

Mailing Date: OCT 27 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1443
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-459434
	:	
MDC ENTERPRISES, INC.	:	
384 SHURS LANE	:	PLCB LID - 42159
PHILADELPHIA, PA 19128-3534	:	
	:	
	:	PLCB License No. R-SS-11419
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EDWARD B. McHUGH, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 16, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MDC Enterprises, Inc., License Number R-SS-11419 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, January 30, 2014, pursuant to requisite and appropriate hearing notice. This hearing was bifurcated and heard again on Wednesday, May 28, 2014. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Section 493(14) of the Liquor Code, 47 P.S. §4-493(14), in that on June 2, 2013, and divers other occasions within the past year, Licensee, by its servants, agents or employes, permitted two (2) minors, twenty (20) years of age, to frequent the licensed premises.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on June 2, 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.

#### COUNT NOS. 1 AND 2

#### FINDINGS OF FACT:

1. The Bureau conducted an investigation of the licensed premises and visited the premises on April 4, 2013, April 18, 2013, May 12, 2013 and May 30, 2013. The premises was open and operating on three of those dates, however, the premises was closed on May 12, 2013. The officers observed no violations on any of those dates (N.T. 6-7, stipulation by the parties).

2. An officer from the Bureau conducted his investigation of the licensed premises on the day of the Manayunk Bike Race. The officers were present for the compliance of liquor laws including underage drinking in the establishments and on the streets (N.T. 9 - January 30, 2014).

3. At approximately 5:25 p.m. on June 2, 2013, Officer J.C. and his partner Officer D.C. entered the licensed premises on the instructions of their supervisor who directed them to check the premises. The officers walked to the front bar and noted a dining area in the rear of the establishment. When they entered, no one was there. The officers took a seat and approximately twenty minutes later, they observed two females enter the premises and sit in the dining area (N.T. 9-10 - January 30, 2014).

4. When the officers entered the premises, they were in plain clothes and not displaying any identification as police officers. Around 5:50 p.m., when the women entered and took a seat at the table, the waitress came up to them and asked if they wanted anything to eat or drink. They ordered something to eat and each of them ordered an alcoholic beverage. The officers were seated approximately fifteen feet from the female patrons (N.T. 11 - January 30, 2014).

5. The server requested identification from them and the two ordered Coors Light beer. It was served to them in a plastic white cup labeled Bud Light (N.T. 11-12 - January 30, 2014).

6. Approximately five minutes after the two females entered the premises, the group of four males entered the premises and approached the table where the two females were seated. A male sat directly next to one of the females who had already been served alcoholic beverages. One of the females, B.O., who was later determined to be over the age of twenty-one, handed the cup of Coors Light to N.B. who was later determined to be only twenty years of age. The officer observed N.B. consume the alcohol and it remained constantly in his possession for about five minutes. The other female also retained her cup (N.T. 12-13, 16-17 - January 30, 2014).

7. The server came back to the table and asked the group if they wanted anything to eat or drink. They all declined (N.T. 13 - January 30, 2014).

8. The officers contacted their supervisor who entered and walked over to the table. The officers identified themselves and determined that B.O. was twenty-one years of age or older. It was determined that N.B. was twenty years of age and T.B., who appeared to be intoxicated, but wasn't served any alcoholic beverage on the premises, was also twenty years of age. N.B. and T.B. were both issued citations for underage drinking (N.T. 13-14 - January 30, 2014).

9. There were approximately thirty people on the premises and was busy likely due to the bike race (N.T. 16-17).

10. They also believed that the group of four males entered through the side entrance, but the young women entered through the front (N.T. 18 - January 30, 2014).

11. The officer did not see the group served, but heard them order Coors Light beer. They were in possession of the cups and at some point, the officer saw the cups and smelled the contents (N.T. 20 - January 30, 2014).

12. The officer indicated that the seating area contained thirty or forty people, but there were only two tables, his table and the table with the six individuals. The premises was crowded in the front, but was not crowded in the rear area where they were seated (N.T. 22 - January 30, 2014).

13. N.B. was born September 9, 1992 and as of the time of hearing was twenty-one years of age. He is familiar with the licensed premises and worked there from January to August of 2011. He came into the bar on June 2, 2013. He was selling t-shirts for a charitable cause, saw some friends and went inside and sat at the table. He was given beer by a friend (N.T. 28 - January 30, 2014).

