

Mailing Date: MAR 27 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 13-1347C
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-462185
	:	
v.	:	PLCB LID No. 52723
	:	
KOOMA, INC.	:	PLCB License No. R-AP-SS-20020
149-151 W. GAY ST.	:	
WEST CHESTER, PA 19380-2914	:	

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE: no appearance

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 2, 2013. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on May 29, 2013, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one minor, nineteen years of age.

At the hearing scheduled for February 11, 2014, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

**FINDINGS OF FACT:**

1. The Bureau investigated Licensee during the period May 29 through May 31, 2013, and sent it written notice of the results on June 13, 2013 (N.T. 12-13, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on July 2, 2013 (N.T. 13-14, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on December 24, 2013.
4. On May 29, 2013, a man whose birth date was April 17, 1994, who was participating in the Bureau's age compliance check program, entered the licensed premises at about 8:42 p.m. and sat at the bar. A bartender approached him and the man asked for a draft beer. The bartender asked for identification. The man presented his Pennsylvania junior driver's license. The bartender looked at it, returned it, and served the beer requested. The man paid, took possession of the beer by holding onto it momentarily, and then left the premises without drinking any beer (N.T. 15-17).
5. At 9:50 p.m. a liquor enforcement officer entered the licensed premises and informed Licensee's personnel of the violation (N.T. 9-11).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

I raised a question at the conclusion of the hearing regarding *Erie Sports Bar, Inc., v. PSP, BLCE*, 6 A.3d 663 (Pa. Cmwlth. Ct., 2010): whether a delay of one hour and eight minutes between the purchase by the Underage Buyer and the verbal notification required by 37 Pa. Code §23.1 complies with the requirement of “immediate verbal notification.”

Counsel for the Bureau has pointed out that in *Erie Sports Bar* there was no verbal notification at all; I agree this is a significant distinction. As counsel has advocated, I will follow the example set by Judge Wright in *Kildare’s West Chester, Inc.*, No. 10-2388C, and find that the verbal notification given in this case was timely.

PRIOR RECORD:

Licensee has been licensed since September 16, 2005, and has had three prior violations:

In re Citation No. 06-1392C. \$1,250.00 fine.

1. Sales to a minor.

In re Citation No. 08-2162. \$400.00 fine.

1. Loudspeaker could be heard outside. June 20 and August 15, 2009.

In re Citation No. 09-2360X. \$100.00 fine.

1. Bad checks in payment for malt or brewed beverages. August 5, 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, Kooma, Inc., License No. R-AP-SS-20020, 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 14<sup>TH</sup> day of MARCH, 2014.

  
David L. Shenkle, J.

**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 business or trust 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