

Mailing Date: December 27, 2000

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 99-0982
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs.

THIRTY THIRD WARD : License No. C-1139
REPUBLICAN CLUB :
227-29 South Broad Street :
Philadelphia, PA 19107-5313 :

Counsel for Licensee: Kenneth W. Makowski, Esquire
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OPINION

Thirty Third Ward Republican Club ("Licensee") appeals from the Adjudication and Order of Administrative Law Judge Tania Wright ("ALJ"), wherein the ALJ sustained all counts of the citation and imposed an aggregate suspension of 15 days.

The citation charged Licensee with six counts. Count one charged Licensee with violation of section 406(a)(1) of the Liquor Code [47 P.S. §4-406(a)(1)], in that on October 31, 1998, January 23, 1999 and May 8, 1999, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

Count two charged Licensee with violation of sections 406(a)(4) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(4) and 4-493(16)], in that on February 21, March 13 and May 8, 1999, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m.

Count three charged Licensee with violation of section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on February 21, March 13, and May 8, 1999, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages, after 3:30 a.m.

Count four charged Licensee with violation of section 499(a) of the Liquor Code in that on February 21, March 13 and May 8, 1999, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages

not later than one-half hour after the required time for cessation of service of alcoholic beverages.

Count five charged Licensee with violation of section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on May 8, 1999, and divers other occasions within the prior year, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing, or giving of alcoholic beverages to five female and two male minors, ages 18-20 years old.

Count six charged Licensee with violation of section 493(14) of the Liquor Code [47 P.S. §4-493(14)], in that on May 8, 1999 and divers other occasions within the prior year, Licensee, by its servants, agents or employes, permitted five female minors and two male minors, ages 18-20, to frequent its licensed premises.

Pursuant to section 471 of the Liquor Code [47 P.S. §4-471], the appeal in this case must be based solely on the record before the ALJ. Where the decision of the ALJ is based upon substantial evidence, the Board must affirm the decision.

The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion requiring something more than a scintilla creating

mere suspicion of the fact to be established. Johnson v. Pennsylvania Board of Probation and Parole, 706 A.2d 903 (Pa. Cmwlth. 1998); Chapman v. Pennsylvania Board of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, Licensee contends that the ALJ's findings of fact and conclusions of law are not supported by substantial evidence. We have examined the record with Licensee's contentions in mind and conclude that given our standard of review, the ALJ's findings were proper.

Our review of the record reveals that an administrative hearing was held on April 4, 2000. All evidence was received by way of stipulation. (N.T. 4-8). Based on those stipulations, the following facts emerge. On October 31, 1998, Officer Tuck of the Pennsylvania State Police, Bureau Liquor Control Enforcement ("Bureau"), arrived at the licensed premises at 1:30 a.m. (Ex. B-3, p. 1). Officer Tuck entered the premises and proceeded upstairs where she paid a man sitting on a stool \$5.00 to enter. (Ex. B-3, p. 1). She was not questioned as to her membership. (Ex. B-3, p. 1). There was one bartender serving approximately 30 patrons. (Ex. B-3, p. 1-2). Officer Tuck ordered and was served a beer for \$4.00. (Ex. B-3, p. 2). There were patrons dancing to music being played by a disc jockey. (Ex. B-3, p. 2). After purchasing a second beer at 1:50 a.m., Officer Tuck

left the premises at 2:10 a.m. (Ex. B-3, p. 2). Officer Tuck is not, nor was she ever, a member of Licensee's club. (Ex. B-3, p. 2).

On January 23, 1999 at 12:25 a.m., Officer Tuck returned to the licensed premises. (Ex. B-3, p. 2). Again she entered without questioning relative to her membership. (Ex. B-3, p. 2). A male bartender was serving approximately 40 patrons. (Ex. B-3, p. 2). At 12:35 a.m. and 1:10 a.m., Officer Tuck ordered and was served a bottle of beer (two bottles total), costing \$4.00 each. (Ex. B-3, p. 2). Again, patrons were dancing to disc jockey music. (Ex. B-3, p. 2). Officer Tuck, who still was not a member of the club, left at 1:30 a.m. (Ex. B-3, p. 2).

