

Mailing Date: NOV 03 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-0113C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W09-471556
	:	
THE HORSE, INC.	:	
T/A THE HORSE TAVERN & GRILL	:	PLCB LID - 54100
1000 OLD BETHLEHEM PIKE	:	
WEST ROCKHILL TWP.	:	
SELLERSVILLE, PA 18960-1422	:	PLCB License No. H-AP-SS-839
	:	
BUCKS COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ROY HARKAVY, 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 29, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against The Horse, Inc., t/a The Horse Tavern & Grill, License Number H-AP-SS-839 (hereinafter "Licensee").

The Horse, Inc.
t/a The Horse Tavern & Grill
In Re: Citation No. 14-0113C

An Administrative hearing was held on Wednesday, November 5, 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 December 11, 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. J.K. is an Enforcement officer who was working in an undercover capacity on Wednesday, December 11, 2013. J.K. arrived at the licensed premises at approximately 5:39 p.m. The officer entered the licensed premises in order to do an age compliance check (N.T. 7).

2. At approximately 6:06 p.m., the officer observed an Underage Buyer enter the premises and take a seat at the bar directly across from him. A female bartender, later identified as Jillian Larsen, did not ask the minor for his identification. The officer saw the bartender take an empty glass to a tap marked Bud Light, fill the glass from the tap and place it in front of the Underage Buyer, who then paid her \$10.00. The bartender returned \$7.50 in change to the Underage Buyer. Once the Underage Buyer had his change, he stood up and left the bar area. The officer described the bar as being ten to fifteen feet across. The officer was approximately ten to fifteen feet away from the Underage Buyer (N.T. 8-9).

3. After the Underage Buyer departed, another officer from the Bureau entered the premises to give notification to the Licensee. He spoke with the bartender and then to another person on the phone, and after giving notice of the buy made by the Underage Buyer, he departed the premises. J.K. remained in the establishment for another fifteen minutes continuing to observe the bartender speaking to two other patrons who were seated at the bar (N.T. 9-10).

4. J.K. departed the licensed premises at approximately 6:28 p.m. (N.T. 11).

5. The investigating officer indicated that any licensed establishment may undergo a random compliance check. Other establishments are selected for compliance checks for reasons which include: (1) previous sales to minors; (2) suspicious activity noted by an Enforcement officer; (3) suspicious activity noted by a Trooper police officer (N.T. 21-22).

6. N.A. was born September 27, 1994. N.A. was part of the Pennsylvania State Police Bureau of Liquor Control Enforcement Age Compliance Program. The individual was trained to participate in the program. He was mandated to take a test on information pertaining to the program. As part of the program, he visited the licensed premises on December 11, 2013 (N.T. 25-26).

7. When the Underage Buyer approached the bartender, he ordered a Bud Light. The female bartender did not request identification nor question him with regard to his age. He gave the bartender a ten dollar bill and received \$7.50 in change. He departed the premises at 6:10 p.m. (N.T. 26-27).

8. After leaving the premises, the Underage Buyer reported back to the compliance officer and completed an incident report. The Underage Buyer visited approximately ten other places on that evening (N.T. 27).

9. H.S. is a Bureau officer who was in charge of the age compliance detail on December 11, 2013. He arrived at the premises at approximately 6:10 p.m. He was aware that there was an undercover officer inside the premises who would notify him as to whether it was safe for the Underage Buyer to enter. The Underage Buyer did subsequently enter the premises (N.T. 33-34).

10. H.S. remained outside in a vehicle surveying the premises. After the Underage Buyer informed him that he had made the purchase, he took some information and had him complete a statement. The Underage Buyer indicated that he had purchased a Bud Light draft beer for \$2.50 by the female bartender. H.S. then entered the premises and identified himself to the person in charge, Jillian Larsen, and informed Ms. Larsen that the age compliance detail had been conducted and that an Underage Buyer had purchased an alcoholic beverage. The officer further informed her that the Bureau would be taking administrative action as a result of the buy (N.T. 35-36).

11. Jillian Larsen has been employed at the licensed premise for approximately seven years and has held the position of bar manager for approximately four years. Prior to that, she was the bartender of another licensed establishment for approximately six years. She received RAMP training on a number of occasions (N.T. 42-43).

12. Ms. Larsen indicated that after she had completed her shift, the night bartender called to her and she came around and was speaking to him down in the basement. A young patron came in and sat down at the bar and asked to be served. She proceeded to serve him a beer and was counting her drawer when the Enforcement officer came in (N.T. 45).

13. Ms. Larsen was aware that the procedure was to obtain identification and use that identification on scanning devices (N.T. 48-49).

