

Mailing Date: MAY 05 2016

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

PENNSYLVANIA STATE	:	In re Citation No. 15-1100C
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W02-496172
	:	
v.	:	PLCB LID No. 51734
	:	
LUPI, INC.	:	PLCB License No. R-SS-11116
T/A CALABRIA PIZZA & FAMILY RESTAURANT	:	
420-422 E. DRINKER ST.	:	
DUNMORE, PA 18512-2438	:	Lackawanna County

JUDGE SHENKLE
BLCE COUNSEL: Craig A. Strong, Esq.
LICENSEE: Carol Cupelli

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 26, 2015. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on May 16, 2015, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one minor, nineteen years of age.

A hearing was held on March 31, 2016 in Scranton, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On May 16, 2015, a woman whose birth date was June 27, 1995, who was participating in the Bureau's age compliance program, entered the licensed premises and picked up a can of beer from a cooler, which she took to the register. The clerk asked for identification, and the woman gave him her valid Pennsylvania junior driver's license. The clerk went into a back room, then returned, gave the woman back her ID and charged her for the beer (N.T. 12-14).

2. A liquor enforcement officer then entered the premises and notified Licensee's employee of the violation (N.T. 7).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since October 1, 2003, and has had no prior violations.

DISCUSSION:

Licensee's corporate officer explained that the woman's junior driver's license had been swiped and the machine verified that she was of legal age. However, the corporate officer later swiped her own license and it returned an incorrect age, so it appears the machine was defective.

47 P.S. §4-495(g) provides a defense to a licensee who establishes that one of the legal forms of identification was identified as valid by a transaction scan device, and that the licensee relied on the device and the identification *in good faith*.

"In good faith" in this context means that the employee completing the transaction must have no reason to doubt the proposition that the person presenting the card is its owner and is legally entitled to purchase alcoholic beverages.

Pennsylvania junior driver's licenses are printed with a portrait, as opposed to a landscape, orientation (they are read vertically rather than horizontally). This is an obvious red flag.

I find that an employee who accepts a junior driver's license as proof of age, prior to the date printed on the license in red, cannot have the benefit of this defense, even if he did not previously know that the transaction scan device he used was defective.

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. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Lupi, Inc., t/a Calabria Pizza & Family Restaurant, License No. R-SS-11116, 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 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: 1-866-275-8237; 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).

Dated this 27TH day of APRIL, 2016.



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.

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

In re Citation No. 15-1100C
Lupi, Inc.