

Mailing Date: JUN 13 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 13-1538
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-463113
	:	
v.	:	PLCB LID No. 59805
	:	
4300 DK, INC.	:	PLCB License No. D-SS-1725
4300 WALNUT ST.	:	
PHILADELPHIA, PA 19104-5239	:	

JUDGE SHENKLE
BLCE COUNSEL: Andrew R. Britt, Esq.
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 6, 2013. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on June 15, 2013, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one minor, nineteen years of age.

A hearing was held on April 10, 2014, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Liquor enforcement officers maintained an outside surveillance of the licensed premises beginning at 8:25 p.m. on June 15, 2013. They saw a youthful man carry two cases of beer from the distributorship. An officer identified himself to the man and requested identification. The man displayed his genuine Pennsylvania driver's license, which showed him to be a minor. The officer asked the man if he had any fake ID, and the man said no (N.T. 5-8).

2. The man's birth date was August 6, 1993, so he was nineteen years old. He had retrieved two cases of beer in the premises and brought them to the counter. When his age was questioned he presented a fake identification showing his age to be 21. The cashier swiped the identification and then requested money for the beer, which the minor paid (N.T. 19-22).

3. The fake identification the man used was a counterfeit Maryland driver's license, bearing the man's own photograph and his correct birthday, but a different year. His name was on a list of people at Penn ordering such fake identifications. The purported license had the man's name but an address in Maryland which the man thought was made up. It looked just like a Maryland driver's license, with a hologram on the front and a magnetic strip on the back. It may also have had the type of strip which is read by a laser. After this incident, the man destroyed the ID and put it in the trash (N.T. 21, 26-29).

4. The owner of this licensed corporation was at the cash register in the premises when the man described above made the purchase. A majority, perhaps 95%, of his customers are students at Penn, Drexel, or USP. There are a large number of foreign students among them. Licensee has been carding its customers for at least four years, using a scanner. Signs posted in the premises inform everyone that identification will be required, so most customers have ID ready (N.T. 31-32).

5. June 15, 2013, was busy at the licensed premises. The owner requested the man's identification and scanned it. The device said that his age was 21. Usually, fake ID's will not display an age when the scanner is used, but sometimes they do work. When the officer came into the premises with the man who had purchased the beer, the owner was scared. The officer said "yo buddy, yo, you sold to minor. That's what I remember him saying. And I said, 'what do you want me to do, I check his ID.'" (N.T. 33-34).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on June 15, 2013, by selling alcoholic beverages to one minor, nineteen years of age.

No penalty may be imposed for this violation because:

- a) The minor was required to produce an identification card as set forth in 47 P.S. §4-495(a), and
- b) The identification card was identified as a valid card by a transaction scan device, and
- c) The identification card and transaction scan results were relied upon in good faith, as set forth in 47 P.S. §4-495(g).

DISCUSSION:

There were differences between the testimony given by the enforcement officer and that given by Licensee's owner, as to the precise events which occurred after the officer and the minor returned to the premises to inform the cashier of the violation. These were minor details which did not detract from the account given by the owner, which was confirmed by the minor.

We do not have the benefit (which we often do in cases of this kind) of seeing the actual identification card used by the minor, but this is not a requirement for a defense under 47 P.S. §4-495(g). I would also prefer that approved transaction scan devices be required to retain and print out on demand a record of any transaction for which they have been used.

The statute in question has been interpreted by the Board's Chief Counsel, in response to a licensee's request for a recommendation as to the brand of device to purchase:

In response to your specific question about the best place to purchase transaction scan devices, and the best kind to acquire and use in order to protect the bar you manage, the Board does not have a list of approved transaction scan device vendors. So long as the transaction scan device used is a device capable of deciphering, in an electronically readable format, the information encoded on the magnetic strip or bar code of an identification card, in accordance with section 495(g) of the Liquor Code, you will have satisfied the statutory requirements.

-- LCB Advisory Opinion No. 11-471

Based on competent evidence which I believe, I find that Licensee's owner relied in good faith on the report of a transaction scan device which met the requirements of the law.

The circumstance that the identification presented was actually counterfeit is of no importance. The word "valid" in 47 P.S. §4-495(a) refers to facts which appear on the face of the document being evaluated; i.e., does it have the appearance and characteristics of a valid identification? That is, it was not expired on the date it was presented, appears genuine, and bears the picture of the person attempting to make the purchase.

I find that these requirements were met in this case.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 13-1538 is DISMISSED.

Dated this 4TH day of JUNE, 2014.



David L. Shenkle, J.

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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.