

Mailing Date: OCT 14 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 15-0038C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-488601
	:	
9241 PW WELSH, LLC	:	
T/A PADDY WHACKS	:	PLCB LID - 58087
9241-43 ROOSEVELT BLVD. REAR	:	
PHILADELPHIA, PA 19114-2205	:	
	:	PLCB License No. R-AP-SS-11481
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 20, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 9241 PW Welsh, LLC, t/a Paddy Whacks, License Number R-AP-SS-11481 (hereinafter "Licensee").

9241 PW Welsh, LLC
t/a Paddy Whacks
In Re: Citation No. 15-0038C

An Administrative hearing was held on Tuesday, August 25, 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 December 6, 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, eighteen (18) years of age.

FINDINGS OF FACT:

1. On Saturday, December 6, 2014 at 7:50 p.m., an officer from the Bureau entered the licensed premises in an undercover capacity and determined that it was safe for the Underage Buyer, working with the Bureau in a volunteer capacity, to enter. One male bartender, later identified as Casey Jones, was tending bar and rendering service of alcoholic beverages to fifty to sixty patrons. At 7:55 p.m., Underage Buyer No. 738 entered the premises and approached the bar. Underage Buyer No. 738 ordered and was served one twelve-ounce bottle of Miller Lite beer for \$3.75 by the bartender who did not request identification. When the transaction was complete, Underage Buyer No. 738 left the beer on the bar and exited the premises without consuming any alcohol. The Underage Buyer was not available at the time of hearing, but was identified and her age verified to be under the age of twenty-one via a JNET file, through the officer who witnessed the sale of the alcoholic beverage to the minor by the bartender at the licensed premise (N.T. 7-17 and Exhibit B-3).

2. Outside the premises, Underage Buyer No. 738 provided a synopsis regarding the alcohol sale to officers waiting outside. Within a minute or two after the minor departed the premises, a second officer entered the premises and informed the bartender that he had served alcohol to a minor (N.T. 12 and 49).

3. On December 8, 2014, a Notification of Non-Compliance was sent to the licensed premises (N.T. 15 and Exhibit B-4).

CONCLUSIONS OF LAW:

On December 6, 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, eighteen (18) 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 October 3, 2008, and has a record of prior violations as follows:

In Re:

Citation No. 09-2967. \$1,250.00 fine.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
November 22, 2009.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
November 22, 2009.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
November 22, 2009.

Citation No. 11-0299C. \$500.00 fine.

1. Sales to a minor.
January 20, 2011.

Citation No. 12-0395. \$300.00 fine.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages.
December 31, 2011.

Citation No. 12-1634C. One day suspension.

1. Sales to a minor.
October 24, 2012.

Citation No. 13-0493. Two days suspension.

1. Sales to a minor.
January 3, 2013.

Citation No. 14-1729. \$150.00 fine.

1. Failed to comply with the Order of the Administrative Law Judge mandating RAMP Certification.
June 4 through July 10, 2014.

DISCUSSION:

Counsel for Licensee cross-examined the Bureau officer regarding motivation and process for selecting this establishment for a compliance check. Counsel objected to the Bureau's presentation of the JNET file in that he was not able to cross-examine the minor. The Court acknowledges that the JNET is admissible for identification and age verification. However, for assurance of a full and fair hearing, the Court strongly encourages the Bureau to present the minor's testimony regarding the circumstances of their entry to the premises and the sales transaction, and to be subject to cross-examination. Here, the witness was unavailable, despite the Bureau's effort's to have her present. In addition, there were no material disputes of the facts. The Bureau officer witnessed the transaction and was available for cross-examination.

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t/a Paddy Whacks
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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.

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 Licensee, 9241 PW Welsh, LLC, t/a Paddy Whacks, License Number R-AP-SS-11481, 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 comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us) within thirty (30) days of the mailing date of this Adjudication in order to receive assistance in the compliance process. Licensee must receive Certification within ninety (90) days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

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).

IT IS ALSO ORDERED that the Restaurant Liquor License of 9241 PW Welsh, LLC, t/a Paddy Whacks, License Number R-AP-SS-11481 (including all permits and Licensee Discount Card), be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, January 23, 2017 and **ENDING** at 7:00 a.m. on Wednesday, January 25, 2017.

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t/a Paddy Whacks
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Licensee is directed on Monday, January 23, 2017 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as 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.

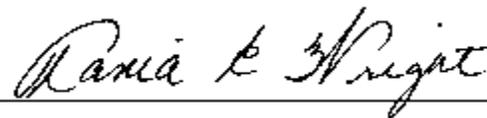
Licensee is advised if a replacement placard is needed for any reason they are available at all Pennsylvania Liquor Stores/Fine Wine and Good Spirits stores.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Wednesday, January 25, 2017 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction of this matter is retained.

Dated this 6TH day of October, 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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9241 PW Welsh, LLC
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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 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

Credit/Debit Cards may be used: if you have already registered with PLCB+ you should be able to pay by Credit/Debit card; if you have not registered with PLCB+ you may obtain the information on how to register by sending an email message to:

RA-LBLICENSINGMOD@pa.gov

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