

Mailing Date: DEC 01 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-0009C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-468500
	:	
JSMG, INC.	:	
3589 RICHMOND ST.	:	PLCB LID - 53000
PHILADELPHIA, PA 19134-6120	:	
	:	
	:	PLCB License No. R-AP-SS-5058
	:	
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 January 14, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against JSMG, Inc., License Number R-AP-SS-5058 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, December 9, 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 November 21, 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.

FINDINGS OF FACT:

1. Officer R.A. is employed by the Bureau and has been so employed for approximately two years. The officer was assigned to conduct an investigation of the licensed premises for sales to minors and sales for consumption off premises. In conjunction with this investigation, the officer conducted an age compliance check (N.T. 6-7).

2. On November 21, 2013, the officer entered the licensed premises at approximately 9:45 p.m. Upon entering, the officer observed a male and female bartender serving drinks. The officer determined whether or not it was safe for an Underage Buyer to enter the premises. After determining that it was safe for an Underage Buyer to enter, the officer then observed an Underage Buyer enter the premises. The Underage Buyer approached the bar. The bartender served him a bottle of Yuengling Lager beer, sat it in front of him and requested three dollars. The Underage Buyer handed him a five dollar bill and the bartender returned two dollars in change. The Underage Buyer did not consume any of the alcoholic beverage and shortly thereafter exited the premises (N.T. 7-9).

3. Once the Underage Buyer exited the premises, the officer notified his supervisor, who then entered with another officer and identified themselves to the male bartender. A letter of non-compliance was sent to the licensed premises on November 25, 2013. There were no other violations other than that on November 21, 2013 (N.T. 10-12).

4. The officer first visited the premises on October 17, 2013 and was there approximately fifty minutes and observed no violations. The officer again visited the premises on November 2, 2013 at 2:20 a.m., but the premises was not open. The officer did not visit the premises again until November 9, 2013 at 12:50 a.m. The premises was open and operating and he observed no violations. The officer again visited the premises on the night of Saturday, November 9, 2013 at approximately 11:35 p.m. The premises was open and operating with approximately fifteen patrons on the premises. The officer remained on the premises for one hour (N.T. 15-19).

5. The officer had noted that on some of the visits to the premises, there was a doorman on duty. There was no doorman on duty on Thursday, November 21, 2013. The officer made a visit to the premises on Sunday, November 24, 2014. He entered the premises at approximately 3:30 p.m. The premises was open and operating and had patrons inside. The officer made one final visit to the premises on Sunday, December 8, 2013 at approximately 1:20 p.m. The premises was open and operating. He observed no violations (N.T. 20-22).

6. Underage Buyer, S.F., was born on April 7, 2014 and was twenty years of age as of the date of hearing. He is part of the Underage Buyer program (N.T. 29-31).

7. On November 21, 2013, the Underage Buyer visited a number of bars. He indicated he went to the bar and asked a relatively young bartender for a Yuengling beer. He served him that beer without checking his identification. He charged him \$2.00 for the beer and then put it down and left the premises and reported to the supervisor outside. The Underage Buyer does not recall anyone checking identification. The Underage Buyer indicated that the supervisor questioned him before going into the premises as to whether he had ever been in the bar or ever drank in the bar (N.T. 32-33).

8. Officer M.R. is a supervisor with the Bureau and has been so employed since January of 2004. M.R. conducted an investigation on November 21, 2013 as a supervisor who set up the actual detail and location of the premises. Once he was notified by S.F. that he had made the purchase of an alcoholic beverage and received a text message from the officer inside, he noted what was purchased in his report and went inside to make notification to the person who had sold the alcoholic beverage to the Underage Buyer (N.T. 39-41).

CONCLUSIONS OF LAW:

On November 21, 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).

PRIOR RECORD:

Licensee has been licensed since August 30, 2004, and has a record of prior violations as follows:

In Re:

Citation No. 06-1083. \$1,300.00 fine and R.A.M.P. required.

1. Sunday sales between 2:00 a.m. and 11:00 a.m.
February 19, 2006. (Dismissed)
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
February 19, 2006. (Dismissed)

3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. (Dismissed)
February 19, 2006.
4. Sold malt or brewed beverages for consumption off premises.
March 2, 2006.
5. Sales to a minor.
March 2, 2006.

Citation Nos. 06-2914 and 07-0139, As Consolidated. \$2,000.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price.
November 19, 2006.
2. Sales after the Restaurant Liquor License expired and had not been renewed and/or validated.
November 19 and December 27, 2006.

Citation No. 07-2930. \$650.00 fine, one day suspension and R.A.M.P mandated. Fine not paid and license suspended for an additional day and thereafter until fine paid.

1. Failed to comply with the Order of the Administrative Law Judge mandating R.A.M.P. training.
October 25 through November 13, 2007.
2. Operated the licensed establishment without a valid health permit or license.
November 13, 2007.

Citation No. 08-2068. \$500.00 fine. Fine not paid and license suspended one day and thereafter until fine paid.

1. Operated the licensed establishment without a valid health permit or license.
August 4, 2008.

Citation No. 08-2361. \$600.00 fine and license suspended one day and thereafter until fine paid.

1. Sold, furnished or gave liquor for consumption off premises.
August 29, 2008.
2. Used loudspeakers or devices whereby music could be heard outside.
August 29, 2008.

Citation No. 09-1546. \$300.00 fine and Verification conditions corrected. Fine not paid and license suspended one day and thereafter until fine paid.

1. Operate the licensed establishment without a valid health permit or license.
June 11, 2009.

Citation No. 10-2503. \$2,000.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m.
October 22, 2010.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
October 22, 2010.
3. Operated the licensed establishment without a valid health permit or license.
May 12, June 18, July 17, September 16 and October 22, 2010.

Citation No. 11-1439X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
June 3, 2011.

Citation No. 11-1737X. \$200.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
August 1 and 2, 2011.

Citation No. 12-1132. \$150.00 fine. Fine not paid and license suspended one day and thereafter until fine paid.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.
June 1, 2012.

Citation Nos. 12-1258. \$650.00 fine. Fine not paid and license suspended one day and thereafter until fine paid.

1. Operated the licensed establishment without a valid health permit or license.
July 24, 2012.

Citation No. 13-1612X. \$250.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.
November 8 and 9, 2012.

Citation Nos. 13-1674. \$300.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.
March 7 and June 13, 2013.

Citation No. 13-2383. \$100.00 and one day suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.
October 21 and 22, 2013.

DISCUSSION:

Although numerous visits were made to the licensed premises by the investigating officers, no complaints were substantiated. The Licensee, however, did fail the compliance test. Licensee has a very long history of violations. Under the circumstances, a \$1,400.00 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.

Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, JSMG, Inc., License Number R-AP-SS-5058, pay a fine of One Thousand Four Hundred Dollars (\$1,400.00) 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.

JSMG, Inc.
In Re: Citation No. 14-0009C

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 4TH day of November, 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 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

In Re: Citation No. 14-0009C
JSMG, Inc.