14. David Adelsberger is the owner and manager of the licensed premises together with his partner, Michael Carey. They have owned the premises together for approximately ten years. The premises is an eating establishment with dining areas, patios and a full menu. Fifty percent of the sales are food. The typical hours of operation are 10:00 a.m. until 2:00 a.m., seven days a week. They have solo guitarists and a disc jockey one weekend a month. They also have several televisions on the premises (N.T. 50-53).

The Horse, Inc.
t/a The Horse Tavern & Grill
In Re: Citation No. 14-0113C

15. Mr. Adelsberger described Jillian Larsen as a competent employee and was surprised at the sale she had made to the underage patron. She is aware of the policy that everyone who appears to be under the age of thirty is to be carded. Mr. Adelsberger indicated that they have an employee handbook and signage on the premises. He also has a doorman on Friday and Saturday nights. They have two identification scanners on the premises (N.T. 54-55).

16. Mr. Adelsberger indicated that all the employees of the restaurant are RAMP trained with the exception of one new hire (N.T. 58).

17. Mr. Adelsberger indicated that there were eleven cameras throughout the building which were installed some seven years ago (N.T. 59).

CONCLUSIONS OF LAW:

On December 11, 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 28, 2005, and has a record of prior violations as follows:

In Re:

Citation No. 07-1466. \$1,000.00 fine.

1. Sales to minors.
January 28, 2007.

Citation No. 07-2570. \$1,300.00 fine.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
September 16, 2007.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
September 16, 2007.
3. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
September 16, 2007.

Citation No. 08-0581C. \$1,500.00 fine and one day suspension.

1. Sales to a minor.
February 26, 2008.

The Horse, Inc.
t/a The Horse Tavern & Grill
In Re: Citation No. 14-0113C

Citation No. 08-2149. \$200.00 fine.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.
August 18, 2008.

Citation No. 09-0566. \$450.00 fine.

1. Failed to post signage required by the Clean Indoor Air Act.
December 3, 2008 and January 9, 2009.
2. Permitted smoking in a public place where smoking was prohibited.
December 3, 2008 and January 9, 2009.

Citation No. 09-2044. \$600.00 fine.

1. Permitted smoking in a public place where smoking was prohibited.
April 4, 2009.
2. Failed to post signage required by the Clean Indoor Air Act.
April 4, 2009.

Citation No. 11-0438. \$500.00 fine.

1. Discounted the price of alcoholic beverages for a period or periods other than a consecutive period of time not to exceed 2 hours in a business day.
December 10, 2010.
2. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.
December 10, 2010.

Citation No. 11-2139C. \$3,000.00 fine and one day suspension.

1. Sales to a minor.
November 3, 2011.

DISCUSSION:

Licensee and their employees are clearly aware of the requirement to check identification and to make sure that no patrons under the age of twenty are served alcohol. Nevertheless, during the shift change, the waitress in fact served a participant in the Bureau compliance program. Licensee was also charged with sales to minors in 2007 and 2011, and has had a number of violations in the interim, however, they involved smoking, discount pricing and purchase in excess of 192 fluid ounces. After a review of the prior history, a \$2,000.00 penalty and two day suspension shall be imposed.

The Horse, Inc.
t/a The Horse Tavern & Grill
In Re: Citation No. 14-0113C

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, The Horse, Inc., t/a The Horse Tavern & Grill, License Number H-AP-SS-839, pay a fine of Two Thousand Dollars (\$2,000.00) 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).

IT IS ALSO ORDERED that the Hotel Liquor License of The Horse, Inc., t/a The Horse Tavern & Grill, License Number H-AP-SS-839 (including all permits and Licensee Discount Card), be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, February 8, 2016 and **ENDING** at 7:00 a.m. on Wednesday, February 10, 2016.

Licensee is directed on Monday, February 8, 2016 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if a replacement placard is needed for any reason they are available at all Pennsylvania Liquor Stores/Fine Wine and Good Spirits stores.

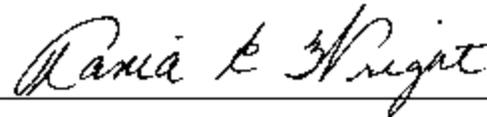
The Horse, Inc.
t/a The Horse Tavern & Grill
In Re: Citation No. 14-0113C

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Wednesday, February 10, 2016 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction of this matter is retained.

Dated this 27TH 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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The Horse, Inc.
t/a The Horse Tavern & Grill
In Re: Citation No. 14-0113C

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

In Re: Citation No. 14-0113C
The Horse, Inc.