

Mailing Date: JAN 06 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation Nos. 13-1413,
LIQUOR CONTROL ENFORCEMENT	:	13-1601 & 13-1639
	:	(Consolidated for Hearing
	:	Purposes Only)
	:	
v.	:	BLCE Incident Nos. W01-456825
	:	W01-463295 & W01-463310
	:	
LINCHEN 4315 INC.	:	
4315 MEGARGEE ST.	:	PLCB LID - 65722
PHILADELPHIA PA 19136-2135	:	
	:	
	:	PLCB License No. D-SS-2961
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of citations that were issued on July 16, 2013, August 13, 2013 and August 27, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Linchen 4315, Inc., License Number D-SS-2961 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, December 17, 2013, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citations are as follows:

Citation No. 13-1413

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on May 24, 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, nineteen (19) years of age.

Citation No. 13-1601

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on June 21, 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 three (3) minors, eighteen (18) and nineteen (19) years of age.

Citation No. 13-1639

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on July 4 and 5, 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, nineteen (19) years of age.

CITATION NO. 13-1413

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. On the officer's first visit to the premises, May 24, 2013, he arrived at approximately 7:55 p.m. and parked across the street from the licensed premises, in a small shopping center parking lot (N.T. 6-7).
2. At approximately 8:30 p.m., the officer observed a 1998 Mercury Villager minivan bearing Pennsylvania registration EBB-1957 and there were four youthful appearing patrons inside (N.T. 7).
3. The officer observed an individual later identified as F.M. and his birthdate was later established as January 4, 1994. He entered the premises and proceeded towards the alcoholic beverages (N.T. 7-8).

4. Two to five minutes later, the officer observed the individual make two trips to the car carrying a thirty pack of Keystone Light, one thirty pack of Bud Light and a twenty-four pack of Bud Light lime. While F.M. was loading the alcoholic beverages in the minivan, the officer approached the vehicle and spoke with F.M. The officer determined and confirmed that the three individuals inside the car were all under the age of twenty-one. At that time, the officer completed a patron questionnaire with F.M. and issued him a non-traffic citation for possession of alcoholic beverages (N.T. 8-9).

5. The officer then seized the alcoholic beverages and contacted F.M.'s parents. The officer subsequently released F.M. The officer then went inside and notified the owners of the licensed premises that they had made a sale to an underage patron (N.T. 9).

6. The Licensee did not have any declaration of age card file, but did have a scanning device on the premises (N.T. 9-10).

7. F.M. was born June 4, 1994 and visited the licensed distributor on May 24, 2013. F.M. went to the refrigerator and grabbed Keystone and Bud Light beer, paid for it and left the premises. F.M. was nineteen years of age on May 24, 2013 (N.T. 13).

8. No one asked F.M. for identification on this occasion. F.M. had previously purchased alcoholic beverages at the licensed premises three to four times, but denies ever presenting any identification to the Licensee (N.T. 14).

CONCLUSIONS OF LAW:

On May 24, 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, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

CITATION NO. 13-1601

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. He made two visits to the premises, the first one on Thursday, June 20, 2013 and parked his car across the street and conducted a surveillance of the premises. He remained in that location for approximately one hour. He found no violations (N.T. 23-24).

2. On Friday, June 21, 2013 at approximately 6:55 p.m., the officer again went to the licensed premises and parked in a parking lot across the street and continued to conduct a surveillance of the premises (N.T.24).

3. The officer observed a 2007 silver colored Buick, four-door vehicle with Pennsylvania tags. The officer noted that there were three youthful appearing patrons inside the car. The driver was identified as A.C., who was under the age of twenty-one years old. The two occupants in the car were also under the age of twenty-one (N.T. 24-25).

4. The officer saw A.C. enter the licensed premises. Approximately two minutes later, A.C. came out of the premises in possession of a thirty pack of Miller High Life beer. The officer pulled up next to the car, identified himself and asked for identification from the driver. A.C. handed him a card, which indicated that it was an Ohio personal identification card (N.T. 25).

5. The officer seized the thirty pack of Miller High Life beer and issued A.C. a Philadelphia non-traffic citation for possession of false identification and possession and purchase of alcoholic beverages (N.T. 25-26 and Exhibit B-3).

