

Mailing Date: APR 24 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-2276
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W09-464959
	:	
MID-ATLANTIC RESTAURANT	:	
GROUP LLC	:	PLCB LID - 61319
T/A KELLY'S RESTAURANT	:	
TAPROOM	:	
1107 LANCASTER AVE.	:	PLCB License No. R-AP-SS-1100
LOWER MERION TWP.	:	
BRYN MAWR, PA 19010-2707	:	
	:	
MONTGOMERY COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ROY HARKAVY, ESQ.

FOR THE LICENSEE:

J. KENNETH BUTERA, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 25, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Mid-Atlantic Restaurant Group, LLC, t/a Kelly's Restaurant Taproom, License Number R-AP-SS-1100 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, September 17, 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 charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on May 6, 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.

FINDINGS OF FACT:

1. J.T. was born on June 25, 1992 and was twenty years old on May 6, 2013. J.T. visited the licensed premises, arriving at approximately 8:00 p.m., with her friend for some sort of celebration. J.T. ordered a cranberry and vodka, and a shot of rumple mint from the bartender. He did not question her with regard to her age nor did she sign a declaration of age card (N.T. 10-12).

2. J.T. indicated that an argument ensued after she was grappled by a man in the bar. She indicated that someone called the police and she stood outside and waited for the police to arrive (N.T. 12-13).

3. The police were called to the scene about a disturbance between a male and female (N.T. 21).

4. At some point, the police reviewed J.T.'s driver's license and determined that J.T. was under the age of twenty-one (N.T. 23).

5. Steven Kitchens is the head of security at the licensed premises. He had worked there for approximately two years at the time of this incident. He indicated that he has been RAMP certified. He further indicated that the premises has a scanning machine which is used primarily on Fridays and Saturdays (N.T. 31-35).

6. Mr. Kitchens indicated that he did not request identification from J.T. on May 6, 2013 because he recalled her coming in two or three weeks prior to that date. He indicated that he did serve J.T. drinks while on the premises, and at some point an altercation erupted (N.T. 38-39).

7. The Licensee indicated that they do have a scanning device and do have their employees RAMP trained. In addition, they utilize a private service in order to insure that their employees are behaving properly (N.T. 57-62).

Mid-Atlantic Restaurant Group, LLC
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CONCLUSIONS OF LAW:

On May 6, 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, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

PRIOR RECORD:

Licensee has been licensed since July 8, 2009, and has a record of prior violations as follows:

In Re:

Citation No. 12-0967. \$1,000.00 fine and RAMP Certification mandated.

1. Sales to a visibly intoxicated person.
December 23, 2011.

Citation No. 13-1311C. \$1,400.00 fine and RAMP compliance mandated.

1. Sales to a minor.
May 16, 2013.

DISCUSSION:

The Licensee was not able to present a defense under Section 495 of the Liquor Code, 47 P.S. §4-495. The minor indicated that she had never been on the premises before the night of May 6, 2013. The bartender, who at first could not recognize J.T. in Court, subsequently had a better recollection of her and claimed to remember her coming into the premises some two to three weeks earlier than the May 6, 2013 date. The bartender claimed that he had carded her on that date. That process and procedure is totally unacceptable and requires ones reliance on recollection, which could be faulty. The Licensee apparently either did not ask for identification or at least did not scrutinize the identification on May 6, 2013. The bartender allowed the minor to be served on the premises.

The Licensee was RAMP certified on February 12, 2013. They had a violation on December 23, 2011 for sales to a visibly intoxicated person, and a violation for sales to minors on May 16, 2013. Since this citation constitutes the third violation in a three year period, a mandatory suspension is required.

Under the circumstances, the Licensee will be suspended for a period of one day and a \$1,250.00 monetary penalty shall be imposed.

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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.

Accordingly, we issue the following

ORDER:

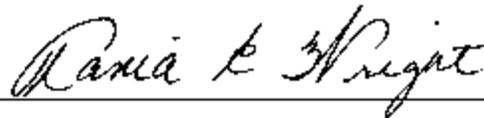
THEREFORE, it is hereby Ordered that Licensee, Mid-Atlantic Restaurant Group, LLC, t/a Kelly's Restaurant Taproom, License Number R-AP-SS-1100, pay a fine of One Thousand Two Hundred Fifty Dollars (\$1,250.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Mid-Atlantic Restaurant Group, LLC, t/a Kelly's Restaurant Taproom, License Number R-AP-SS-1100 (including all permits and Licensee Discount Card), be suspended for a period of one (1) day. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

Jurisdiction of this matter is retained.

Dated this 22ND day of APRIL, 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.

Mid-Atlantic Restaurant Group, LLC
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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

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