

Mailing Date: JUN 09 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 14-2371
LIQUOR CONTROL ENFORCEMENT	:	BLCE INCIDENT NO. W03-477906
	:	
v.	:	
	:	
	:	PLCB LID - 55257
ROTUNDA BROTHERS, INC.	:	
T/A BATDORF RESTAURANT	:	PLCB LICENSE NO. R-AP-SS-18656
239-245 W. MAIN ST.	:	
ANNVILLE, PA 17003-1322	:	
	:	
LEBANON COUNTY	:	

**ADJUDICATION**

**BEFORE: DANIEL T. FLAHERTY, JR., ALJ**  
**BUREAU COUNSEL: JOHN H. PIETRZAK**  
**LICENSEE COUNSEL: JASON C. GIURINTANO**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on December 4, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against ROTUNDA BROTHERS, INC., (hereinafter "Licensee").

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

The investigation which gave rise to the citation began on April 22, 2014 and was completed on November 3, 2014; and notice of the violation was sent to Licensee by Certified Mail on November 14, 2014. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 15, 2015 at the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. AMS was born on March 15, 1995, and, on March 27, 2014, he was 19 years old (N.T. 29-30).
2. The Licensee charged in this case is Rotunda Brothers, Inc. t/a the Batdorf Restaurant, which has its license at 239-245 West Main Street, Annville, PA (Administrative Notice).
3. A second liquor licensee, known as the Annville Grille, has its licensed premises on West Main Street in Annville, PA about two blocks from the Rotunda Brothers, Inc. restaurant on the same side of West Main Street in the Batdorf Building. (N.T. 46-47).
4. On March 27, 2014, AMS entered the Annville Grill with a second individual who was over the age of 21. This second individual ordered two beers, one of which was served to AMS (N.T. 32).
5. Upon being interviewed by local police after being stopped, AMS incorrectly identified the establishment where he had beer served as the Batdorf Restaurant because of the sign on the building which houses the Annville Grill which read, "Batdorf Building." (N.T. 41 and Exhibit L-4).

CONCLUSION OF LAW:

The charge in the citation must be **dismissed**.

DISCUSSION:

The record establishes that the minor in this case was served beer by a licensee other than the one that was charged in this case.

In a liquor license case, the burden is on the Commonwealth to establish a violation by a clear preponderance of the evidence. *In re Omicron Enterprises*, 449 A.2d 857 (Pa.Cmwltth 1982).

The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. *Black's Law Dictionary, Fifth Edition*, West Publishing Company, Copyright 1979, Page 1064.

It is within my province, and is part of my responsibility to determine the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robinson*, 561 A.2d 82 (Pa.Cmwlth 1989). I may give testimony such consideration as it may deserve, and accept it or reject it in whole or in part. *McFarland Landscape Service v. Workmen's Comp. Bd. Of Appeal*, 557 A.2d 816, 817-18 (Pa.Cmwlth 1989); *Hollenbach v. North Wales Foundry Co.*, 136 A.2d 148, 150 (Pa.Super 1957).

The minor in this case assumed that the "Batdorf Building" housed the "Batdorf Restaurant," and honestly but mistakenly gave this information to the investigating officers. Since the charged Licensee (Batdorf Restaurant) was not in any way involved in this matter, the charge in the citation must be dismissed.

ORDER

IT IS HEREBY ORDERED that Citation No. 14-2371 be DISMISSED.

Jurisdiction is retained.

Dated this 31<sup>ST</sup> day of May, 2016.



Daniel T. Flaherty, Jr., J.

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**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.**

**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 CHIEF COUNSEL'S OFFICE AT 717-783-9454.**