6. The identification clearly says that it is not for use for any restricted purchases and is not issued by the government. The birthdate on the card is indicated as April 1, 1990, which would have made the holder twenty-three years of age (N.T. 26-27 and Exhibit B-3).

7. Down at the premises, the server met the officer outside and indicated that the individual had been carded. The officer then questioned them as to whether or not the Ohio personal identification card was the one that was presented and the server indicated that it was. The officer showed them the identification and explained that it was not a valid identification card (N.T. 28 and Exhibit B-3).

8. The officer departed the premises approximately 7:40 p.m., but returned around 8:30 p.m. on the same evening and continued the surveillance of the premises. The officer observed two vehicles aggressively driving through the beer distributor parking lot. The officer determined that one car was driven by C.C., who was born on February 27, 1995 and was eighteen years of age. The second car was driven by K.G. who was seventeen years of age. There were four other occupants in the vehicle and one other occupant in A.C.'s vehicle (N.T. 29).

9. The officer observed both cars parked on the side of the premises and C.C., who was eighteen years of age, went inside the licensed premises. He was empty handed when he went in, but approximately two to three minutes later, he came out with a thirty pack of Keystone Lite beer (N.T. 29).

10. The officer observed him walk up to one of the vehicles and hand the thirty pack of beer through the back window to the passengers. The officer pulled up behind the cars, got out and identified himself to the individuals (N.T. 30).

11. Five individuals in the one vehicle were all underage juveniles, sixteen to eighteen years of age. C.C. showed the officer what appeared to be a Pennsylvania driver's license, however, when questioned regarding the license, C.C. admitted that he was eighteen years of age. The officer issued all passengers a citation for possession of alcoholic beverages. The officer also contacted the juvenile's parents and released him to his parents. C.C. was issued a Philadelphia traffic citation for purchasing the alcoholic beverage and also possession of fictitious identification (N.T. 30-31).

12. The officer met with the owners of the premises. He showed them the identification card and the officer explained how he compared the card to an actual driver's license. He pointed out that the identification had a fake crease in it and the hologram is not perfect. The font is slightly different. There were some quotation marks next to the height, which were scrolled and curled (N.T. 31-32 and Exhibit B-4).

13. While still in the premises, the officer observed S.C. with a date of birth of July 24, 1993. He entered the premises and walked to the freezer and obtained two cases of Bud Light beer, twelve ounce cans, and brought them to the counter. The clerk asked him for identification and he showed him a Pennsylvania driver's license, which the officer immediately recognized as a card from the same source as the other fake Pennsylvania driver's license. When the officer questioned him, he had admitted he was under the age of twenty-one (N.T. 33).

14. The clerk asked the individual for identification. Once she handed it back to S.C., the officer then asked him for the identification. Once the officer determined that the identification was fake and that S.C. was under twenty-one years of age, he issued him a citation for attempting to purchase alcoholic beverages and possession of false identification. No money changed hands for the purchase (N.T. 33-35).

15. A.C. was born April 1, 1994 and visited the licensed premises over ten times to purchase alcoholic beverages. On June 21, 2013, he purchased a Miller High Lite beer from the licensed premises. He showed the identification card to the clerk when asked and to the officer outside. He indicated that on previous occasions, when he had been in the premises, he was not asked for identification (N.T. 35-38).

16. S.C. was born July 24, 1993 and was twenty years old as of the date of hearing. He indicated that he had been in the licensed premises thirty or so times and purchased alcoholic beverages on June 21, 2013 (N.T. 41-42).

17. On June 21, 2013, S.C. attempted to make an alcoholic beverage purchase. The clerk asked for identification and subsequently the police officer requested that he not complete the purchase of alcoholic beverages. He had been carded in the past and had presented the identification card (N.T. 42-44).

18. Long Fei Chen and Wemya Lim operate the premises. They took the RAMP program and were instructed to buy a scanner (N.T. 47).

19. With regard to A.C., Licensee did ask for identification, and he indicated he examined it and returned it. The Ohio identification would not have scanned on the machine that he claims RAMP instructed him to buy (N.T. 47-48).

20. Wemya Lim is the wife of the Licensee. She indicated that she carded S.C. and the officer took the identification card. As a result, no sale was rung up (N.T. 51-52).

