

Mailing Date: FEB 25 2015

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 14-1342C
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-480190
v.	:	
	:	
PROGRESS GRILL, INC.	:	PLCB LID No.: 18552
T/A PROGRESS GRILL	:	
3526 WALUT ST.	:	
HARRISBURG, PA 17109-3618	:	PLCB License No.: R-SS-17286
	:	
DAUPHIN COUNTY	:	

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

FOR LICENSEE: Steve C. Nicholas, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on July 17, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Progress Grill, Inc. (Licensee).

The citation charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that Licensee, by your servants, agents, or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, nineteen (19) years of age, on June 6, 2014.

I presided at an evidentiary hearing on January 15, 2015 at 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on June 6, 2014 and completed it on June 11, 2014. (N.T. 8)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on June 26, 2014. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5-6)

3. Pursuant to the Bureau's Age Compliance Program, on June 6, 2014, an underage buyer (19 years old) purchased a beer after being challenged as to age and showing authentic and valid identification.

4. Bureau personnel and the underage buyer were trained in the Age Compliance Program (ACP). The Bureau complied with all other protocols of the ACP. (N.T. 8-14; 19-24)

CONCLUSION(S) OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. The Bureau complied with the requirements of the Age Compliance Program [18 Pa. C.S.A. §6308(e) and §6310(c); 37 Pa. Code, Chapter 23].

3. I sustain the violation as charged.

DISCUSSION

Licensee summoned a defense based upon the recollection of the bartender who served the minor. He unequivocally testified the underage buyer displayed a photo driver's license indicating the purchaser was of age. Even so, the bartender who went through Responsible Alcohol Management Program server training, failed to take the additional step required by law. He did not make a video representation or photostat of the displayed identification card. He also did not require the purchaser to complete a declaration of age statement.

As a matter of fact, I conclude the underage buyer displayed his true and valid Pennsylvania photo driver's license. Had I not, the matter would have turned on whether the Bureau complied with regulation and statute regarding the Age Compliance Program.

It is crucial to note the law imposes no duty upon the Bureau for the underage purchaser to display a true and valid Pennsylvania photo driver's license (BLCE v. Boulevard Take Out and Six Pack LLC, In Re Citation No.: 14-1063C). Consequently, had I determined the facts to be precisely as Licensee presented, the charge would still have been sustained.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since June 6, 1986, and has no prior Adjudications since July 1, 1987, the date the Office of Administrative Law Judge was established.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [47 P.S. §4-471] prescribes a penalty of license suspension, or revocation, or a fine of not less than \$1,000.00, or more than \$5,000.00, or both for the violation found herein.

Further, Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to responsible alcohol management, mandates that Licensee participate in the Pennsylvania Liquor Control Board's Responsible Alcohol Management Program (RAMP), since this is Licensee's first violation as herein found.

Discretionary Component(s)

I impose a \$1,000.00 fine.

ORDER:

Imposition of Fine

Licensee must pay a \$1,000.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Mandatory RAMP Compliance

I order Licensee to comply with Liquor Code Section 471.1, pertaining to responsible alcohol management, for one year from the date of Bureau of Alcohol Education (BAE) certification.

Requirement to Contact the BAE of the Pennsylvania Liquor Control Board

Licensee must contact the BAE, Pennsylvania Liquor Control Board: toll free telephone No.: 1-866-275-8237; web site: www.lcb@pa.gov; email address: LBEducation@pa.gov within thirty days of the mailing date of this Adjudication to effect full RAMP compliance. Licensee has ninety days from the mailing date of this Adjudication to be fully certified by the BAE.

Consequence of Noncompliance with Mandatory RAMP

Failure to comply may cause the Bureau to issue a citation alleging Licensee's noncompliance. Alternatively, the Bureau may request a modification of the penalty imposed in this Adjudication.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 18TH day of February, 2015.



Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. If you have not already done so, it may be prudent for you to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.

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

The fine must be paid by cashier's check, money order, or an attorney's check who is licensed to practice law 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

Credit/debit cards may be used: visit www.lcb.state.pa.us scroll over LEGAL and then click on Office of ALJ for instructions..