14. N.B. had been in the premises on occasion since he stopped working there, however, he was not served alcohol by employees, but was given Coors Light beer by friends on the premises on June 2, 2013 (N.T. 30 - January 30, 2014).

15. Dana Strunk was at the licensed premises and was there as a server for approximately two and a half years. On June 2, 2013 at approximately 6:00 in the evening, she was working as a server (N.T. 6-7 - May 28, 2014).

16. Dana Strunk recalled two younger men walking in and ordering beers. She requested identification from them and then she walked away to get the beer. When she returned, they ordered food. She then left to get the food order. Two female women did show identification and were twenty-one years of age or older (N.T. 7-8 - May 28, 2014).

17. She recalled that they ordered Coors Light beers and french fries, but does not recall the remainder of the order (N.T. 8-9 - May 28, 2014).

18. Dana Strunk was serving other customers in addition to the two young women (N.T. 9 - May 28, 2014).

19. The premises had an unlocked side entrance which patrons were permitted to move in and out of (N.T. 9 - May 28, 2014).

CONCLUSIONS OF LAW:

Count No. 1 - On June 2, 2013, and divers other occasions within the past year, Licensee, by its servants, agents or employes, permitted two (2) minors, twenty (20) years of age, to frequent the licensed premises, in violation of Section 493(14) of the Liquor Code, 47 P.S. §4-493(14).

Count No. 2 - On June 2, 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 July 27, 1998, and has a record of prior violations as follows:

In Re:

Citation No. 03-1186. \$300.00 fine and Verification conditions corrected.

1. Operated the licensed establishment without a valid health permit or license.

Citation No. 05-1948X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 05-2470X. \$200.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 09-2962X. \$300.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.  
October 23, 2009

DISCUSSION:

Counsel for Licensee asked the Court to review the testimony of the *State Police v. J.E.K. Enterprises, Inc.* 680 A.2d 53 (Pa.Cmwlth. 1996) wherein the Commonwealth Court found that in this case with a visibly intoxicated person, something more than mere consumption had to be shown in order to find a violation with regard to service to a visibly intoxicated person. The Court distinguished this matter from *P.L.C.B. v. Abraham*, 541 A.2d 561 (Pa.Cmwlth. 1988), where the license was suspended because a minor was furnished with alcohol by an adult third party on the premises, even though the Licensee claimed not to have been aware that it was occurring. The Court found that it is not unlawful for a visibly intoxicated adult to be in a licensed premises.

Here, a minor was unlawfully on the premises and while there consumed an alcoholic beverage. The Court finds that the Licensee permitted alcoholic beverages to be furnished or given to a minor and failing to prevent that minor from being served on the premises. The facts of this case indicate that there was an event being held in the community and that there were a lot of people on the street and even in the licensed premises. The minor accessed the premises through an unlocked side door, which the Licensee permitted to be used by patrons. There was apparently no one attending to this point of ingress and egress. While the waitress was putting in an order, the minor entered the premises and then consumed an alcoholic beverage that was provided by a young woman who was over the age of twenty-one.

The server indicates that she did not know that they were on the premises until the officer brought it to her attention. The server testified credibly that she in fact went to the table and asked the additional patrons if they wanted anything to eat or drink and they declined. At a time when it was known to be busy and that people would be coming into the premises, it would have been prudent of Licensee to insure that they checked identification not just at the table, but at the door. If they were going to allow other points of entry to the premises, someone should have been responsible for checking identification at that point.

Under the circumstances, the Court finds that Licensee is in violation. However, given the circumstances, a minimum 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.

MDC Enterprises, Inc.  
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That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,000.00.

Count No. 2 - \$1,000.00.

Accordingly, we issue the following:

ORDER

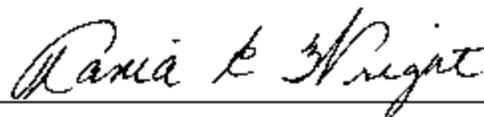
THEREFORE, it is hereby Ordered that Licensee, MDC Enterprises, Inc., License Number R-SS-11419, pay a fine of Two Thousand Dollars (\$2,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of 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](http://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 15<sup>TH</sup> day of October, 2015.



Tania E. Wright, J.

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

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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

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MDC Enterprises, Inc.