CONCLUSIONS OF LAW:

On June 21, 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, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

CITATION NO. 13-1639

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises visiting the premises on July 5, 2013 at approximately 8:00 p.m. The officer was accompanied by a second officer and two other officers were also at the premises, who arrived there in a separate car. Two of the officers walked, got out of their car and noted a late model Sedan pulling into the parking lot with a female driver and male passenger in the car. Both appeared to be youthful. The car parked right in front of the licensed beer distributor. The male got out and walked into the beer distributor empty-handed. The officer observed him taking several cases of beer from the beer cooler to the counter, but at that time could not see what it was. The youthful appearing individual walked out to the car to the driver's side door and observed a female hand an unknown amount of money to the male. He then returned to the store to the counter and departed the beer distributor carrying a case of Bud Light lime beer (N.T. 62-63).

2. An employee of the premises walked out with a second case of Bud Light Lime beer and a case of Leinenkugel, also a beer. The three cases of beer were placed in the trunk of the vehicle (N.T. 63-64).

3. The officers approached the car and identified themselves and returned inside the beer distributor. The officers asked for identification. Both provided the officers with Pennsylvania driver's licenses. Both were determined to be under twenty-one years of age. The officer asked the male if he had used false identification to make the purchase and he indicated that he had. He then handed one of the officers what appeared to be a state driver's license, which the officer's immediately identified as being fictitious (N.T. 64-65 and Exhibit B-3).

4. Both of the officers spoke to the Licensees, Ms. Lim and Mr. Chen, and showed the identification to them. The officer pointed out the license, which began with the number "20". According to the officer, the numbers are issued sequentially. The officer indicated that that would have made the person approximately forty years old. The officer indicated that someone who moved to the state would have a number which began in the thirties, but a number lower than twenty would have been issued by the Commonwealth about 1975. The officer also indicated that there was a variation in the issue date and the expiration date which varies from the authentic license (N.T. 67-68).

5. The officer asked Ms. Lim if the identification card had scanned and he indicated that it had. She indicated that she had scanned it, but had not looked at the printout. Ms. Lim indicated that since the scanner indicated that the age was twenty-two, she did not compute all the information. The expiration date was that of the date of birth, on the scanner, and not the day after as appears on the identification card. The officer indicated that the driver's number omitted the first two numbers (N.T. 68).

6. T.M. was born on July 30, 1993 and was twenty years old on the date of hearing. He purchased alcoholic beverages on July 5, 2013 at the licensed premises (N.T. 74-75).

7. T.M. indicated he was asked for identification and indicated that he paid approximately \$86.00 for the identification card. He thought that the identification card did scan but he had his old address of his on it, his picture and his signature, but the year had been altered (N.T. 77-78 and Exhibit B-3).

8. Mr. Chen purchased a scanner that he claimed he was directed to buy by the Responsible Alcohol Management Program. The Licensee bought another scanner because the State Police told him not to trust the scanner he had and paid \$1,200 for a new one. The Licensee swipes the card and compares the date of birth and the address (N.T. 81-84).

CONCLUSIONS OF LAW:

On July 4 and 5, 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, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), but raised a valid defense under 47 P.S. §4-495 in that Licensee scanned the identification and it indicated its validity.

PRIOR RECORD:

Licensee has been licensed since May 6, 2012, and has no record of prior violations.

DISCUSSION:

Citation No. 13-1413

Licensee sold alcoholic beverages to an underage person. Licensee failed to request an identification card, did not use a swiper nor did they have the youthful appearing patron sign a declaration of age card. Under the circumstances, in that Licensee has no prior history, a \$1,400.00 penalty shall be imposed.

Citation No. 13-1601

The officer observed three minors attempt to purchase alcoholic beverages. In all three scenarios, the Licensee did request identification, but did not establish a defense under §4-495, in that there is no evidence that the identification scanned or that the Licensee had visual documentation such as a minor identification card signed. In the first instance, the minor presented what was clearly a fake Ohio personal identification card, which indicated on its face that it was not to be used to make purchases or to make age restricted purchases. It stated on its face that it was not a good government identification and could not have been relied upon in good faith.

As to the second alleged minor who came into the premises, the Bureau did not present the witness. The identification card was not issued by the government but was a good replica and would have been difficult to detect. The officer pointed out slight variations in the identification card. Had the Licensee scanned the card and the card scanned as being a good driver's license, then the Licensee might be able to establish a defense under §495. However, there is no evidence that Licensee ever scanned the card. Nevertheless, in that the Bureau did not present sufficient evidence and that there is no documentary evidence that the person was underage, the Court finds the evidence insufficient to establish that the Licensee is in violation for having served C.C.

