

Mailing Date: MAR 05 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-1683C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-450654
	:	
CMJ SHEFFIELD INC.	:	
T/A PADDY WHACKS	:	PLCB LID – 57373
2711 COMLY RD.	:	
PHILADELPHIA PA 19154-2101	:	
	:	PLCB License No. R-AP-SS-EHF-8510
	:	
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 11, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against CMJ Sheffield, Inc., t/a Paddy Whacks, License Number R-AP-SS-EHF-8510 (hereinafter “Licensee”).

An Administrative hearing was held on Thursday, July 11, 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 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.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement who has been employed with the Bureau for approximately seven years conducted an investigation of the licensed premises based upon an anonymous complaint for sales to minors. The officer made three undercover visits to the premises, but found no violations on the first two visits. On the two visits to the premises, he remained for an hour and an hour and fifteen minutes. Nothing during the course of either visits led to the issuance of a citation (N.T. 8).

2. On October 24, 2012 at approximately 9:50 p.m., an underage buyer entered the premises as part of the age compliance program. The investigating officer looked at the premises prior to the underage buyer entering to make sure the surrounding area was safe for the underage buyer to enter. He also noted that there was a female bartender on duty. The premises was open and operating. There were patrons on the premises (N.T. 9).

3. The officer was seated along the back wall of the premises. At approximately 10:10 p.m., the underage buyer entered the premises and sat at the long end of the bar. The officer heard the underage buyer request a Bud Light beer from the bartender. She reached behind the bar, gave him the beer and the underage buyer took possession of the beer. After the money was exchanged, the underage buyer put the beer down on the bar and departed the premises (N.T. 11).

4. The underage buyer held the beer and put it back on the bar, but did not consume any of the beer (N.T. 11).

5. After the underage buyer left the premises, an officer from the Bureau entered the premises and spoke with the female bartender. Shortly after, the Enforcement officer left and so too did the investigative officer (N.T. 11-12).

6. The officer presented the JNET file for the minor, E.S., who was born September 11, 1992 and was twenty years of age at the time of his visit to the licensed premises. The investigating officer identified E.S. as the underage buyer who was in the premises and purchased alcoholic beverages on October 24, 2012 (N.T. 12-14 and Exhibit B-3).

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7. A notice of noncompliance was sent to the licensed premises on November 2, 2012 (N.T. 14-15 and Exhibit B-3).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since June 14, 2007, and has a record of prior violations as follows:

In Re:

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

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
February 10, 2008.
2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
February 10, 2008.

Citation No. 08-0889. \$750.00 fine.

1. Sales to minors.
March 19, 2008.
2. Sold and/or served an unlimited or indefinite amount of alcoholic beverages.
March 20, 2008.

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

1. Sales to a minor.
November 15, 2009.

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

1. Sales to minors.
January 13, 2011.

Citation No. 12-0173. Four days suspension.

1. Sales to minors.
February 24, 25 and September 29, 2011.
2. Minors frequenting.
February 24, 25 and September 29, 2011.

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Citation No. 12-0400. \$300.00 fine.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages.
December 31, 2011.

DISCUSSION:

The Licensee was unable to establish a defense as set forth in Section 495 of the Liquor Code. However, while the evidence was legally sufficient to find that an underage buyer did enter the premises and purchase an alcoholic beverage, the Court is concerned (1) that the underage buyer, part of the age compliance program, was not present in Court and instead the Bureau presented the JNET file; and (2) that while the underage buyer is twenty years of age, it is the opinion of this Court that the individual does appear to be much older than his stated age.

This is a strict liability defense and the Licensee did fail to ask for identification from this individual. The JNET file has been determined to be admissible and there was supportive evidence by a Bureau officer that this was indeed the person who purchased alcoholic beverages from the Licensee. However, Licensee did not have the opportunity to examine this witness in Court and neither did the Court have an opportunity to observe the demeanor of this witness.

The Court carefully reviewed the facts of this case and the Licensee's mitigating information, which included a clear house policy against service of minors and intoxicated persons. A review of the Licensee's record indicates that there were numerous prior violations of the same nature, the last one in 2011. However, during the course of the investigation of this premises no violations were found until this underage buyer was sent to the premises.

In that this is the third violation in less than a four year period for sales to a minor, a suspension is mandated. Under the circumstances, a two day suspension shall be imposed, notwithstanding our usual policy of increasing the penalty for subsequent offenses. The circumstances of this case warrant diversion from that policy.

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.

Accordingly, we issue the following

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ORDER:

THEREFORE, it is hereby Ordered that the Restaurant Liquor License of CMJ Sheffield, Inc., t/a Paddy Whacks, License Number R-AP-SS-EHF-8510 (including all permits and Licensee Discount Card), be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, June 9, 2014 and **ENDING** at 7:00 a.m. on Wednesday, June 11, 2014.

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).

Licensee is directed on Monday, June 9, 2014 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.

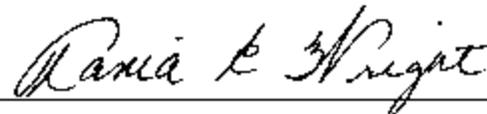
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Wednesday, June 11, 2014 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction of this matter is retained.

Dated this 27TH day of February, 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.

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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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