

Mailing Date: JUN 04 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-0787
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-458645
	:	
4300 DK INC.	:	
4300 WALNUT ST.	:	PLCB LID - 59805
PHILADELPHIA PA 19104-5239	:	
	:	
	:	PLCB License No. D-SS-1725
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 16, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 4300 DK, Inc., License Number D-SS-1725 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, November 21, 2013, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter, the citation and as to the testimony of the investigating officer.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on March 13, 2013 and divers other occasions within the past year, 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 conducted an investigation of the licensed premises. On Wednesday, March 13, 2013 at 5:48 p.m., the officer was in the vicinity of the licensed premises and conducted an outside surveillance. At 6:05 p.m., the officer observed a youthful appearing patron exit the passenger side of a Honda Civic in the parking lot of the licensed premises and subsequently enter the premises. Approximately one minute later, the youthful appearing patron exited the premises in possession of one thirty-pack of Genny Light beer (Exhibit B-3).

2. As the youthful patron was placing the beer into the trunk of the vehicle, the officer approached the youthful appearing patron and identified himself as an Enforcement officer. Upon questioning, the youthful appearing patron quickly admitted that he was twenty years of age. The youthful appearing patron, a minor, was in possession of a false New York Driver's License. The minor informed the officer that he did not present identification on this occasion, but that he had been carded on prior occasions and had used the false identification card (Exhibit B-3).

3. The officer entered the premises with the minor and identified himself to the cashier, Seoul Kim. When the officer asked Mr. Kim if he had requested identification from the minor, Mr. Kim stated, "Oh, no. I forgot" (Exhibit B-3).

4. The officer issued the minor citations for violation of PCC 6308(A), underage drinking, and PCC 6310.3, possession of false identification. The officer had the minor complete a patron questionnaire. The identification card and the thirty-pack of beer were seized and placed onto Property Record No. W1-4018 (Exhibit B-3).

5. On March 26, 2013, the officer sent, or caused to be sent, a notice of violation letter, under the signature of Sergeant Daniel D. Steele, District Office Commander, to the Licensee (Exhibit B-3).

6. A.K. was born December 6, 1992 and was twenty-one years of age as of the date of hearing (N.T. 9).

7. On March 13, 2013, he visited the licensed premises, which he knew to be called University City Beverage. At approximately 6:00 p.m., his friend pulled into the parking lot in front of the establishment. A.K. entered the premises and purchased a case of Genny Light beer (N.T. 8-9).

8. A.K. proceeded to the cash register and paid for the beer and walked outside (N.T. 9).

9. A.K. was not asked to show identification. A.K. had previously shown identification at the licensed premises in the form of an identification card, which purported to be a driver's license from the state of New York. The identification card had his name on it and a different date of birth and a false address. Further, it did belong to A.K. (N.T. 8-12 and Exhibit B-4).

10. A.D. did not present the identification on March 13, 2013, but had shown it on previous dates (N.T. 13-14).

11. The minor had shown identification on previous occasions, but had never signed a declaration of age card (N.T. 15).

12. The minor did not recall the Licensee ever having swiped the identification through a machine (N.T. 15-16).

13. The minor indicated that he had used the identification ten to twenty times in a period of a year at the licensed establishment (N.T. 17).

14. Jonathan Kin is the owner of the licensed premises and had been at that location for approximately six years. He indicated that the minor had come into the establishment on many occasions and that he was previously carded and produced identification (N.T. 20).

15. Mr. Kin indicated that on a prior occasion, he had put the identification through a swipe machine (N.T. 19).

16. Mr. Kin indicates that on a previous occasion when he had carded A.K., the card went through the machine and the machine indicated that the card was valid (N.T. 22).

17. The machine does not have a paper printout, but does have a memory record (N.T. 23).

18. When scanned, the machine gives the Licensee the date and age (N.T. 24-25).

19. No paper printout or a record of the card being scanned was presented in Court (N.T. 23-24).

20. The owner was not present on the date of March 13, 2013 at the time of the minor's visit to the premises (N.T. 24).

CONCLUSIONS OF LAW:

On March 13, 2013 and divers other occasions within the past year, 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 March 20, 2008, and has a record of prior violations as follows:

In Re:

Citation No. 08-1074. \$1,000.00 fine and R.A.M.P. training mandated.

1. Sales to a minor.
April 12, 2008.

Citation No. 11-2051. \$1,500.00 fine.

1. Sales to a minor.
October 20, 2011.

DISCUSSION:

On March 13, 2013, A.K. was not carded at the licensed premises. The minor and sales clerk both indicate that he was not requested to show identification nor did he present identification. The employee's initial response was that he had forgotten to card A.K.

The Licensee was not present on the date of the transaction. While the Licensee and owner both claim to have swiped the identification card, the minor did not recall them having swiped the card nor did he recall ever signing a declaration of age card. One means to establish a defense under Section 4-495 of the Liquor Code is that Licensee must show that the minor was required to present an identification card, and that the card was identified as valid by the transaction device and relied upon in good faith.

Section 4-495(f) requires a visual presentation and although Section 4-495(g) has no such requirement, it does require the Licensee to establish that the minor was required to produce a valid identification card and one was scanned. In this instance, the Court is not satisfied with the Licensee's reliance on memory, as opposed to demonstrable or documentary evidence, particularly where the minor witness did not recall the identification ever being scanned.

4300 DK, Inc.
In Re: Citation No. 13-0787

Licensee's defense fails in that the identification card was not requested or presented on March 13, 2012, the date of violation. The Court is satisfied that the identification card was presented in the past, but is not convinced that its validity was verified by the scanning device. In that the Licensee has a prior record of violations, a \$2,000.00 monetary 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.

Accordingly, we issue the following

ORDER:

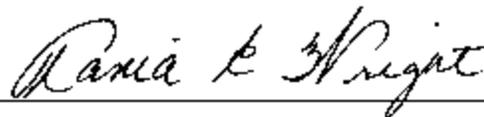
THEREFORE, it is hereby Ordered that Licensee, 4300 DK, Inc., License Number D-SS-1725, pay a fine of Two Thousand Dollars (\$2,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us) within thirty (30) days of the mailing date of this Adjudication in order to receive assistance in the compliance process. Licensee must receive Certification within ninety (90) days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

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).

Jurisdiction of this matter is retained.

Dated this 28TH day of MAY, 2014.



Tania E. Wright, J.

4300 DK, Inc.
In Re: Citation No. 13-0787

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.

mm

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

The fine must be paid by Treasurer's Check, Cashier's Check, Money Order or a check drawn on the business or trust account of an attorney, who must be licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless they are certified by your bank.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

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

Credit/Debit Cards may be used: visit www.lcb.state.pa.us and look under LEGAL/Office of ALJ for instructions.

In Re: Citation No. 13-0787
4300 DK, Inc.