

Mailing Date: APR 30 2015

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

PENNSYLVANIA STATE	:	In re Citation No. 14-2082
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-482138
	:	
v.	:	PLCB LID No. 64611
	:	
BETOP, INC.	:	PLCB License No. D-SS-1925
608 BALTIMORE PIKE	:	
SPRINGFIELD, PA 19064-3030	:	Delaware County

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 21, 2014. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on July 15, 2014, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one minor, seventeen years of age.

A hearing was held on March 19, 2015, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On July 15, 2014, a man whose birth date was April 22, 1997, purchased two cases of beer in the licensed premises. When the cashier asked for identification, he presented a counterfeit Pennsylvania driver's license bearing his photograph and falsely representing that he was born on April 12, 1993 (N.T. 20-22, Exhibit B-3).
2. When the man left the premises with the beer, an officer of the Springfield Township Police Department stopped him and asked how old he was. The man admitted that he was 17. The officer asked how he could buy beer without being of age. The man admitted that he had used the fake identification, and surrendered it to the officer (N.T. 13-14).
3. The officer and the man returned to the licensed premises and confronted the owner, who admitted that she had sold beer to the minor. He asked if she had carded him. She said that

she had. The officer showed the owner the fake ID, and asked if it was the one he used; she acknowledged it was (N.T. 14).

4. He asked her if the minor didn't look a bit young; she said she had been concerned about that and asked for additional identification, but he did not have any. He asked if she used a card reader; she said she did, but only a bunch of numbers came up when she swiped it. He asked her, wasn't that another sign that this was not valid? She didn't answer (N.T. 14-15).

5. Licensee's owner recounted the events: "The kid came in. He looks young, so I asked for his ID. I take the card...I look at it. I gave it to my son, at the day he was [working] there, too, and we both look at it. There was nothing wrong, but his face looks young, so that worries me. I am serious about this...you have scanner to scan. And the machine will show up numbers, which is years and days, and his number, under scan, showed over 21....It's a bunch of numbers, but it's over 21, so I sold him the case (N.T. 29-30).

CONCLUSIONS OF LAW:

Licensee violated the Liquor Code, 47 P.S. §4-493(1), on July 15, 2014, by selling alcoholic beverages to one minor, seventeen years of age.

The defense provided by 47 P.S. §4-495(g) does not apply because Licensee lacked good faith under the circumstances of this case.

DISCUSSION:

Licensee's owner was entirely correct in questioning the age of the seventeen year old minor in this case, because he has an extremely youthful appearance. The counterfeit driver's license used was quite good: all of the visual elements of a genuine license are present in the correct locations, and the card bears no evidence of alteration.

My finding that the counterfeit license was not relied upon in good faith is based on two facts: first, the owner asked for a second identification, and the failure to provide one should have confirmed her suspicions. Second, during her testimony the owner volunteered additional information about the events of that evening which affected my assessment of her good faith.

The additional information is her nonresponsive observation that the transaction happened while it was dark, between 8:00 and 9:00 p.m. in April. The owner questioned whether anyone (such as the police officer who testified) could see the extreme youthfulness of the patron carrying beer out of the premises at that time of day (N.T. 30-31).

This suggests to me that the owner actually knew, in her heart of hearts, that this customer was too young to buy beer. I think she decided to complete the transaction because it was dark and it appeared unlikely anyone would notice. This mental state is incompatible with good faith.

At the time of the hearing I thought this decision would turn on the question whether Licensee's transaction scan device, used to verify the age of lottery customers (who must be at least 18), also qualified as a "transaction scan device" within the meaning of 47 P.S. §4-495(g). I asked for counsel's input, and the Bureau later argued in a letter brief that the decision in *PSP, BLCE v. Parth Corporation*, Citation No. 05-2791, pointed to the conclusion that such devices do not satisfy the requirements of the Liquor Code defense.

I do not agree that *Parth* holds that, or has any application to the present case. The problem remains the one which the Bureau acknowledged: "The Bureau can cite no authority which defines the requirements which a 'transaction scan device' must meet." (BLCE letter brief, p. 2).

Neither can I. It would be useful to have some standards in this area, because many people have ideas about what characteristics such a device should have (such as a memory of some type) but they are not of much weight in the absence of a controlling statute or regulation.

In this case I believe the device employed met all of the requirements set forth in 47 P.S. §4-495(g). If I had been persuaded that Licensee acted in good faith, this result would have been different.

PRIOR RECORD:

Licensee has been licensed since May 25, 2011, and has had prior violations as follows:

In re Citation No. 12-1615. \$1,250.00 fine and R.A.M.P. – certification mandated.

1. Sales to a minor. September 14 and 15, 2012.

In re Citation No. 13-2647. \$2,000.00 fine and R.A.M.P. compliance mandated.

1. Sales to a minor. October 25, 2013.

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. Since this is Licensee's third violation in a four-year period of a provision mentioned in 47 P.S. §4-471(b), the law requires that the penalty include license suspension or revocation.

ORDER

THEREFORE, it is hereby ORDERED that the distributor license of Licensee, Betop, Inc., License No. D-SS-1925, shall be suspended for a period of two (2) days (including all permits and Licensee Discount Card) BEGINNING at 7:00 a.m. on Monday, June 15, 2015, and ENDING at 7:00 a.m. on Wednesday, June 17, 2015. Jurisdiction is retained.

Licensee is directed on Monday, June 15, 2015, at 7:00 a.m. to place the enclosed notice of suspension (Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Fine Wine & Good Spirits stores.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Wednesday, June 17, 2015, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 28TH 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.