Bureau Officer Sauro arrived at the licensed premises at 2:40 a.m. on February 21, 1999. (Ex. B-3, p. 2). A note on the front door read, "the club is open." (Ex. B-3, p. 2). When Officer Sauro proceeded up the stairs, the male at the top of the stairs asked her if she was a member. (Ex. B-3, p. 2). Upon learning she was not a member, he told her she could not enter without a member. (Ex. B-3, p. 2). Five minutes later, a man and woman came along and offered to take the officer in with them. (Ex. B-3, p. 2). She was then admitted upon payment of a \$5.00 fee. (Ex. B-3, p. 2). Inside were three bartenders serving approximately 100 patrons. (Ex. B-3, p. 2). Again there was a disc jockey and patrons dancing. (Ex. B-3, p. 3).

The officer ordered and was served vodka and cranberry juice drinks at 2:55 a.m., 3:10 a.m., and 3:40 a.m., paying \$4.50 each time. (Ex. B-3, p. 3). She also saw male patrons order and receive beers at 3:12 a.m. and at 3:15 a.m. (Ex. B-3, p. 3). When Officer Sauro left the premises at 4:00 a.m., there were about 75 patrons still there and still being served alcoholic beverages. (Ex. B-3, p. 3). Officer Sauro is not, nor was she ever, a member of Licensee's club. (Ex. B-3, p. 3).

On March 13, 1999, Officer Sauro and another person arrived at the licensed premises at 3:15 a.m. (Ex. B-3, p. 3). The front door was locked, so they knocked and the male doorman answered. (Ex. B-3, p. 3). Recognizing Officer Sauro from her February visit, he opened the door, told them to "wait a minute, there's a cop over there," indicating a nearby white car. (Ex. B-3, p. 3). After two minutes, they were admitted without questioning as to membership. (Ex. B-3, p. 3). Inside there were three bartenders serving approximately 70 patrons, some of whom were dancing to disc jockey music. (Ex. B-3, p. 3). Officer Sauro ordered and was served a mixed alcoholic drink at 3:30 a.m. (Ex. B-3, p. 3). She also witnessed a male patron order and receive a beer at 3:40 a.m. (Ex. B-3, p. 3). Service of alcoholic beverages continued through Officer Sauro's departure at 4:00 a.m. (Ex. B-3, p. 3-4). Sixty patrons remained at that

time, and the bartenders were still serving these patrons alcoholic beverages. (Ex. B-3, p. 4).

On May 8, 1999, Officer Sauro arrived at the licensed premises at 2:30 a.m. (Ex. B-3, p. 4). This time, a female sitting at the entrance asked the officer if she was a member. (Ex. B-3, p. 4). The officer responded no, but mentioned her friend's name, whereupon she was allowed to enter for a \$5.00 fee. (Ex. B-3, p. 4). Three bartenders were serving approximately 40 patrons, which later grew to 75 persons. (Ex. B-3, p. 4). At 2:35 a.m., 3:10 a.m. and 3:35 a.m., Officer Sauro ordered and was served mixed alcoholic beverages for \$4.50 each. (Ex. B-3, p. 4). Between 3:00 and 3:30 a.m., all three bartenders served alcoholic beverages to several patrons. (Ex. B-3, p. 4). At 3:55 a.m., the Bureau conducted a raid and Officer Sauro left at 4:05 a.m. (Ex. B-3, p. 4).

Bureau Officer Brown was part of the raid conducted by the Bureau on May 8, 1999. (Ex. B-3, p. 4). He was there to conduct a routine inspection, during which he issued citations to seven minors for violations of the Pennsylvania Crimes Code [18 Pa. C.S. §§6308(a)-underage drinking, and 6310.3-false identification]. (Ex. B-3, p. 4). Three false identification cards were among those items seized. (Ex. B-3, p. 4). There was no declaration of age card file maintained by Licensee. (Ex. B-3, p. 4).

Two of the bartenders were also arrested for sales after hours. (Ex. B-3, p. 4). Bureau Officers Olivieri, Bandy, Rondon, and Rogers were able to corroborate Officer Brown's testimony. (Ex. B-3, p. 5).

