

Mailing Date: JAN 15 2016

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

PENNSYLVANIA STATE : In re Citation No. 15-0489
POLICE, BUREAU OF :
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W01-490741
 :
v. : PLCB LID No. 47870
 :
THE END ZONE, INC., T/A CLUB ONYX : PLCB License No. R-AP-SS-EHF-9131
2908 S. CHRISTOPHER COLUMBUS BLVD. :
PHILADELPHIA, PA 19148-5106 : Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Andrew R. Britt, Esq.
LICENSEE COUNSEL: James L. Pearl, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on March 24, 2015. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on February 13, 2015, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one minor, twenty years of age.

A hearing was held on October 28, 2014, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On February 13, 2015, at 11:15 p.m., uniformed liquor enforcement officers entered Licensee's premises to conduct an open inspection. They walked through the premises, looking for any illegal activity. One of the officers saw and interacted with a young-looking woman in possession of alcohol. An investigation disclosed that the woman had obtained the drink from a "shot girl," who was also identified (N.T. 5-7).

2. Two officers who were a part of the detail saw two young-looking women who appeared to be dancers, based on their attire, as they were being served shots. The women were seated in recliner-style chairs, facing the stage. The officers asked them for identification. They raised their hands and said "do we look like we have ID on us?" The officers asked where their ID's were, and another officer escorted the women to the locker room to retrieve them (N.T. 12-13).

3. One of the officers had seen a "shot girl" going around asking people if they wanted shots. He knew she was a shot girl because she had a tray with shots on it. The dancer cited by the officer for underage possession told him that the liquid which was served was Green Apple Bacardi Rum shots. The officer saw the shot girl hand the shots to the dancers, but he did not observe her

closely and would not be able to identify her. The dancer whom the officer cited had a photo ID record obtained through JNET, the Pennsylvania Justice Network, showing that her date of birth was November 14, 1994. Therefore she was 20 years old on February 13, 2015 (N.T. 15, Ex. B-3).

4. The other young-looking dancer seen by the officer turned out to be of legal age and was let go. Another officer asked the dancer who was cited to complete a patron questionnaire, but the officer who issued the citation understood that she refused to do so. When the shot girl handed the shot to the dancer who was cited he was about five feet away from her, but did not recall her race. He did not know how many shot girls were in the premises that evening, nor did he know of his own personal knowledge whether the drink was alcohol. He believes the dancer handed the drink to the officers, and that the other officer disposed of it. The drink was green in color (N.T. 16-19).

5. The officer did not recall what the shot girl was wearing, but she had a tray with multiple shots on it and was circulating among the customers, asking people if they would like a shot. He did not see people paying for these shots, but assumed they did. If he remembers correctly, the officer described the containers as like test tubes, of the type that will not stand up if it is set down on a counter (N.T. 19-21).

6. Neither of the women seen by the officer consumed any alcoholic beverage, but they appeared to be getting ready to do so when the officer approached them. In the officer's experience, shot girls normally serve shots of alcohol, either a mixture or a lesser proof, to make it cheaper (N.T. 21-23).

7. The dancers who appear at Licensee's premises, which does business as Club Onyx, are independent contractors. When a dancer starts a shift she checks in at the office, and normally her person and belongings are searched, to make sure they don't have weapons or anything. Dancers are not permitted to bring alcohol into the club, but sometimes this rule is broken. Underage dancers are given an "underage wristband" which is yellow with black writing on it. The dancer who was cited received such a wristband on February 13, 2015, but after the inspection, when she was brought back to the office, she didn't have it on. The procedure for a dancer who wishes to purchase a drink is she gives the last four digits of her Social Security number to a bartender, who enters it in Licensee's system, which confirms her age (N.T. 25-28).

8. Licensee's manager was present at the time of the open inspection, and was in the hallway near the office when a liquor enforcement officer walked back there and said he had seen a young lady with alcohol. Once the officers brought the dancer to the office area the manager had a conversation with her in which he asked if she had been drinking; she said yes. He asked where she got the alcohol; she said she didn't remember. Officers and the manager repeated that question and the dancer repeated her statement that she didn't remember (N.T. 28-33).

