

Mailing Date: AUG 08 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1017
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-455275
	:	
COBB'S SPIKES INC.	:	
3517 COTTMAN AVENUE	:	PLCB LID - 64197
PHILADELPHIA PA 19149-1607	:	
	:	
	:	PLCB License No. R-AP-SS-7536
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 14, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Cobb's Spikes, Inc., License Number R-AP-SS-7536 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, December 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 March 20, 2013, 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 by visiting the premises at approximately 10:50 p.m. on Wednesday, March 20, 2013 at 10:50 p.m. The officer conducted an investigation based upon complaints for sales to minors at that location. The officer entered the premises after showing identification. The officer observed approximately twenty-five patrons, some appeared to be youthful. As he entered, there was a bar to the left and a bar to the back. The officer proceeded to the back. After making observations in the premises, the officer contacted the shift supervisor in order to have a team of officers enter the premises (N.T. 11-12).

2. The officer who initially entered the premises remained undercover during the investigation. The officer purchased a beer at the back bar and remained in the back bar area (N.T. 12-14).

3. A second officer from the Bureau of Enforcement, who has been employed with the Bureau for approximately one year, entered the premises on Wednesday, March 20, 2013. The officer was a part of the minor patrol, which consisted of two undercover officers who entered the premises prior to the key officer entering (N.T. 15-17).

4. One minor was observed on the licensed premises. She was ultimately identified as M.K. The officers requested an identification card to verify her age. She provided a Pennsylvania driver's license, which stated that she was twenty years of age. The officers observed her sitting at the bar with a Bud Light beer in front of her. None of the officers saw her consume any beer from that bottle during the investigation (N.T. 18).

5. The Bureau received a certified document from J-Net with regard to M.K. indicating that her date of birth was March 23, 1992. She was twenty years of age at the time of the investigation (N.T. 19).

6. The officers were able to verify that the photograph, the J-Net and the identifying information was in fact M.K. (N.T. 23).

7. Shawn Brubaker works at the licensed premises. On March 20, 2013, he was on duty. He recalls that M.K. came into the establishment with someone who had previously worked there as a bartender. He allowed her to come in because he had previously carded her on Friday night. On the weekend, they use a scanner or the identification is swiped at the door. He recognized that the identification as the one shown to him on a previous night and that the identification had scanned as valid (N.T. 40-41).

8. The Enforcement officer was shown what purported to be a Pennsylvania Driver license in the name of M.K. The officer compared it to the J-Net document and it appeared to have the same address, signature, a different photo, but it was still recognizable as the same person. The date of birth appeared as March 23, 1990. On the J-Net it appeared as March 23, 1992 (N.T. 27-28 and Exhibit B-3).

9. On the night of March 20, 2013, the officer conducted an interview with M.K. and questioned her as to whether she was in possession of false identification. She indicated she was not in possession of false identification. She was not observed purchasing or consuming beer (N.T. 25-28 and Exhibit L-1).

10. The officer testified that he believed that L-1 is not a valid license in that the seal is bubbled, the font appeared to be different and also the color saturation. He also indicated that the material appeared to be different. The officer was not able to tell the Court whether it was more or less flexible, hard, soft, light or heavier (N.T. 31-32).

11. Subsequent to March 20, 2013, and after turning twenty-one, M.K. visited the premises. M.K. gave the sole corporate officer the false identification, which he brought to Court (N.T. 49-50 and 58-59).

12. The sole corporate officer stated that he has a slight bubbling on his own identification and he thought the front to be the same except it had some discoloration (N.T. 51).

13. The Licensee has a scanning device on the premises. After he retrieved the card from M.K., he scanned the identification card, and it scanned as valid (N.T. 52).

14. The Licensee presented the scanning device in Court that purported to have been in use at the licensed premises. Licensee conducted an in Court demonstration, scanning the identification card of M.K. It scanned as valid showing the name, M.K., identification number, photo, the last visit, which indicated 12-11, and the age as twenty-three. The information remains in there until the machine is saturated with other information (N.T. 56-57).

15. The Licensee's attorney and the Bureau attorney acknowledged that they had scanned the identification card earlier in the day, prior to the in-Court demonstration and it scanned as valid (N.T. 58-59).

CONCLUSIONS OF LAW:

There is insufficient to conclude that on March 20, 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).

DISCUSSION:

Licensee's counsel raises a defense under Section 495 of the Liquor Code, 47 P.S. §4-495(g) claiming that the identification card presented by the minor, i.e. driver's license, was authenticated, with the scanning device. Further, the defects of the identification card, pointed out by the officer, in all likelihood could only be discerned by an expert. The Licensee then argues that they accepted what was seemingly a valid identification and that this identification, when going through the transactional scanning device, was determined to be valid. The identification was scanned Friday previous to Wednesday, March 20, 2013, the night of the police raid, and was fresh in the mind of the door person. The doorman saw M.K. on that night, and he still had the information with regard to the license available to him.

The Licensee was able to obtain the identification card from the then minor, who returned to the premises after she turned twenty-one. Licensee argued to the Court that whatever the differences in the fake identification and real identification were, they would only have been detected by an expert and demonstrated that the particular identification card did scan as being valid. The information which the scanning device deciphered from the magnetic strip was that which appeared on the card and indicated that the holder was twenty-three years of age. In actuality, the holder of the card was days shy of her 21st birthday.

The Bureau argues that Licensee did not establish a valid defense under §495, arguing that the defense requires reasonable reliance by the employee utilizing the scanning device. The Bureau determined that the Licensee could not reasonably rely on the authenticity of the identification card and thus did not meet the good faith requirement. The Bureau contends that a doorman should have known M.K.'s identification card was a fake.

The Court does not agree that there was anything overtly suspicious about the identification or that it had the common indicia of a fake identification card. With a very discriminating eye, and a close examination and comparison with an actual Pennsylvania driver's license, one may have been able to determine that there were indeed slight differences. However, Licensee may have muddled its defense in not scanning the identification card on the night of the offense, but asserts that the device retains the information, at least until its memory is saturated.

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Notwithstanding any possible defects in the Licensee's defense, the Court does not find the evidence sufficient to sustain the charges. The citation charges that Licensee served a minor; Licensee is not charged with permitting the minor to frequent the premises. The minor did not appear in Court and, as is frequently the case, the Bureau utilized the computer generated J-Net file, from the PA Department of Transportation, to establish the age of the minor. However, the Court did not find that there was competent or reliable evidence to establish that the minor was served while on the licensed premises. The Licensee was not observed serving the minor; the minor was not observed consuming alcohol on the premises nor was the minor observed in physical possession of any alcoholic beverage. There was no reliable evidence that the minor purchased an alcoholic beverage or that an alcoholic beverage was purchased for or given to her on the licensed premises on March 20, 2013.

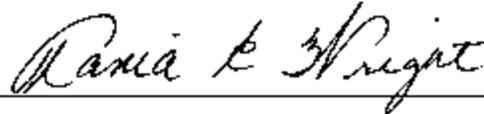
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Citation No. 13-1017 is DISMISSED.

Jurisdiction of this matter is retained.

Dated this 25TH day of JULY, 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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