Of the seven minors who were arrested on May 8, 1999, four purchased and/or received alcoholic beverages without question as to age. (Ex. B-3, pp. 5-6). The other three minors were questioned as to their ages by the doorman, showed false identification, and were admitted, whereupon they obtained alcoholic beverages without further questioning. (Ex. B-3, pp. 5-6). None of the seven minors was asked to sign a declaration of age card, and none of the minors was accompanied by a parent or legal guardian. (Ex. B-3, pp. 5-6).

The first minor, a female age 20, obtained two cups of draft beer around 2:00 a.m. (Ex. B-3, p. 5). She had been served at the licensed premises on five other occasions within the preceding year. (Ex. B-3, p. 5). The second minor, a male age 19, bought and was served four beers around 2:30 a.m. (Ex. B-3, p. 5). He had also been served alcoholic beverages at the licensed premises on five other occasions in the preceding year. (Ex. B-3, p. 5). The third minor, a female age 18, obtained an alcoholic beverage at approximately 2:30 a.m. (Ex. B-3, p. 5). She had been served on three other occasions in the preceding year. (Ex. B-3, p.

5). The fourth minor, a female age 19, was served a bottle of beer at 2:30 a.m. (Ex. B-3, p. 5). She had been served on one other occasion in the preceding year. (Ex. B-3, pp. 5-6). The fifth minor, a male age 19, bought and was served a bottle of beer at 3:30 a.m. (Ex. B-3, p. 6). The sixth minor, a female age 18, bought and was served a bottle of beer at 2:30 a.m. (Ex. B-3, p. 6). She had been served on two other occasions in the preceding year. (Ex. B-3, p. 6). The seventh minor, a female age 18, was served alcoholic beverages at 3:00 a.m. (Ex. B-3, p. 6).

Given this record, we find little merit to Licensee's appeal. After consideration of the testimony and the relevant statutes and case law, we concur with the ALJ's findings that Licensee violated the various sections cited.

As to the first count, section 406(a)(1) of the Liquor Code provides, in pertinent part, that "[n]o club licensee nor its officers, servants, agents or employes, other than one holding a catering license, shall sell any liquor or malt or brewed beverages to any person except a member of the club." [47 P.S. §4-406(a)(1)]. Officer Tuck, a nonmember of Licensee's club, entered the licensed premises without questioning on October 31, 1998 and January 23, 1999; she purchased two beers on each of those days. Officer Sauro, a nonmember of Licensee's club, entered the licensed premises on

May 8, 1999 merely by mentioning her friend's name. She freely admitted she was not a member when asked by the door person. She purchased three mixed drinks while on the premises.

As to the second count, section 406(a)(4) of the Liquor Code prohibits a club licensee from selling liquor or malt or brewed beverages between the hours of 3:00 a.m. and 7:00 a.m. on any day. [47 P.S. §4-406(a)(4)]. Section 493(16) of the Liquor Code prohibits any licensee to furnish, serve, or deliver any liquor or malt or brewed beverages to any person during hours when it is prohibited from selling alcohol. [47 P.S. §4-493(16)]. Thus, Licensee can neither sell nor furnish, serve, or deliver alcoholic beverages between 3:00 a.m. and 7:00 a.m.

The evidence clearly indicates that Licensee sold alcoholic beverages to Officer Sauro on February 21, 1999 at 3:10 a.m. and 3:40 a.m., along with service to male patrons who ordered and received beers at 3:12 a.m. and 3:15 a.m. Patrons were still being served alcoholic beverages at 4:00 a.m. when Officer Sauro left. Similarly, on March 13, 1999, Officer Sauro was sold an alcoholic beverage at 3:30 a.m., witnessed a male patron order and receive a beer at 3:40 a.m., and saw service of alcoholic beverages continuing until she left at 4:00 a.m. On May 8, 1999, Officer Sauro purchased an alcoholic beverage at 3:35 a.m. and saw service of

alcoholic beverages to other patrons up until 3:55 a.m. when the premises was raided.

