

Mailing Date: MAR 18 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-1667C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-482109
	:	
4936 SSP, INC.	:	
VALLEY VIEW SHOPPING CENTER	:	PLCB LID - 60140
4936 PENNELL RD.	:	
ASTON TWP.	:	
ASTON, PA 19014-1867	:	PLCB License No. R-AP-SS-15465
	:	
DELAWARE COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 19, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 4936 SSP, Inc., License Number R-AP-SS-15465 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 14, 2015, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on July 18, 2014, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, twenty (20) years of age.

FINDINGS OF FACT:

1. The Bureau conducted an investigation of the licensed premises which began on July 18, 2014 and ended on July 22, 2014. A notice of violation letter dated July 30, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation, dated August 19, 2014, was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on August 22, 2014. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on February 24, 2015, by certified mail, return receipt requested, and by first class mail notifying them of the April 14, 2015 hearing. The mailing was signed as received on February 26, 2015 (N.T. 12-14 and Exhibits B-1 and B-2).

2. Officers from the Bureau of Enforcement conducted an age compliance check of the licensed premises on July 18, 2014. At approximately 4:55 p.m., two officers from the Bureau went into the establishment prior to the minor entering. The officers observed approximately fifteen patrons inside the premises being rendered service by one female bartender (N.T. 6-9).

3. One of the officers sat at the bar and ordered a drink. Then Underage Buyer No. 617 entered the premises, went to the bar and requested a twelve-ounce bottle of Miller Lite beer from the bartender. There was no doorman outside the premises. The bartender did not ask the Underage Buyer for identification nor did she ask him to sign a declaration of age card. The bartender retrieved the beer from the cooler, came back, opened it up, took money from the minor, placed the money in the cash register and returned his change. She then placed the beer in front of him. The Underage Buyer grabbed the beer up in his hands, but did not consume any of it. The Underage Buyer then picked up his cell phone, feigning a call and left the premises (N.T. 8-10).

4. Shortly thereafter, a supervisor from the Bureau approached the female bartender and notified her that she had served a minor. The other officers departed the premises while the supervisor was speaking with the bartender and checking the liquor license (N. T. 10).

5. A notification of noncompliance letter was mailed to the Licensee on July 22, 2014 (N.T. 13-14 and Exhibit B-3).

6. In lieu of presenting the Underage Buyer, S.F., the Bureau presented a JNET document with a Penn DOT photograph of S.F., which indicated that he was born April 17, 1994 and was twenty years old as of the date of hearing, and on July 18, 2014, the date of the offense. The Underage Buyer was part of the age compliance program, had met the requisite training requirements and remained under the direct supervision of the Bureau at all times during the compliance check (N.T. 14-15 and Exhibit B-4).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On July 18, 2014, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

PRIOR RECORD:

Licensee has been licensed since July 1, 2008, and has a record of prior violations as follows:

In Re:

Citation No. 09-0010X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
October 20 and 31, 2008.

Citation No. 11-0129X. \$200.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
June 3 and October 14, 2010.

Citation No. 11-0342X. \$150.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
October 14, 2010.

Citation No. 11-0876X. \$250.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
March 25, 2011.

Citation No. 13-2065. \$1,400.00 fine and R.A.M.P. training mandated.

1. Sales to a visibly intoxicated person.
September 6, 2013.

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Citation No. 14-0568. \$1,000.00 fine.

1. Sales after the license expired and had not been renewed and/or validated.
December 1, 2013 through January 27, 2014.

DISCUSSION:

This is the third enhanced penalty violation within a four year period and therefore the law mandates that the license be suspended.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that the Restaurant Liquor License of 4936 SSP, Inc., License Number R-AP-SS-15465, be suspended for a period of one (1) day. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

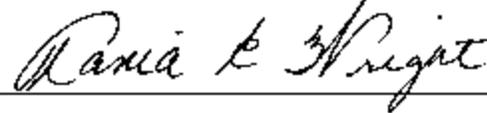
IT IS FURTHER ORDERED that the requirements set forth in Section 471.1 of the Liquor Code, pertaining to Licensee's mandatory certification through the Pennsylvania Liquor Control Board Responsible Alcohol Management Program (R.A.M.P.) are hereby DEFERRED pending renewal of the license.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

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Jurisdiction of this matter is retained.

Dated this 8th day of MARCH, 2016.



Tania E. Wright, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

If you wish to appeal the decision of the Administrative Law Judge's Order, the appeal must be filed within 30 days of the mailing date of the Order. Please contact the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

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

The fine must be paid by Treasurer's Check, Cashier's Check, Money Order or a check drawn on the business or trust account of an attorney, who must be licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless they are certified by your bank.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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