

Mailing Date: FEB 13 2020

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 19-1013C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No.: PA 2019-559719
v.	:	
	:	
EDMUND A SKWIRUT	:	PLCB LID No.: 18171
T/A ALFIE MCDUFFS	:	
711 HAWTHORNE ST	:	PLCB License No.: R-SS-16728
VANDERGRIFT PA 15690-1525	:	
	:	
WESTMORELAND COUNTY	:	
	:	
	:	

**BEFORE:** JUDGE RICHARD O'NEILL EARLEY

**APPEARANCES:**

**BLCE COUNSEL:** EMILY L. GUSTAVE, ESQ.

**LICENSEE:** EX PARTE

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on July 12, 2019, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Edmund A. Skwirut, t/a Alfie McDuffs, License Number R-SS-16728 (Licensee).

The citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-493(1), alleging that on May 1, 2019, 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, 19 years of age.

An administrative hearing was conducted on Thursday, January 16, 2020, at 1:00 p.m., at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily L. Gustave, Esq. Licensee was ex-parte.

I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on May 1, 2019, and completed its investigation on June 5, 2019. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated June 18, 2019, which was sent by certified mail and received by Licensee on June 27, 2019. (Exhibits C-1 and C-2)
3. The citation was issued on July 12, 2019, and was sent by certified mail. It was not signed for by Licensee. (Exhibits C-3 and C-4)
4. On May 1, 2019, an undercover contingent from the Bureau visited Licensee's premises in conjunction with the Age Compliance Check Program (the Program). All Bureau participants received mandatory training under the Program before the undercover visit. (N.T. pp. 12, 16, 24)
5. A Liquor Enforcement Officer entered Licensee's premises and observed owner Edmund Skwirut, and no patrons present. (N.T. pp. 9-10)
6. A short time later, a 19-year-old, underage buyer entered Licensee's premises and ordered a bottled beer. Mr. Skwirut asked the underage buyer for identification. The underage buyer provided her valid Pennsylvania driver's license, and Mr. Skwirut served the underage buyer. (N.T. pp. 11, 17)
7. The underage buyer paid for the beer and departed the premises without consuming any alcoholic beverages. (N.T. pp. 19-20)
8. Shortly thereafter, Liquor Enforcement Officer Tyler Henk entered the establishment and informed Mr. Skwirut that he had just served alcohol to an undercover minor. (N.T. pp. 25-26)
9. Officer Henk sent a letter of noncompliance to Licensee on May 2, 2019. (Exhibit C-7).
10. I take administrative notice that Board records indicate Licensee's liquor license expired on June 30, 2019, and that as of this date there is no record to indicate that Licensee has taken steps to renew it.
11. On December 6, 2019, I wrote to the parties to notify Licensee that because of its extensive citation history and the severity of the charge in this citation, that this matter would be best resolved by a hearing rather than through a waiver. I further notified Licensee that it was already in violation of Chief Administrative Law Judge Maunus'

September 11, 2019, order requiring Licensee to file its prehearing memorandum, and implied that Licensee should communicate with the Bureau's counsel to attempt to address this failure. Licensee did not communicate with Bureau counsel at any time thereafter. (N.T. p. 27)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by the Liquor Code at 47 P.S. §4-471 have been satisfied.
2. Count one: Licensee violated the Liquor Code at 47 P.S. §4-493(1), in that 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, 19 years of age.

DISCUSSION:

The Bureau has established by a preponderance of the evidence that on May 1, 2019, Licensee served alcohol to a minor. Pennsylvania Liquor Control Board v. Leggens, 542 A.2d 653 (Pa. Cmwlth. 1988); Omicron Enterprises, 449 A.2d 857 (Pa. Cmwlth. 1982); Com. v. Moreno, 14 A.3d 133 (Pa.Super. 2011).

PRIOR RECORD:

Licensee has been licensed since October 24, 1977, and has had 15 prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

IN RE:

Citation No. 90-2153. Fine \$725.00. Licensee's appeal to Board dismissed. Licensee's appeal to Common Pleas Court dismissed.

1. Sold alcoholic beverages after your restaurant liquor license expired.
2. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.

Citation No. 94-1329 and No. 94-1581 consolidated. Fine \$750.00 and one-day suspension.

1. Not a bona fide restaurant in that chairs at tables were insufficient.
2. Sales to visibly intoxicated persons.
3. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (poker machine and machine).

Citation No. 95-0577. Fine \$250.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.

EDMUND A. SKWIRUT  
T/A ALFIE MCDUFFS  
IN RE CITATION NO. 19-1013C

2. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 2:30 a.m.

Citation No. 95-2234. Fine \$50.00.

1. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension.

Citation No. 96-1369. Fine \$1,000.00 and one-day suspension.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises.

Citation No. 09-2580. Fine \$2,400.00 and RAMP training mandated.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (machine).
2. Sales to a visibly intoxicated person.
3. Sold alcoholic beverages on credit in contravention of the Liquor Code and Title 40 of the Pennsylvania Code.
4. Failed to clean malt or brewed beverage dispensing system at least once every seven days.

