

Mailing Date: MAR 28 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-2174C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-485779
	:	
CHELSEA’S ROCKHOPPERS, INC.	:	
473 LEVERINGTON AVE.	:	PLCB LID - 67354
PHILADELPHIA, PA 19128-3315	:	
	:	
	:	PLCB License No. R-AP-SS-9512
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**JOHN J. McCREESH, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 28, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against Chelsea’s Rockhoppers, Inc., License Number R-AP-SS-9512 (hereinafter “Licensee”).

An Administrative hearing was held on Tuesday, September 15, 2015, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on September 27, 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, nineteen (19) years of age.

FINDINGS OF FACT:

1. On Saturday, September 27, 2014 at 7:00 p.m., an officer from the Bureau conducted an investigation of the licensed premises as part of the Underage Buyer Program. The officer entered the licensed premises in an undercover capacity, sat down, looked around and determined that it was safe for the Underage Buyer to enter. There were approximately ten other patrons in the bar. The officer then sent a text message to the detail outside advising them to allow the Underage Buyer to come into the premises (N.T. 7-9).

2. R.K. was born September 10, 1995 and is a part of the Bureau's underage compliance check program. He was trained by the Bureau and had to pass a test before participating in the program. At 7:07 p.m., the Underage Buyer entered the licensed premises and approached the bar. As the bartender approached, R.K. observed an open seat, with a beer on the bar in front of the seat. R.K. asked if the seat was taken, and the bartender stated "No, you're good." The bartender then asked R.K. if he wanted *another* Yuengling. R.K. indicated that he would take one. R.K. was served one twelve-ounce bottle of Yuengling Lager beer for \$3.50 by the bartender, who did not ask his age or request identification. When the transaction was complete, R.K. played with his cell phone and then left the bottle of beer on the bar and exited the premises without consuming any alcohol (N.T. 9, 11 and 15-17).

3. Shortly thereafter, a Bureau supervisor entered the premises, identified himself and notified the bartender that he had sold to a minor. The bartender directed him to the Licensee. The officer viewed a video of the transaction. From the conversation with the bartender and watching the video, the officer concluded that the bartender believed the Underage Buyer to be a customer who was already on the premises and presumably already presented identification and not one who had just entered the premises (N.T. 18-22).

4. The bartenders were in the process of changing shifts. The bartender coming on duty was told by a bar back that a gentleman standing at the bar wanted a drink. The bartender indicated that the Underage Buyer was touching the bottle of Yuengling that was on the bar and he thought that he was indicating that he wanted *another* one. The bartender knew that the owner was the previous bartender and was diligent about carding everyone, so he presumed that the patron had been carded (N.T. 23-24).

5. On October 1, 2015, a Notification of Non-Compliance was sent to the licensed premises (N.T. 10 and Exhibit B-3).

CONCLUSIONS OF LAW:

On September 27, 2014, Licensee, by its 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, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

PRIOR RECORD:

Licensee has been licensed since December 12, 2012, and has a record of prior violations as follows:

In Re:

Citation No. 13-2522C. \$1,400.00 fine and RAMP Certification mandated.

1. Sales to a minor.  
October 23, 2013.

DISCUSSION:

At the time of the offense, the bartenders were in the process of changing shifts. The bartender coming on duty was told by a bar back that a gentleman standing at the bar wanted a drink. The bartender indicated that the person was touching the bottle of Yuengling that was on the bar and he thought that he was indicating that he wanted another one. The bartender knew that the owner of the premises was the earlier bartender, who was diligent about carding everyone, so he presumed that the patron, the Underage Buyer, had been carded. The bartender was mistaken in his belief that he was serving a customer who was already on the premises and who had previously been served and whose identification had been checked.

The Court believes that the bartender made an honest mistake, however, Licensee has a recent, previous violation of the same nature necessitating that the penalty be above the minimum recommended. Licensee was RAMP certified on May 12, 2015. Licensee will be required to remain in compliance with the requirements set forth in Liquor Code Section 471.1 pertaining to RAMP.

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.

Accordingly, we issue the following:

ORDER

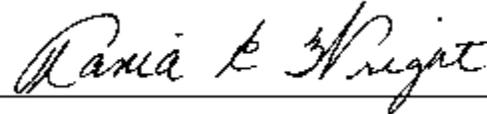
THEREFORE, it is hereby Ordered that Licensee, Chelsea Rockhoppers, Inc., License Number R-AP-SS-9512, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that Licensee shall remain in compliance with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management for a period of one year from the mailing date of this Order.

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).

**Jurisdiction of this matter is retained.**

Dated this 18<sup>TH</sup> 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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Chelsea's Rockhoppers, Inc.  
In Re: Citation No. 14-2174C

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

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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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