 8:50 p.m. Shortly thereafter, the officer texted his supervisor and the underage buyer entered approximately five minutes after he sent the text (N.T. 11).

3. The officer noted that the premises had approximately twenty-five to thirty people inside. There was a female bartender tending bar. However, shortly before the underage buyer came in, she left the bar and a second person, who the officer believed to be Mr. Hall, took over behind the bar. The officer took a seat close to the front of the entrance of the bar to the left in the vicinity of the beer coolers. When the underage patron came in, he approached the area near the cooler and requested a twelve ounce can of Bud Light beer (N.T. 11-12).

4. Eventually Mr. Hall came over to him and asked what he wanted. The underage buyer requested the Bud Light beer. Mr. Hall took the beer out of the cooler and charged him \$1.50. Mr. Hall put the money into a working cash register and gave the underage buyer change. The underage buyer took possession of the beer then left it on the bar and departed (N.T. 11-13).

5. The underage buyer left the beer on the bar next to the cooler. The underage buyer presented no identification to the bartender (N.T. 13).

6. The Bureau of Enforcement presented, through the officer, a JNET printout of the underage buyer, E.S., who was born September 11, 1992. The officer testified that E.S. is an underage buyer who purchased alcoholic beverages from the licensed establishment on October 24, 2012. The officer had been involved in approximately thirty to forty details with this underage buyer (N.T. 14-16 and Exhibit B-4).

7. The officer remained undercover during the investigation. Another officer from the Bureau spoke with Mr. Hall and the female bartender who had left shortly before the purchase of alcoholic beverages by the underage buyer (N.T. 16-17).

8. Officer M.R. was the supervisor on the detail of officers that evening. Part of his duties were to be sure that the minor involved had been properly tested and had previous training. The female bartender informed M.R. that she had gone to the restroom and that Mr. Hall was covering the bar during the time of the raid (N.T. 24-26).

9. Lamar Hall is head of security for the licensed premises. At the time of hearing, he had held that position for approximately three years. On the evening of October 24, 2012, the premises was somewhat busy. The bartender went to the restroom and Mr. Hall indicated that he had seen the underage buyer on a previous occasion and therefore served him on that evening (N.T. 28-30).

10. Mr. Hall indicated that he was behind the bar getting ice. He indicated that he did not ask for identification, but that he believed he had seen the individual on a prior occasion about a month before the incident (N.T. 31-32).

11. Since the incident, Mr. Hall had put steps in place to insure there is no reoccurrence of underage sales. Mr. Hall talked to the owner and managers and now has identification scanning machines behind the bar and one at the front desk. The one at the front desk is primarily used during the weekend when the premises is more heavily trafficked (N.T. 34-35 and Exhibit L-1).

12. Mr. Hall indicated that the licensed premises is now R.A.M.P. certified (N.T. 39).

CONCLUSIONS OF LAW:

On October 24, 2012, 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, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

PRIOR RECORD:

Licensee has been licensed since April 27, 2010, and has no record of prior violations.

DISCUSSION:

On October 24, 2012, the Licensee, through an employee, served one minor who was a member of the underage compliance program. Since that time, the Licensee has taken steps to remedy this problem. This security person was behind the bar at the time of the sale, briefly covering for the bartender who had gone to the restroom. All employees need to have R.A.M.P. training and no one should be serving alcoholic beverages without the tools to detect and deter service to minors and intoxicated patrons. The Licensee now has scanner machines and has become R.A.M.P. certified. Under the circumstances, a \$1,100.00 penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 5207 HO, Inc., License Number R-AP-SS-2227, pay a fine of One Thousand One Hundred Dollars (\$1,100.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

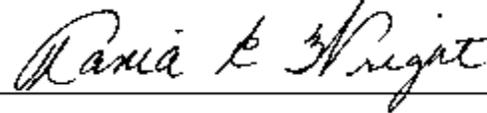
IT IS FURTHER ORDERED that Licensee shall remain in compliance with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management for a period of one year from the mailing date of this Order.

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) of the Liquor Code, 47 P.S. Section 4-471(d).

5207 HO, Inc.
In Re: Citation No. 12-1651C

Jurisdiction of this matter is retained.

Dated this 19TH day of MAY, 2014.



Tania E. Wright, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

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Detach Here and Return Stub with Payment

The fine must be paid by a check drawn on the business or trust account of your attorney, who must be licensed in this Commonwealth, a Treasurer's Check, Cashier's Check or Money Order. **Personal and business checks are not acceptable unless they are certified by your bank.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation (please use the Return Stub when mailing payment or write your citation number on the check) to:

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

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