

Jai Ganesh, Inc.)
Georgetown Discount Liquors) **DECISION AND ORDER**
9 Georgetown Plaza) Violation No. 07388
Georgetown, DE 19947)
License No. 14125)

SUMMARY OF THE EVIDENCE

The Commissioner held a hearing on February 5, 2014 in Georgetown, Delaware at which the licensee, through its counsel, Eric Howard, Esquire, appeared. The licensee entered a guilty plea to the charge of serving an alcoholic beverage to a person under the age of 21 years on October 21, 2013 (Violation No. 07388).

Agent Tyler Bryan, of the Division of Alcohol and Tobacco Enforcement, testified the Division conducted a Cooperating Underage Witness operation at the above location on October 21, 2013. During the operation, an underage female witness, who was 19 years of age (DOB: 4/24/1994), entered the premises and purchased a six-pack of Mike’s Hard Cranberry, an alcoholic beverage. The witness presented a marked \$10 bill as payment, and received \$1.01 in change from the clerk, Robert Watts. At no time did the clerk request identification or inquire about the age or date of birth of the witness.

The licensee did not dispute the proffer of evidence.

THE LAW

The Commissioner may suspend any license and/or fine any licensee if the licensee has violated any provision of the Delaware Liquor Control Act or any of the regulations promulgated pursuant thereto. 4 Del.C. § 561(b)(1).

No person or licensee shall sell alcoholic liquor to any individual who has not reached the age of 21 years, except that in any prosecution for an offense under this paragraph, it shall be an affirmative defense that the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older. 4 Del.C. § 708(a)(1).

Whoever sells any alcoholic liquor to any person who has not reached the age of 21 years, or sells to any person of more than such age any alcoholic liquor knowing that such alcoholic liquor is bought for a person who is less than 21 years of age and is to be drunk by the latter, shall, in addition to the payment of costs, be fined not less than \$250 nor more than \$500 and, on failure to pay such fines and costs, shall be imprisoned for 30 days. 4 Del.C. § 904(a)(1) (criminal offenses and penalties).

Any fine imposed by the Commissioner, pursuant to this section, shall not exceed 10% of the estimated average gross monthly sales of alcoholic liquor for the operations of the licensee within the twelve (12) months immediately preceding the date of the finding of guilt provided that such amount exceeds \$250. In no case shall the fine imposed by the Commissioner upon a finding of guilt be less than \$250. 4 Del.C. § 914.

FINDINGS OF FACT

Based upon the licensee's Affidavit and Plea Agreement which the licensee made knowingly and voluntarily, and the proffer of evidence, the Commissioner finds the above licensee sold an alcoholic beverage on October 21, 2013, to a person under the age of 21 years, in violation of 4 Del.C. §§ 561(b)(1) and 904(a)(1) (Violation No. 07388).

ORDER

It is this _____ day of _____, 2014, the Commissioner's Decision and Order that the licensee shall pay a fine of \$2,750 and costs of \$50, for selling an alcoholic beverage to an underage person on October 21, 2013 and which includes a \$250 increase for the following aggravating circumstances which the Commissioner considered: the very short time period between the licensee's first underage sale on December 14, 2012 and this sale on October 21, 2013, which is less than one year; the clerk's failure to request identification from or inquire about the age of the witness; and the occurrence of two underage sales within four years. (Violation No. 07388). Based upon the licensee's prior record and the testimony and evidence presented, the Commissioner is satisfied the penalty imposed for this offense is in the public interest and will have the desired disciplinary effect. 4 Del.C. § 914.

The licensee shall pay the fine of \$2,750 and costs of \$50 within thirty (30) days of this Decision and Order.

IT IS SO ORDERED.

John H. Cordrey, Commissioner