Citation No. 12-1090. Fine \$350.00.

1. Operated the licensed establishment without a valid health permit or license. December 1 through 23, December 26 through 30, 2011, January 2 through April 7, and April 9 through May 24, 2012.
2. Paid for purchases of malt or brewed beverages with other than Licensee's checks.  
On 30 dates between July 13, 2011, and April 30, 2012.

Citation No. 12-1368. Fine \$200.00.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.  
May 18, June 7 and July 20, 2012.

Citation No. 14-0639. Fine \$1,400.00.

1. Failed to maintain malt or brewed beverage system dispensing cleaning records.  
June 1, 2013, through January 29, 2014.
2. Operated the licensed establishment without a valid health permit or license. December 1 through 23, 26 through 30, 2013, and January 2 through 28, 2014.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years.  
January 29, 2014.
4. Not a bona fide restaurant in that food items were insufficient.  
January 29, 2014.

EDMUND A. SKWIRUT  
T/A ALFIE MCDUFFS  
IN RE CITATION NO. 19-1013C

Citation No. 14-2423. Fine \$500.00.

1. Failed to maintain malt or brewed beverage dispensing system cleaning records.  
January 30 through September 30, 2014.

Citation No. 16-0617. Fine \$200.00.

1. Not a bona fide restaurant in that food items were insufficient.  
March 30, 2016.

Citation No. 17-0238. Fine \$850.00.

1. Sold alcoholic beverages on credit in contravention of the Liquor Code and Title 40 of the Pennsylvania Code.  
On 13 days from September 28 through December 14, 2016.
2. Refilled liquor bottles.  
December 15, 2016.

Citation No. 17-1250C. Fine \$3,200.00 and RAMP certification mandated.

1. Sales to a minor.  
July 10, 2017.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
June 3, 2017.
3. Sales after the license expired and had not been renewed and/or validated.  
July 1 through 27, 2017.

Citation No. 18-0951C. Fine \$2,500.00 and one-day suspension with thereafter conditions.

1. Sales to a minor.  
April 26, 2018.

Citation No. 19-0198. Fine \$1,500.00 and two days' suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.  
On 19 dates between November 26 and December 21, 2018.
2. Sales during a time when the license was suspended.  
November 26 and December 4, 2018.

PENALTY:

For violations of the type found in this case, the Liquor Code permits any of the following penalties: (1) a license revocation, (2) a fine in the range of \$1,000.00 to \$5,000.00, (3) a license suspension, or (4) any combination of a fine and suspension. (47 P.S. §4-471)

Moreover, licensees who have been cited and found to have violated the Liquor Code at 47 P.S. §4-493(1) for a second or subsequent offense as it relates to sales to minors or sales to a visibly intoxicated person may be required to comply with the requirements set forth at 47 P.S. §4-471(e), pertaining to Responsible Alcohol management (RAMP).

EDMUND A. SKWIRUT  
T/A ALFIE MCDUFFS  
IN RE CITATION NO. 19-1013C

Further, the Liquor Code at 47 P.S. §4-471(c) requires that the penalty imposed include license suspension or revocation where 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 at 47 P.S. §4-471(b) and/or the Crimes Code within a four-year period. Therefore, license revocation or suspension must be included as part of the penalty.

For reasons unknown to me, Licensee has failed to communicate with the Bureau or to participate in this proceeding. Licensee also possesses an extensive and troubling citation history. Licensee also permitted its license to expire more than six months ago, and there is no indication in Board records that Licensee has taken steps to renew its license. For these reasons I find Licensee to be a candidate for license revocation. However, when I asked Bureau counsel if she had a recommendation for a penalty in this case, she urged, instead, consideration for a period of suspension deferred until Licensee reactivates its license. I took the Bureau's suggestion to mean that an outright revocation might be unduly harsh. Similarly, a fine, if unpaid, would ultimately result in a revocation for failure to pay. Therefore, the Bureau's suggestion permits Licensee to keep its expired license until either it reactivates it and serves the suspension, or until the license is voided pursuant to §4-470(a) of the Liquor Code (47 P.S. §4-470(a)). I am persuaded by the Bureau's request for restraint in this matter. Therefore, I am ordering Licensee to serve a deferred suspension of ten days and to remain RAMP compliant for a period of one year.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of Edmund A. Skwirut, t/a Alfie McDuffs, License Number R-SS-16728, including all permits and Licensee Discount Card, be suspended for a period of ten days. However, the suspension period is deferred pending the reactivation of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing the dates for suspension.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in the Liquor Code at 47 P.S. §4-471.1 pertaining to Responsible Alcohol Management, however, compliance is deferred pending the reactivation of Licensee's license, at which time RAMP compliance will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing RAMP compliance.

EDMUND A. SKWIRUT  
T/A ALFIE MCDUFFS  
IN RE CITATION NO. 19-1013C

Jurisdiction is retained.

Dated this 6<sup>TH</sup> day of February, 2020.

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Richard O'Neill Earley, J.