

Mailing Date: NOV 24 2015

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

PENNSYLVANIA STATE	:	In re Citation No. 14-0748
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-475852
	:	
v.	:	PLCB LID No. 66919
	:	
PNK HEAD HOUSE, LLC	:	PLCB License No. R-AP-SS-EHF-1959
421 S. 2 <sup>nd</sup> ST.	:	
PHILADELPHIA, PA 19147	:	Philadelphia County

JUDGE SHENKLE  
BLCE COUNSEL: Andrew 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 April 22, 2014. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on March 15, 2014, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to four minors, nineteen years of age.

A hearing was held on Tuesday, September 22, 2015, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

**FINDINGS OF FACT:**

1. On March 15, 2014, Licensee participated – along with approximately 15 other bars in the university and center city areas of Philadelphia – in an “Erin Express” pub crawl, held annually on the Saturday before Saint Patrick’s Day. A number of buses provided free transportation among the participating establishments (N.T. 32-33).

2. On the same date, liquor enforcement officers arrived at Licensee’s premises at 2:30 p.m. and saw several tables with chairs set up outside. A perimeter had been set up demarking an area covered by a PLCB temporary extension. At the entrance to this area, a doorman checked the officers’ identifications and allowed them access. They saw approximately 25 patrons seated in the outside area, and among these the officers noticed a group of seven women, who appeared to be youthful, seated at two tables. All of the women were in possession of and consuming alcoholic beverages (by stipulation of counsel, N.T. 4-5).

3. Three of the women went into the licensed premises. The other four stood and prepared to leave. The officers identified themselves to these women, and asked for identification. They determined from questioning the women that they were minors, and issued various citations. Patron

Questionnaires were completed. The officers spoke with Licensee's member/manager, Patrick Pawliczek, who showed them an electronic identification scanner plugged into an electrical outlet; he also said that they maintained an age declaration card file, but neither method was used that day because of the volume of patrons participating in the "Erin Express" pub crawl (Ibid).

4. On March 15, 2014, a woman whose birth date was September 20, 1994, rode on one of the buses which were transporting people among the bars on the "pub crawl." She was a student at Villanova University, and drank vodka that day in her dorm room, as well as on the train from the university to 30<sup>th</sup> Street Station. She went to one other establishment before arriving at Licensee's premises, but was denied entry. She was very intoxicated (N.T. 25-28).

5. The woman was with a group of about ten people. She remembered getting off the bus at Licensee's premises. There was a small line. She was asked for ID and thinks she presented her Villanova Wild Card, but did not recall specifically. A Massachusetts driver's license, representing that the woman pictured on it was born in 1991, was found in her purse; the woman believes she picked it up off the ground and was trying to get into a bar with it. The photograph and name on the license are not hers, and she has no idea if the license is genuine (N.T. 8-11, Exhibit B-5).

6. The woman knows that she was cited for being in possession of a tequila sunrise at the table where she was sitting, but she does not remember how that happened, whether she bought it or someone bought it for her. She does not remember drinking it or picking it up. She remembers talking to an officer of the Bureau of Liquor Control Enforcement (N.T. 11-14).

7. The woman identified a "STATEMENT/QUESTIONNAIRE FOR MINORS" which the officer filled out; the document was signed by the woman. The document says that she had one tequila sunrise, which was served to her and paid for by friends, and that her age was questioned by the doorman, whereupon she displayed the Massachusetts license. The woman knows that she would not have misrepresented anything to the officer (N.T. 14-18, Ex. B-7).

#### CONCLUSIONS OF LAW:

Licensee violated the Liquor Code, 47 P.S. §4-493(1), on March 15, 2014, by permitting the sale, furnishing or giving of alcoholic beverages to one minor, nineteen years of age.

#### DISCUSSION:

The woman who testified for the Bureau did not have a present recollection of the events of March 15, 2014, both because the events had occurred a year and a half earlier and also because she had been intoxicated at the time the events occurred.

Counsel for Licensee objected to the Bureau's use of the questionnaire identified by the woman, on the basis that counsel was impeaching his own witness (in that she testified she had no recollection of the events reflected in the questionnaire). I made the document a part of the record in order to facilitate appellate review, but deferred receiving it in evidence until this writing.

Of course the questionnaire is hearsay, and since it has been objected to it must be excluded from evidence unless one of the exceptions to the hearsay rule applies.

Pennsylvania Rule of Evidence 803.1 provides in relevant part:

Rule 803.1. Exceptions to the Rule Against Hearsay--Testimony of Declarant Necessary

The following statements are not excluded by the rule against hearsay if the declarant testifies and is subject to cross-examination about the prior statement:

...

(3) Recorded Recollection of Declarant-Witness. A memorandum or record made or adopted by a declarant-witness that:

(A) is on a matter the declarant-witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the declarant-witness when the matter was fresh in his or her memory; and

(C) the declarant-witness testifies accurately reflects his or her knowledge at the time when made.

In my opinion the evidence in this case provides the necessary basis for a conclusion that this hearsay exception applies: the witness adopted as her own statement a writing which was made while the events were fresh in her memory, although she no longer recalls them.

Therefore Exhibit B-7 is received in evidence, over Licensee's objection. It provides a sufficient basis to sustain this citation as to one minor.

PRIOR RECORD:

Licensee has been licensed since March 22, 2013, and has had no prior violations.

PENALTY:

For violations of the type found in this case, any fine must usually be in the \$1,000.00 to \$5,000.00 range. However, if a licensee was in compliance with 47 P.S. §4-471 at the time of the violation and had not sold alcoholic beverages to minors or visibly intoxicated persons in the previous four years, then any fine must be in the \$50.00 to \$1,000.00 range. Licensee became R.A.M.P. – certified on June 19, 2013, and is therefore entitled to this benefit.

Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, PNK Head House, LLC, License No. R-AP-SS-EHF-1959, shall pay a fine of five hundred dollars (\$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 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 2<sup>ND</sup> day of November, 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**

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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.** Please make your guaranteed check 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