

Mailing Date: MAR 23 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1884
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-464750
	:	
XX-LIN INC.	:	
5840 HARBISON AVE.	:	PLCB LID - 64324
PHILADELPHIA PA 19135-4046	:	
	:	
	:	PLCB License No. D-SS-2069
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 a citation that was issued on September 17, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against XX-Lin, Inc., License Number D-SS-2069 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 8, 2014, pursuant to requisite and appropriate hearing notice. 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(1) of the Liquor Code, 47 P.S. §4-493(1), in that on July 30, 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, twenty (20) years of age.

The second count charges Licensee with violation of Section 441(a) of the Liquor Code, 47 P.S. §4-441(a), in that on July 30, 2013, Licensee, by its servants, agents or employes, sold malt or brewed beverages in containers not as prepared for the market by the manufacturer at the place of manufacture.

COUNT NO. 1

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises relative to sales to minors. The officer visited the premises on July 30, 2013 at approximately 5:30 p.m. (N.T. 6-7).
2. The officer, along with another officer from the Bureau arrived at the premises at approximately 5:30 p.m. on July 30, 2013 and parked across the street in a parking lot that faced the entrance of the licensed premises. At approximately 5:50, a youthful appearing male parked in the parking lot, got out of his vehicle and walked in the premises (N.T. 7).
3. When the officer saw the youthful appearing patron enter the premises, they crossed the street in their vehicle and as they opened their vehicle, the male was coming outside of the premises with a case of beer, which consisted of a twelve pack of Leinenkugel Summer Shandy and a twelve pack of Leinenkugel Summer Sampler (N.T. 7).
4. The officer was unaccustomed to seeing two different twelve packs sold as a case (N.T. 8).
5. When the youthful appearing person exited the premises, the officers exited their vehicle and identified themselves to the male. The male first claimed to be twenty-one years of age. The officers asked to see his identification. He gave them a Pennsylvania identification card but also had a Delaware identification card in his possession, which was a fake identification card (N.T. 8-9).
6. The minor denied using the Delaware identification card in order to obtain the beer and indicated he used no identification (N.T. 9).

7. After speaking to the minor, the officers went inside to speak to the employee from the premises. The officers spoke to Amanda Benincasa and asked her if she had carded the male who had bought a case of beer a few minutes earlier. She indicated that she had not. They explained to her that the individual was under the age of twenty-one and that she needed to get in contact with the owner or another person who was in charge (N.T. 9-10).

8. The officers conducted a routine inspection of the premises, but found no other violations (N.T. 10-11).

9. G.C. was born June 8, 1993 and was twenty years of age from the date of hearing. He visited the licensed premises, trading as Philly Beverage, on July 30, 2013. He purchased Leinenkugel beer at the licensed premises and was stopped by the officers and questioned when leaving the premises (N.T. 12-13).

10. G.C. took the beer from the freezer or the floor, brought it to the counter and paid for it. He was not questioned with regard to his age (N.T. 14).

11. G.C. purchased beer prior to July 30, 2013, on the premises and at some point showed them the Delaware identification card that he purchased from the U.S. copy center. The identification card indicates that it does not meet the standard for Pennsylvania statutes 4-495 (N.T. 14-19 and Exhibit B-3).

12. G.C. indicated that the case that he purchased, Summer Shady and a variety pack in the second twelve pack, was already in that form when he picked it up (N.T. 19-20).

CONCLUSIONS OF LAW:

Count No. 1 - On July 30, 2013, Licensee, by its servants, agents or employees, 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).

Count No. 2 - There is insufficient evidence to conclude that on July 30, 2013, Licensee, by its servants, agents or employees, sold malt or brewed beverages in containers not as prepared for the market by the manufacturer at the place of manufacture, in violation of Section 441(a) of the Liquor Code, 47 P.S. §4-441(a).

PRIOR RECORD:

Licensee has been licensed since June 2, 2011, and has no record of prior violations.

DISCUSSION:

The Bureau produced sufficient evidence to show that a minor purchased malt or brewed beverages at the licensed premises and at the time, the individual was under the age of twenty-one. The Licensee did not ask the individual for identification although the individual had clearly been in the premises before and had used a fake Delaware identification card in the past.

With regard to the sale of brewed beverages in containers not as prepared for the market by the manufacturer at the place of manufacture, there is insufficient evidence. The officer testified that there were two six packs, one of one variety and one of the other. The officers were unfamiliar with them being packed or sold in that manner. The cases were not brought to Court as evidence for the Court to examine. The minor indicated that they were already prepared in that manner when he purchased them and there is no evidence to show that Licensee or anyone but the manufacturer prepared them in that manner.

Under the circumstances, a monetary 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 Count No. 1 of this case.

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 - \$1,250.00.
Count No. 2 - DISMISSED.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, XX-Lin, Inc., License Number D-SS-2069, pay a fine of One Thousand Two Hundred Fifty Dollars (\$1,250.00) 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.

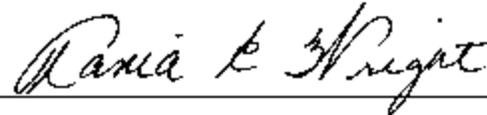
XX-Lin, Inc.
In Re: Citation No. 13-1884

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 12TH day of MARCH, 2015.



Tania E. Wright, J.

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.

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