

Mailing Date: DEC 03 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 14-0116
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-471219
	:	
v.	:	PLCB LID No. 48144
	:	
USA DELI, INC.	:	PLCB License No. E-SS-884
2234-38 N. BROAD ST.	:	
PHILADELPHIA, PA 19132-4501	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Andrew R. Britt, Esq.
LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 4, 2014. There are two counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on December 5, 2013, and on divers other occasions within the past year, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one minor, eighteen years of age.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(14), on December 5, 2013, and on divers other occasions within the past year, by permitting one minor, eighteen years of age, to frequent its licensed premises.

A hearing was held on September 23, 2014, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On December 5, 2013, three liquor enforcement officers and their supervisor were standing on Broad Street near the intersection of Susquehanna in north Philadelphia at about 9:35 p.m. when they saw three young men walk by them and stop in front of the licensed premises. One of them went inside while the other two stood on the sidewalk. About a minute later the man who had entered the premises came out, carrying two bags, each of which was later found to contain two 40-ounce bottles of malt liquor. He handed the bags to the other two, whereupon the officers stopped all three men and demanded identification. The men complied (N.T. 5-7).

2. The man who had been inside the licensed premises produced a genuine Pennsylvania driver's license and also a counterfeit New Jersey driver's license, both in his name and bearing his photograph. The New Jersey document made him out to be six years older than he was (N.T. 8-10).

3. The man who had been inside the licensed premises had been born on May 5, 1995, according to the driver license information contained in the JNET database (N.T. 13, Exhibit B-3).

4. The liquor enforcement supervisor took the New Jersey document with him into the licensed premises, and told the clerk that he had sold malt liquor to a minor. The clerk remembered the transaction and protested that the man was of age, that he had carded him before, and that he had retained a copy of the license on his cell phone. The clerk had many photos of licenses on his phone, but could not locate the man who made the purchase. He said the man had come into the premises a lot, so he hadn't carded him lately. There was a scanning device in the store, but it had not been used for any transaction involving the same man (N.T. 20-23).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Counsel objected to the hearsay statements of the clerk, but I find they are admissible as the statement of an opposing party. Pennsylvania Rule of Evidence 803(25).

Counsel objected to the admission of the JNET document, but I find that I am required to receive it under 75 Pa.C.S. § 6328. Counsel also objected that the document itself is tainted as hearsay because in order to find which record in the PennDOT database corresponds to the person involved one must rely on the hearsay contained in the man's genuine Pennsylvania driver's license, as well as the hearsay statement of the man in which he acknowledged his identity and age.

This tribunal deals in administrative law, not philosophical speculation. Police officers to whom a genuine Pennsylvania driver's license is presented, meeting face to face with a person whose photograph appears on the identification given, are entitled to rely on the information stated on the license, whether it is hearsay to them or not.

I find that there are sufficient indicia of reliability inherent in the transaction described in the previous sentence that I am entitled to rely upon the facts which were adduced thereby.

PRIOR RECORD:

Licensee has been licensed since December 27, 2001, and has had prior violations as follows:

In re Citation Nos. 02-2042 & 02-2258 (consolidated). \$1,300.00 fine.

1. Sales to minors. October 3, 5 and November 20, 2002.
2. Minors frequenting. October 3 and 5, 2002.
3. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises. November 20, 2002.

In re Citation Nos. 03-0432 & 03-0767 (consolidated). \$1,200.00 fine.

1. Sales to minors. February 5 and April 9, 2003.
2. Minors frequenting. February 5, 2003.
3. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises. February 5 and April 9, 2003.

In re Citation No. 03-1982. 3 days suspension.

1. Sales to minors. October 20, 2003.

In re Citation No. 03-2123. \$1,000.00 fine and 3 days suspension.

1. Sales to a minor. November 20, 2003.

In re Citation No. 07-0702. 1 day suspension.

1. Sales to a minor. March 1, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of this type.

In mitigation I note that there were almost seven years between the date of Licensee's previous violation and this one. I am well aware of the difficulties Licensee faces, given its location in the heart of Temple University, and in this case I am impressed that Licensee's clerk was making an effort to comply with the law.

I suggest to Licensee's counsel that he encourage his client to look into the Board's Responsible Alcohol Management Program, and explain the benefits. With a record like this I am, strangely enough, not required to order R.A.M.P. compliance, and so I have not done so. However, there are a few fine points to the art of avoiding this sort of problem which ought to be underlined a bit more for Licensee's personnel. The two counts are merged for penalty purposes.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, USA Deli, Inc., License No. E-SS-884, shall pay a fine of one thousand six hundred dollars (\$1,600.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 17TH day of NOVEMBER, 2014.



David L. Shenkle, J.

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

Detach Here and Return Stub with Payment – Note Citation Number on Check

The fine must be paid by cashier's check, money order, or a check drawn on the account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail it, 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.