9. The club employed two shot girls at the time. They do not stock Apple Bacardi Rum, though they do stock Bacardi Rum. They do not serve shots in test tubes; they are served in plastic shot cups, five ounce capacity, of a type which can sit on a counter without falling over. When the shot girls offer shots to the crowd, the people who want them pay \$5 for a shot. The dancers normally wear bathing suits, a bottom and a top. It is a large club, and there are many dancers working in rotation. When not onstage, they may mingle with customers, sitting with them at tables and chairs rather than the bar. Customers may buy drinks for adult dancers (N.T. 33-39, 57-58).

10. The wrist band supposed to be worn by dancers who are underage is of the type given in a hospital, which a person can remove easily. Removing the band would result in expulsion of the dancer, if she is caught. The requirement for the last four digits of the dancer's Social Security number to get a drink is an additional requirement which backs up the wrist band requirement. The shot girls serve vodka, tequila, and sometime bourbon, but not rum. They are mixed with cheap alcohol and a juice of some kind. There were only two shot girls working on the night of the open inspection. When a dancer buys a shot from a shot girl she is not required to give the last four digits of her Social Security number (N.T. 40-46).

11. The shot girl seen by the officer works as an independent contractor, and has been doing this work for about two years. When she goes to work she clocks in, gets some liquor, carafes and juice and prepares mixtures which have more juice than liquor in them. She then fills the shot glasses from the carafes, which she keeps put away until she needs more. The liquor is usually Banker's brand, plus perhaps some "pucker mixes" and a lot of juice; she estimates 25% alcohol and the rest juice. The juices are cranberry, orange, whatever goes with the liquor (N.T. 47-48).

12. The shot girl remembered the police coming in. One of Licensee's managers told her to come to the office; the dancer who was cited was there, and pointed to the shot girl who was asked to come in, saying that it was she who sold her the shot. The shot girl responded that she sells a lot of shots, she didn't remember. She has sold shots to dancers before, though usually it is a customer who purchases the shot. Because she felt pressure to do so, the shot girl admitted making the sale although she didn't actually remember it; she figured if everyone was saying she did it, she must have done it (N.T. 48-52).

CONCLUSIONS OF LAW:

The weight of the evidence favors the conclusion that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on February 13, 2015, by permitting the sale of an alcoholic beverage to one minor, twenty years of age.

DISCUSSION:

There were a number of inconsistencies in the testimony, and some instances in which I thought a liquor enforcement officer's ability to observe, remember and relate significant details could stand improvement. However, it is my conclusion that the weight of the evidence supports the averment of the citation.

Licensee instituted controls which it reasonably believed to be sufficient to prevent the problem which arose in this case. Unfortunately there was a chink in Licensee's armor, and this violation was the result. Licensee's general pattern of diligence persuades me that the appropriate penalty in this case is the minimum fine of \$1,000.00.

PRIOR RECORD:

Licensee has been licensed since May 17, 2001, and has had prior violations as follows:

In re Citation No. 09-2093. \$300.00 fine.

1. Permitted strippers to dance until 2:30 a.m. January 25, 2009.
2. Permitted patrons to possess alcoholic beverages after 2:30 a.m. April 4, 2009.

In re Citation No. 13-2623. \$250.00 fine.

1. Failed to adhere to an conditions of an agreement with the Board placing additional restrictions on the license. September 4 through November 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 the type found in this case. Licensee became certified under 47 P.S. §4-471.1 on June 11, 2015. The law requires mandatory continuation of that status under the circumstances of this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, The End Zone, Inc., t/a Club Onyx, License No. R-AP-SS-EHF-9131, shall pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that Licensee shall remain in compliance with the requirements set forth in Liquor Code §471.1, pertaining to Responsible Alcohol Management, for a minimum 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 is retained.

Dated this 13TH day of January, 2016.



David L. Shenkle, J.

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.

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

The fine must be paid by cashier's check, money order, or a check drawn on the account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail it, 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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The End Zone, Inc.