

Mailing Date: NOV 26 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 13-0068
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-446530
	:	
	:	
v.	:	
	:	
	:	PLCB LID - 40259
M.A. O'DONNELL ASSOCIATES, INC.	:	
T/A BOWMANSVILLE TAVERN	:	PLCB LICENSE NO. R-AP-SS-20912
1255 READING RD.	:	
PO BOX 801	:	
BOWMANSVILLE, PA 17507-0801	:	

ADJUDICATION

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: MARIANNE O'DONNELL, PRO SE**

BACKGROUND:

This proceeding arises out of a citation that was issued on January 24, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against M.A. O'DONNELL ASSOCIATES, INC., License Number R-AP-SS-20912 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on April 21, 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 minor, twenty (20) years of age.

The investigation which gave rise to the citation began on May 11, 2012 and was completed on December 19, 2012; and notice of the violation was sent to Licensee by Certified Mail on January 7, 2013. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 24, 2013 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Donald Blake Hatch, Jr. (hereinafter Hatch) was born on December 13, 1991, and, on April 21, 2012, he was 20 years old (N.T. 22).
2. Hatch was involved in an automobile accident in the early morning hours of April 21, 2012 and was charged with driving under the influence (N.T. 27 and 35).

CONCLUSION OF LAW:

The charge in the citation is **dismissed**.

DISCUSSION:

The testimony of the minor in this case, Donald Hatch indicates that he was highly intoxicated on the night of the alleged violation. This testimony is inconsistent and indicates to me that he really does not remember what happened on the date in question. Consequently, I give his testimony no weight and must therefore dismiss the citation.

In a liquor license case, the burden is on the Commonwealth to establish a violation by a clear preponderance of the evidence. *In re Omicron Enterprises*, 449 A.2d 857 (Pa.CmwltH 1982).

It is within my province, and is part of my responsibility to determine the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robinson*, 561 A.2d 82 (Pa.CmwltH 1989). I may give testimony such consideration as it may deserve, and accept it or reject it in whole or in part. *McFarland Landscape Service v. Workmen's Comp. Bd. Of Appeal*, 557 A.2d 816, 817-18 (Pa.CmwltH 1989); *Hollenbach v. North Wales Foundry Co.*, 136 A.2d 148, 150 (Pa.Super 1957).

In this case Hatch initially testified on direct examination that he had been drinking Miller Lite beer. He further indicated that he purchased a bottle or two (N.T. 12). Upon being questioned closer about the two purchased bottles he said, "Either that or I was carded when Zach bought pitchers. One of the two. To be honest with you, I really don't remember. It was so long ago." (N.T. 24).

Again in reference to whether he purchased a bottle of two of beer he responded, "Honestly, I really don't remember if I personally purchased a bottle or two of beer for myself. Like I said, I was carded, but I think that that also might be when Zac bought the pitchers. I was with him obviously." (N.T. 24-25).

When he was questioned whether or not he remembered entertainment going on in the bar that night he responded that he didn't remember and said, "I have a bad memory to be honest with you." (N.T. 30).

Upon being questioned as to why his testimony changed from his original statements wherein he indicated he had five or six Miller Lite bottles of beer in the hour he was there, he responded, "It might change because I really don't remember; and I was drunk that night also. I mean I don't exactly remember how many beers I did have." (N.T. 30).

In response to another question on cross examination he responded, "I really don't remember that much from that night. I mean I blacked out..." (Emphasis mine) (N.T. 35).

Further on in his testimony Hatch responded "... but I really don't remember that much from that night." (N.T. 36).

Further in his testimony, Hatch indicated that he didn't remember whether he was drinking bottles or draft beer (N.T. 37).

Based on the foregoing, I find the testimony of this witness to be completely unreliable and I give it absolutely no weight.

Since the Bureau has no other evidence to establish a violation in this case, I conclude that the Bureau has failed to meet its burden and the charge in the citation must be dismissed.

ORDER

IT IS HEREBY ORDERED that Citation No. 13-0068 be **DISMISSED**.

Dated this 19TH day of November, 2013.



Daniel T. Flaherty, Jr., J.

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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.

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.