

Mailing Date: DEC 18 2014

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

PENNSYLVANIA STATE  
POLICE, BUREAU OF  
LIQUOR CONTROL ENFORCEMENT

In re Citation No.	BLCE Incident No.
13-1700C	W09-463628
14-0649C	W09-476237

Consolidated for Adjudication Only

v.

LEE GRIBBENS FINE GOURMET, INC.  
194-198 MAIN ST.  
EMMAUS, PA 18049-4015

PLCB LID No. 57244

PLCB License No. R-AP-SS-EHF-16022

Lehigh County

JUDGE SHENKLE  
BLCE COUNSEL: Roy Harkavy, Esq.  
LICENSEE: Manuel Gonzalez, vice president of Licensee

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued two citations, each of which alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one minor. The details are as follows:

Citation No.	Date Citation Issued	Date of Violation Alleged	Age of Minor Alleged
13-1700C	August 21, 2013	June 27, 2013	18
14-0649C	April 9, 2014	March 19, 2014	19

A hearing was held on October 24, 2014, in Plymouth Meeting, Pennsylvania. The parties stipulated to the admission of the documents which establish jurisdiction in these cases.

**FINDINGS OF FACT:**

**Citation No. 13-1700C**

1. On June 27, 2013, a woman whose birth date was June 30, 1994, who was participating in the Bureau's age compliance check program, entered the licensed premises at 6:15 p.m. A gentleman asked for her order, and she requested beer. The gentleman asked if she was 21 and had identification. The woman said she was 21 and handed him her driver's license (N.T. 16).

2. The driver's license the woman presented was a Pennsylvania Junior Driver's License which bore her birth date, her photograph, and the legend "UNDER 21 until 06/30/2015" This license is printed in a portrait orientation, rather than the landscape orientation of a regular license (Exhibit C-4).

3. The gentleman said she looked like a baby, handed the license back, and served beer to the woman. She then pretended to take a phone call and walked out of the premises to her supervising liquor enforcement officer, at about 6:30 p.m. (N.T. 7-8, 17).

4. A liquor enforcement officer then entered the premises and informed Licensee's officers of the violation (N.T. 8).

5. Licensee's regular bartender was not on duty at the time, because of a medical emergency. Licensee's president, who was filling in, suffers from dyslexia and was not experienced in the process of requesting identification and determining if the person presenting it is an adult. The premises was crowded. When he asked the woman if she was 21, he thought that her answer would be honest. (N.T. 27, 33).

#### Citation No. 14-0649C

6. On March 19, 2014, officers of the Bureau in an undercover capacity and a young man who was participating in the age compliance check program returned to the licensed premises to make another attempted purchase, because of the previous incident (N.T. 39).

7. On the same date the young man, whose birth date was May 3, 1994, entered the licensed premises at 7:50 p.m. He sat at the bar. A bartender asked how he could be helped, and the man asked for beer. The bartender asked for ID, and the man presented his current Pennsylvania Junior Driver's License, which was printed in a portrait orientation, rather than the landscape orientation of a regular license. The bartender then served the beer requested (N.T. 47-48, Exhibit C-4).

8. The man pretended to take a phone call, and left the premises without touching the beer. A liquor enforcement officer then entered and informed the person in charge, who was fired as a result of this incident, of the violation (N.T. 45).

#### CONCLUSIONS OF LAW:

Both citations are sustained as charged.

#### DISCUSSION:

Licensee argued, regarding the evidence in Citation No. 13-1700C, that it was improper for the government to recruit an underage woman to break the law by attempting to purchase alcoholic beverages in licensed premises, and instructing her that, if anyone questions her age, she should lie. As a closely related argument, Licensee suggested that a witness who frankly admits that she lied

when asked her age should not be trusted about anything, including whether she ordered an alcoholic beverage.

These are good and logical arguments, but our legislature implicitly rejected them when it authorized the state police to recruit young people (generally criminal justice majors looking for something to put on their résumés) for this work.

I recognize that the situation confronting Licensee in this case – an experienced bartender not available and a large crowd requiring service – was stressful, and I can sympathize with the feeling Licensee’s officers have that they were entrapped.

In response I can only say that the procedure employed by the government in this case was authorized by law, and judges are required to follow the law. In addition, the woman’s testimony was corroborated by the testimony of a liquor enforcement officer.

In defense of the government, however, I must point out that the young woman who testified in this case does indeed have a youthful appearance, and one does not have to be able to subtract numbers from the current date to see that she was presenting a junior driver’s license, a red flag if ever there was one.

As to the evidence regarding Citation No. 14-0649C, Licensee made the same arguments, and I can only answer in the same way: Good, bad or indifferent, the law authorizes the Bureau to conduct compliance checks in the manner shown by the evidence in these cases, and I am therefore bound to receive such evidence and apply the law as it stands.

PRIOR RECORD:

Licensee has been licensed since November 3, 2006, and has had one prior violation:

In re Citation No. 08-0642X. \$100.00 fine.

1. Bad checks for malt or brewed beverages. November 9, 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 the type found in these cases. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances. Penalties are assessed as follows:

Citation No. 13-1700C – a fine of \$1,000.00. plus mandatory R.A.M.P. – certification.

Citation No. 14-0649C – a fine of \$1,250.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Lee Gribbens Fine Gourmet, Inc., License No. R-AP-SS-EHF-16022, shall pay a fine of two thousand two hundred fifty dollars (\$2,250.00) 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.

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: 1-866-275-8237; [www.lcb.state.pa.us](http://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).

Dated this 5<sup>TH</sup> day of December, 2014.



David L. Shenkle, J.

jb

**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**

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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](http://www.lcb.state.pa.us)  
and look under LEGAL/Office of ALJ for instructions.