

Mailing Date: APR 28 2015

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

PENNSYLVANIA STATE	:	In re Citation No. 14-0653C
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W09-475008
	:	
v.	:	PLCB LID No. 57961
	:	
MANHEIM DINER, INC.	:	PLCB License No. R-SS-EHF-9296
1614 RTE. 61 HWY. SOUTH	:	
SCHUYLKILL HAVEN, PA 17972	:	Schuylkill County

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE: David Frew

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 9, 2014. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on February 27, 2014, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one minor, eighteen years of age.

A hearing was held on February 17, 2015, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

On February 27, 2014, a woman whose birth date was June 11, 1995, who was participating in the Bureau's age compliance program, entered the licensed premises at about 7:10 p.m. and selected a six-pack of beer from a cooler. She took it to the counter. When an employee asked the woman for identification she presented her valid Pennsylvania Junior Driver's License. The employee completed the transaction, and the minor left the premises with the beer. An officer of the Bureau then entered and informed Licensee's employee of the violation (N.T. 10-13, 17).

CONCLUSIONS OF LAW:

Licensee violated the Liquor Code, 47 P.S. §4-493(1), on February 27, 2014, by selling alcoholic beverages to one minor, eighteen years of age.

DISCUSSION:

Licensee's arguments in this case were previously raised and addressed in the adjudication of Citation No. 13-0182C. The arguments were summarized in the adjudication as follows:

Licensee's president argued that this citation must be dismissed because the woman described in the findings of fact was not "an officer, employee or intern" of the Bureau. The quoted phrase comes from Act 141 of 2002, which added provisions to 18 Pa. C.S. §§6308 and 6310 requiring that a minor participating in the program fall into one of those categories. The same phrase is used in the regulation promulgated by the Pennsylvania State Police pursuant to the Act.

Licensee contends that the woman cannot be an officer, as she was underage; she cannot be an employee, as she was not paid; and she cannot be an "intern" because the program in which she participated did not have a "well-rounded component."

I find that the underage buyer's status as either a "volunteer" or an "intern" is of no relevance to citation cases such as this. Licensee's employee sold an alcoholic beverage to a minor, an act for which Licensee is absolutely liable, whatever may have been the means by which the minor came into the licensed premises.

Erie Sports Bar, Inc. v. PSP, BLCE, 6 A.3d 663 (Pa. Cmwlth. Ct. 2010) does not require exclusion of the evidence given by the minor in this case. In that case the court held that proof of compliance with the immediate verbal notification requirement of 37 Pa. Code §23.23 is a mandatory part of a citation case such as this one.

Since the status of the minor is not relevant, I have found no facts relating to it.

PRIOR RECORD:

Licensee has been licensed since May 15, 2007, and has had no prior violations which have become finally adjudicated.

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. Licensee became R.A.M.P. – certified on April 8, 2014. The law requires mandatory R.A.M.P. – compliance for a period of one year under the circumstances of this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Manheim Diner, Inc., License No. R-SS-EHF-9296, shall pay a fine of one thousand five hundred dollars (\$1,500.00) 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 continue to comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management, for a minimum period of one year following the mailing date of 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 24TH day of APRIL, 2015.



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

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.