

Mailing Date: April 23, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 07-0686
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :
 :
 :
 vs. :
 :
 :
 TIMMY'S CORPORATION : License No. D-2069
5840 Harbison Avenue :
Philadelphia, PA 19135-4046 :
 :

Counsel for Licensee: Stewart Berger, Esquire
7207 Rising Sun Avenue
Philadelphia PA 19111

Counsel for Bureau: Erik Shmukler, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue, Third Floor
Philadelphia, PA 19142

OPINION

Timmy's Corporation ("Licensee") appealed from the Adjudication and Order of Administrative Law Judge David L. Shenkle ("ALJ"), wherein the ALJ sustained the citation and imposed a two thousand dollar (\$2,000.00) fine.

The citation charged that, on March 3, 2007, Licensee, by its servants, agents or employees, violated section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age.

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. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, Licensee contends that it exercised honesty, good faith and competence when examining the personal identification of the purchaser and, therefore, should not be held in violation.

The record reveals that, on March 3, 2007, at approximately 8:00 p.m., John Bernesky, an officer with the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”), arrived at the licensed premises and parked across the street. (N.T. 9-11).

At approximately 8:50 p.m., he observed a male enter Licensee’s premises, then exit shortly thereafter with two (2) cases of Lion’s Head beer. (N.T. 12-13, 30). Officer Bernesky approached the male as he was about to place the beer in the trunk of a car, and identified himself. (N.T. 13, 34). When he asked the male for identification (“ID”), the male handed him a Maryland driver’s license which reflected a date of birth of September 18, 1984, and which Officer Bernesky recognized was not a valid Maryland driver’s license. (N.T. 13-14, 34; Ex. B-3). Noted on the back of the card was the statement, “does not meet standards of P.S. 4-495” (referring to the Liquor Code). (N.T. 15-16; Ex. B-3). Upon further questioning, the male provided the officer with his true ID, with a date of birth is September 18, 1986, he completed a patron questionnaire, and the officer cited him for underage drinking and possession of false identification. (N.T. 16-17, 29-30, 37, 40, 44).

Officer Bernesky went into Licensee's premises with the male and informed Licensee's employee, Jian Liu, that he should not serve the male, since he was a minor and had false ID. (N.T. 17-18, 35). Mr. Liu acknowledged the sale to the male minor and admitted that he did not check his ID guide to determine if the Maryland ID presented was valid. (N.T. 19). Licensee had an ID scanner on the licensed premises. (N.T. 19-20, 28).

According to the male and Mr. Liu, upon check-out, he was asked by Mr. Liu to show ID. (N.T. 31, 49-50, 52). The male produced the Maryland ID, which has his photo. (N.T. 31-33, 52-53; Ex. B-3). Mr. Liu looked at the card, looked at the male, then handed the ID back to the male. (N.T. 33, 53). The transaction was videotaped. (N.T. 55-60). Mr. Liu stated that he was unable to scan the Maryland ID because his age detection machine could only test Pennsylvania identifications at that time. (N.T. 53). Mr. Liu acknowledged that the picture on the card was of the male in question, and that the birth year was 1984, leaving Mr. Liu to believe the male was twenty-two (22) years old. (N.T. 54). The male purchased alcohol at Licensee's premises prior to this incident, using the Maryland and another ID card. (N.T. 36).

Section 493(1) of the Liquor Code provides that it shall be unlawful “[f]or any licensee . . ., or any employee, servant or agent of such licensee. . ., to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given . . . to any minor” [47 P.S. § 4-493(1)]. Section 495(f) of the Liquor Code provides that a licensee who has provided alcohol to a minor may, nonetheless, escape liability if the licensee required the minor to provide proper identification, and if the licensee acted in good faith. [47 P.S. § 4-495(f)].

The evidence is clear here that Licensee sold alcohol to a minor on March 3, 2007. To escape liability for the violation of selling and furnishing alcohol to minors, Licensee must establish an affirmative defense by proving that it complied with all of the requirements set forth in section 495 of the Liquor Code. In the present matter, Licensee failed to meet its burden. Licensee must show that the minor in question provided a valid photo driver’s license or identification card issued by the Department of Transportation or by any other state. [47 P.S. § 495(a)]. Once Licensee has established that a valid form of identification was presented, Licensee must utilize one (1) of three (3) methods of verification to escape liability. Licensee must require

that the minor complete and sign a Declaration of Age Card; Licensee can make a photograph, photocopy or other visual or video presentation of the valid identification card; or, Licensee can use a transaction scan device pursuant to section 495(g). Further, the method chosen must be relied upon by Licensee in good faith. [47 P.S. § 495(c), (e)-(g)].

In the present matter, Licensee claims that it acted in good faith. Licensee cannot avail itself of the “good faith” defense without first having determined that the ID presented was valid. Licensee requested, and the male presented, an ID card to the cashier. The card presented, however, had no information on it that demonstrated in any manner that it was issued by the State of Maryland. Nothing on the card demonstrated that the card was indeed valid. In fact, it clearly stated that it does not satisfy the requirements of section 495. The ID had no indicia of validity, and despite having a state ID book at the premises, did not verify its validity. Accordingly, Licensee has failed to satisfactorily meet the criteria of a “good faith” defense to the charge in question.

The Board finds that the ALJ’s decision is supported by substantial evidence. The decision of the ALJ is, therefore, affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid the fine in the amount of two thousand (\$2,000.00) dollars.

Licensee must adhere to all conditions set forth in the ALJ's Order dated January 23, 2008.

Board Secretary