

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. This citation arose out of an Age Compliance Check conducted at the licensed premises on May 31, 2013 (N.T. 11-12).
2. On May 31, 2013 at 9:05 p.m., an officer of the Bureau entered the licensed premises, together with a second officer of the Bureau. Upon entry the officers observed one patron at the counter (N.T. 13).
3. The officers determined that it was safe for the underage buyer to enter the licensed premises, and they observed the underage buyer enter (N.T. 13).
4. The underage buyer, whose date of birth was August 17, 1994, and, who was 18 years old on May 31, 2013, entered the licensed premises. He walked over to the "to go" counter, obtained a six pack of Miller Lite beer in 12-ounce bottles and took it to the counter (N.T. 25).
5. The Licensee, Mrs. Picarella, was behind the register. She questioned the age of the underage buyer, but never asked for identification. The underage buyer told her he was 21 years of age, but never produced actual identification (N.T. 25).
6. The underage buyer paid for the beer. He gave Mrs. Picarella \$10.00 in U.S. currency and received \$2.50 in change (N.T. 25-26).
7. After paying for the six-pack of beer, the underage buyer took the six-pack along with the change and went outside to the officers, who were part of the Age Compliance Check team (N.T. 26).
8. The customary hours for the licensed premises are from 3:00 p.m. until 9:00 p.m. (N.T. 32).

CONCLUSION OF LAW:

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

DISCUSSION:

The record establishes that an Age Compliance Check was conducted at the licensed premises on May 31, 2013 beginning at 9:05 p.m. An underage buyer entered the licensed premises and purchased a six-pack of beer. He was challenged as to his age, but never provided identification. He was served by the Licensee on the basis of his representation that he was 21 years old.

Licensee argues that a violation cannot be found in this case due to the fact that the Age Compliance Check began at 9:05 p.m., which was five minutes after their normal closing time. Licensee bases her argument upon Subsection (d) of Section 23.22(d) of the Regulations [47 Pa. Code §23.22(d)]. This Subsection of the Regulations states as follows:

(d) The Age Compliance check shall be conducted at the licensed premises during regular business hours.

Licensee argues that since her regular business hours are from 3:00 p.m. until 9:00 p.m., the Bureau of Enforcement was not authorized to conduct this Compliance Check after that time. I disagree. The “regular business hours” as indicated above are, in my opinion, not the business hours of the Licensee, but the regular business hours for liquor licensees, which in this case, since Licensee is a restaurant liquor licensee, from 7:00 a.m. until 2:00 a.m. the next morning. Moreover, Licensee was conducting business at 9:05 a.m. when it sold to the minor; its posted “business hours,” notwithstanding.

Based on the foregoing, I conclude that the operation conducted by the Bureau of Enforcement, in this case was an authorized Age Compliance Check, and the charge in the citation must be sustained.

PRIOR RECORD:

Licensee has been licensed since May 10, 1983, and has had one prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

IN RE:

Citation No. 93-1019. Fine \$50.00.

1. Permitted a minor under 18 years of age to render service in connection with the service or delivery of alcoholic beverages.
2. Employed a minor under 16 years of age.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or 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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00 and mandatory RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee ELIZABETH A. PICARELLA, pay a fine of \$1,250.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 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. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us) within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 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.

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. §4-471(d)].

Jurisdiction is retained.

Dated this 8TH day of December, 2014.



Daniel T. Flaherty, Jr., J.

an

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.

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

IN RE: CITATION NO. 13-1362
ELIZABETH A. PICARELLA

Credit/debit cards may be used: visit www.lcb.state.pa.us scroll over LEGAL and then click on Office of ALJ for instructions..