

Mailing Date: NOV 05 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-0081C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-469473
	:	
FRANK L. STAUB TAVERN, INC.	:	
2760-62 E. PACIFIC ST.	:	PLCB LID - 14723
PHILADELPHIA, PA 19134-5533	:	
	:	
	:	PLCB License No. R-AP-SS-11080
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, 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 28, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Frank L. Staub Tavern, Inc., License Number R-AP-SS-11080 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, December 9, 2013, 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 L.H. is employed by the Bureau of Enforcement. She went to the licensed premises as part of an underage compliance visit. A number of other officers were also involved. On Thursday, November 21, 2013, the officer arrived at the premises at approximately 9:20 p.m. The officer took a seat at the bar, ordered a drink and texted the supervisor that it was a safe environment for the Underage Buyer (N.T. 6-8).

2. The Underage Buyer entered the premises at 9:40 p.m. and took a seat at the bar approximately fifteen to twenty feet from the officer. The Underage Buyer was on one side of the bar and the officer was on the other side of him. The Underage Buyer was not served immediately. After taking a seat at the bar, a female bartender approached him. The female bartender went to the cooler and got the beer, opened it and presented it to the Underage Buyer. The bartender did not ask for identification. There was no doorman checking identification. The bartender rang up \$3.75 on the cash register and returned the change to the Underage Buyer. The Underage Buyer wrapped his hand around the beer, waited for a minute and then left the premises but did not consume any portion of the beer. The Bureau officer and supervisor entered the premises approximately two minutes after the Underage Buyer departed. Officer L.H. remained undercover during the entire investigation (N.T. 10-11).

3. A notice of compliance letter was sent to the Licensee as part of the investigation. This investigation was done as a random selection and there were no complaints against the establishment (N.T. 12).

4. Underage Buyer No. 617, S.F., was born April 17, 1994 and was nineteen years of age on November 21, 2013. He participated in the Pennsylvania State Police Bureau of Liquor Control Enforcement's age compliance program from March of 2013 to October of 2013. He no longer actively participates in the program (N.T. 16-17).

5. S.F. was required to apply for the program as well as pass a test on the information. He visited the licensed premises on November 21, 2013 (N.T. 17).

6. S.F. purchased a Miller Lite Beer for \$3.75. He had never been in the bar prior to that date nor since (N.T. 19).

7. When he entered the bar, there were approximately twenty patrons there and Officer L.H. was on the premises (N.T. 20).

8. M.R. is a supervisor for the Bureau and has been so since 2012. He has been an Enforcement officer January of 2004. As part of his duties, he was in charge of setting up the detail and running the detail deciding which places they visited and making the notifications to Licensees that they in fact sold to an Underage Buyer and were non-compliant. He did inform the Licensee that S.F. had purchased alcoholic beverages on the premises. After the buy, he entered the premises and made immediate notification as required by law (N.T. 21-22).

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 January 10, 1980, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

In Re:

Citation No. 97-0635. \$600.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises.

Citation No. 97-2495. \$200.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 04-1232. \$500.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 09-0574. \$900.00. fine.

1. Used loudspeakers or devices whereby the sound of music could be heard outside.
December 6, 2008; January 15 and February 13, 2009.
2. Permitted smoking in a public place where smoking was prohibited.
January 22, 28, 30 and February 13, 2009.

Frank L. Staub Tavern, Inc.
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DISCUSSION:

This matter did not result from a complaint. The Licensee was not compliant, in that the Licensee did not request identification and served a minor, who was participating in the Underage Compliance Program. In reviewing Licensee's prior record, it was noted that they had a number of older violations and one more recent one for loudspeakers and smoking. This is the first violation of this nature. Under the circumstances, a \$1,500.00 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.

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.

Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, Frank L. Staub Tavern, Inc., License Number R-AP-SS-11080, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) 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.

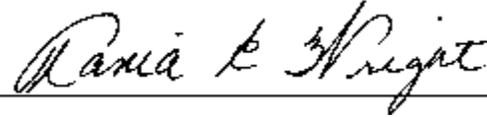
IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone 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).

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Jurisdiction of this matter is retained.

Dated this 26TH day of October, 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

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