The next two counts also involve after-hours violations, this time of patrons rather than of sales/service. Section 499(a) of the Liquor Code requires that all patrons of a licensee must leave that part of the premises habitually used for the serving of liquor or malt or brewed beverages to guests or patrons not later than one-half hour after the time the licensee must cease service of alcoholic beverages. It also prohibits patrons from having in their possession or removing any previously served liquor or malt or brewed beverages. [47 P.S. §4-499(a)]. The evidence regarding sales/service after-hours on February 21, March 13 and May 8, 1999 also reveals that Licensee allowed patrons to remain both in possession of alcohol and on the premises after 3:30 a.m., which is one-half hour after sales must stop. Not only were patrons still in possession of alcoholic beverages after 3:30 a.m. on these three dates, but they were still being sold and served alcoholic beverages after 3:30 a.m. Further, Officer Sauro indicated that there were about 75 patrons still on the licensed premises at 4:00 a.m. on February 21, 60 patrons at 4:00 a.m. on March 13, and an unknown number of patrons at 3:55 a.m. on May 8 when the raid occurred. Thus, violations of section 499(a) are clear.

The remaining two counts deal with the seven minors who were found on the premises in possession of alcohol on May 8, 1999 at 3:55 a.m. when the raid occurred. Section 493(1) of the Liquor Code prohibits a licensee from selling, furnishing and/or giving of or permitting such sale, furnishing and/or giving of alcoholic beverages to any minor. [47 P.S. §4-493(1)]. Section 493(14) of the Liquor Code forbids any club licensee, among others, from permitting minors to frequent the licensed premises unless accompanied by a parent, guardian, or under proper supervision as defined under the Code. [47 P.S. §4-493(14)].

On May 8, 1999, when the Bureau officers conducted the raid, they found among the patrons present on the premises at 3:55 a.m. seven minors. They ranged in age from 18 to 20 years old. All of the minors were in possession of alcoholic beverages, most of which had been purchased by them and the rest purchased by others. Whether the minors bought the alcoholic beverage themselves or whether they were bought by someone else is immaterial because Licensee is still in violation of section 493(1) by permitting the service or furnishing of alcoholic beverages to a minor. Licensee has a responsibility to prevent such service or furnishing of alcoholic beverages on its licensed premises. Pennsylvania Liquor Control Board v. Mignogna, 120 Pa. Cmwlth. 405, 548 A.2d 689 (1988).

Further, the recent decision in Skoritowski v. Pennsylvania State Police, Bureau of Liquor Control Enforcement, 742 A.2d 704 (Pa. Cmwlth. 1999), does not demand a different result. Skoritowski requires the evaluation of the good faith efforts of Licensee when interpreting section 495(f) of the Liquor Code. 47 P.S. §4-495(f) involves the ability of licensees to use in their defense the declaration of age cards, or other identification cards presented by minors in their establishments. Here, four of the minors were not even questioned as to their age; therefore, section 495(f) is inapplicable. The other three minors were questioned by the door person and presented false identifications from other states to obtain entrance, whereupon they bought and/or were served alcoholic beverages. None of the minors were asked or required to fill out a declaration of age card, probably because Licensee did not maintain a declaration of age card file. Given that five of the minors admitted to being on the premises on other prior occasions and that the minors were admitted without even being questioned, we certainly cannot find that Licensee acted in good faith to keep the minors from entering or frequenting the premises.¹

As to the frequenting charge, there were seven minors present at 4:00 a.m. on May 8, 1999. Five of these minors admitted they had been in

¹ In fact, at the hearing, Licensee indicated that it would not contest the issue of good faith but rather throw itself at the mercy of the Court. (N.T. 8).

the licensed premises on other occasions in the prior year. Two of them had been there on five prior occasions, the others less often. Nonetheless, we have no trouble finding that the ALJ's determination that Licensee did not prevent minors from frequenting its premises was based on substantial evidence.

Therefore, based on the record before us, we conclude that the ALJ's findings of fact were based on substantial evidence and, thus, we affirm the ALJ's decision.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is ordered that Club License C-1139, issued to the Thirty Third Ward Republican Club, be suspended for a period of 15 days beginning at 7:00 a.m. on Monday, January 8, 2001 and ending at 7:00 a.m. on Tuesday, January 23, 2001.

Licensee is directed on Monday, January 8, 2001 at 7:00 a.m. to place a 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 authorized on Tuesday, January 23, 2001 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Licensee must adhere to all other conditions set forth in the ALJ's Order.

Board Secretary