

Mailing Date: SEP 19 2013

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

PENNSYLVANIA STATE : In re Citation No. 12-1812
POLICE, BUREAU OF :
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W01-452498
 :
v. : PLCB LID No. 50126
 :
700 SE, INC. : PLCB License No. R-SS-228
700 SNYDER AVE. :
PHILADELPHIA, PA 19148-2432 :

JUDGE SHENKLE
BLCE COUNSEL: Eric S. Shmukler, Esq.
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on January 15, 2013. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on December 7, 2012, and one unknown date within the past year, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to three minors between seventeen and twenty years of age.

A hearing was held on July 16, 2013, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. A liquor enforcement officer assigned by the Bureau to investigate Licensee visited the premises twice in the weeks prior to December 7, 2012, and observed no violations (N.T. 6-8).
2. On December 7, 2012, the officer and other officers of the Bureau conducted a surveillance of the licensed premises, beginning at 8:00 p.m. In a little while they saw a vehicle arrive with young-looking people in it. Two men and a woman got out of the car and entered the licensed premises, empty-handed. They came out of the premises carrying five 40-ounce bottles of beer and a 40-ounce bottle of malt liquor. The liquor enforcement officers identified themselves to these people and asked to see identification (N.T. 8-9).

3. One of the people the officers saw was a woman whose birth date was August 22, 1995. She entered the licensed premises on that date, put an ID on the counter, and asked for five 40's of beer and one of malt liquor. She was not asked for identification, but just put the ID down as soon as she walked into the store. The identification was not hers; it was the expired driver's license of a woman whose birth date was November 9, 1988. The clerk looked at the card briefly, handed it back to the woman, and provided the beverages requested (N.T. 15-16, Exhibit B-3).

4. The woman described in the preceding finding of fact is 5'1" tall and has brown eyes. The woman whose expired license she presented was 5'5" and had hazel eyes. The woman who testified did not resemble the woman in the photograph (N.T. 20-21, Exhibit B-3).

5. One of the men who assisted in carrying the beverages out of the licensed premises had a birth date of October 27, 1994 (N.T. 23-24).

6. Licensee had an age declaration card file in the premises on December 7, 2012, but it did not contain a declaration for the woman described above (N.T. 30-32).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on December 7, 2012, by selling alcoholic beverages to one minor, seventeen years of age.

PRIOR RECORD:

Licensee has been licensed since January 10, 2003, and has had prior violations as follows:

In re Citation No. 06-1037. \$250.00 fine.

1. Not a *bona fide* restaurant (insufficient seating). March 20, 2006.

In re Citation No. 09-2266C. \$1,250.00 fine and R.A.M.P. – certification mandated.

1. Sales to a minor. August 20, 2009.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 700 SE, Inc., License No. R-SS-228, shall pay a fine of one thousand five hundred dollars (\$1,500.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 4TH day of September, 2013.



David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

Detach Here and Return Stub with Payment; Note Citation Number on Check

The fine must be paid by cashier's check, money order, or a check drawn on the account of an attorney licensed in Pennsylvania. **Personal and business checks are not acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation, to:

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