With regard to the third minor, S.C. presented identification that appeared to have been made by the same individuals who made C.C.'s license and the Licensee did ask to see it. However, the Licensee did not scan it. The officer suggested that it might have scanned, but Licensee did not take the necessary steps to find out. The officer stopped the transaction and did not allow the sale to go through by taking the identification and examining it. It may have been very difficult for the Licensee to determine that it was fake, but it is necessary that the Licensee not ask for identification in a perfunctory manner, but ask for identification, question the individual, examine that identification, scan that identification or ask any youthful appearing person who has an identification that appears to be valid to sign a declaration of age card. That is the means by which the Licensee can establish a defense if in fact they rely upon the identification in good faith. The Licensee has a scanning device and it would behoove the Licensee to use the scanning device.

These minors have frequented the premises on multiple occasions and clearly it is a place that minors believe that they can purchase alcoholic beverages, which was evident simply by the fact that the officer was able to witness three attempts to purchase alcoholic beverages by minors in one evening. Under the circumstances, a \$2,000.00 penalty shall be imposed.

Citation No. 13-1639

Despite the fact that the identification was subsequently determined to be invalid, the finding of this Court is that the Licensee did rely upon the scanner in good faith. The Licensee scanned the identification card, with equipment that it claims was recommended by the Responsible Alcohol Management Program. The scanner did not indicate that the license was not valid. In this instance, Licensee accepted what in all appearances was a valid Pennsylvania driver's license and allowed the purchase. However, the trained police officers were able to point out some very interesting subtleties in the identifying information. The Licensee now has more information and cannot rely in good faith on a license, such as the one presented in this case, in any subsequent matter.

Trained police officers are provided with constant updates and new information to insure that they are able to detect false identification. Unfortunately, that is not the case with the licensees or the general public. What is known by police officers, about falsification of identification cards, is not necessarily that which is known to a Licensee. What the trained enforcement officer knows should not be the standard.

The Licensee has much experience with minors at this point and clearly needs to make it more difficult for minors to purchase alcoholic beverages in its establishment. Licensee needs to work on not only detecting minors, but deterring minors from coming into the premises. The police did not have to spend a lot of man hours waiting for minors to come. Apparently, the minors are ever present. The Licensee has now purchased another scanner which purports to have a better reader and the Licensee now compares that information to the identification card, which is prudent given the nature of its business and the potential for minors to attempt to make unlawful purchases.

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 Citation Nos. 13-1413 & 13-1601. In addition, in that this is Licensee's first offense for sales to minor, it is mandated that Licensee comply with the requirements in section 471.1 pertaining to responsible alcohol management and to remain compliant for a period of one year.

Linchen 4315, Inc.
In Re: Citation Nos. 13-1413, 13-1601 & 13-1639

Therefore, penalties shall be assessed as follows:

Citation No. 13-1413

Count No. 1 - \$1,400.00 and R.A.M.P. training mandated.

Citation No. 13-1601

Count No. 1 - \$2,000.00 and R.A.M.P. training.

Citation No. 13-1639

Count No. 1 – DISMISSED.

Accordingly, we issue the following

ORDER:

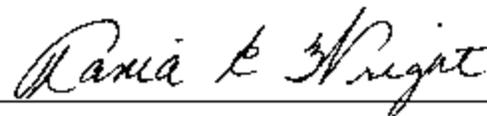
THEREFORE, it is hereby Ordered that Licensee, Linchen 4315, Inc., License Number D-SS-2961, pay a fine of Three Thousand Four Hundred Dollars (\$3,400.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing 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) 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 22ND day of December, 2014.



Tania E. Wright, J.

Linchen 4315, Inc.
In Re: Citation Nos. 13-1413, 13-1601 & 13-1639

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

The fine must be paid by Treasurer's Check, Cashier's Check, Money Order or a check drawn on the 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

Credit/Debit Cards may be used: visit www.lcb.state.pa.us and look under LEGAL/Office of ALJ for instructions.

In Re: Citation Nos. 13-1413, 13-1601 & 13-1639
Linchen 4315, Inc.