

Mailing Date: FEB 7 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0746X
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-307399
	:	
MCFADDEN'S AT BALL PARK LLC	:	
T/A MCFADDEN'S AT BALL PARK	:	LID - 52500
ONE CITIZENS BANK WAY	:	
PHILADELPHIA PA 19148	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-11077	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**SEAN FARRELL, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 20, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against McFadden's At Ball Park, LLC, t/a McFadden's At Ball Park, License Number R-AP-SS-11077 (hereinafter "Licensee").

McFadden's At Ball Park LLC  
t/a McFadden's At Ball Park  
Citation No. 05-0746X

An Administrative hearing was held on Tuesday, July 12, 2005, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

Attorney Edward B. McHugh, Esq. entered his appearance on behalf of the Licensee on July 21, 2005 after the date of hearing.

The citation charges Licensee with violation of Section 493(26) of the Liquor Code, 47 P.S. Section 4-493(26), in that Licensee, by its servants, agents or employes, issued checks or drafts dated February 16, 2005, in payment for purchases of malt or brewed beverages, when they had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

#### FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on March 8, 2005 and concluded March 22, 2005. A notice of violation letter was sent to the licensed premises by certified mail, return receipt requested on March 31, 2005. The mailing was signed as received. A citation dated April 20, 2005 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises by certified mail, return receipt requested and by first class mail on July 26, 2005. That mailing was signed as received by Jody Boon on June 1, 2005 (N.T. 9-10 and Exhibits B-1 and B-2).

2. Daniel Harris is employed by the Bureau of Enforcement and has been so employed for five years. Officer Harris conducted an inspection of the licensed premises concerning a check written by the Licensee to beer distributors, Origlio Beverages and Penn Distributors. Check No. 5990 and Check No. 6066 were written to Origlio Beverage and Check No. 6065 was written to Penn Distributors (N.T. 7-8).

3. Check No. 5990, which was returned to Origlio Beverages was dated February 2, 2005 and was in the amount of \$3,188.12. In that that was the first check Licensee had written to Origlio Beverage during the calendar year that had been returned for nonsufficient funds, Licensee received a warning (N.T. 8).

4. With regard to Check No. 6066, which was dated February 16, 2005 in the amount of \$3,083.15, notice of violation letter was sent to the Licensee (N.T. 8 and Exhibit B-1).

5. With regard to Check No. 6065 written to Penn Beer Distributor in the amount of \$1,373.82, it was returned for insufficient funds. Although it was a first check written to Penn Distributors by the Licensee for the calendar year, it was not satisfied within the ten-day period allowed and was outstanding for approximately twenty-days (N.T. 9).

McFadden's At Ball Park LLC  
t/a McFadden's At Ball Park  
Citation No. 05-0746X

6. Leon Hankin is employed by Antonio Origlio as a director of finance. Mr. Hankin brought with him an invoice indicating that on February 2, 2005, the Licensee purchased malt or brewed beverages in the amount of \$3,188.12 and paid for them with Check No. 5990 dated that same day. The check was returned from the bank for insufficient funds on February 9, 2005. The check was eventually made good (N.T. 11-12 and Exhibit B-3).

7. Mr. Hankin also brought with him Invoice No. 455246 indicating that Licensee made purchases of malt or brewed beverages in the amount of \$3,083.15 and paid for those purchases by Check No. 6066 dated February 16, 2005. The check was returned for insufficient funds and was subsequently redeposited (N.T. 12-13 and Exhibit B-4).

8. Joseph Ryan is employed by Penn Beer Distributors as a customer service representative. Part of his job is to take calls from the bank whenever a check is returned. Mr. Ryan brought with him an invoice indicating that Licensee made purchases of malt or brewed beverages from the beer distributor on February 16, 2005 and paid with Check No. 6065 in the amount of \$1, 373.82. That check was returned for nonsufficient funds (N.T. 15-16 and Exhibit B-5).

9. The check was made good on a subsequent delivery. The check was added to a March 22, 2005 invoice (N.T. 16-17).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

The citation charges Licensee with violation of Section 493(26) of the Liquor Code, 47 P.S. Section 4-493(26), in that Licensee, by its servants, agents or employees, issued checks or drafts dated February 16, 2005, in payment for purchases of malt or brewed beverages, when they had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

PRIOR RECORD:

Licensee has been licensed since March 1, 2004, and has no record of prior violations.

DISCUSSION:

Under the circumstances, a \$150.00 penalty shall be imposed consistent with the recommendation of Bureau's counsel.

McFadden's At Ball Park LLC  
t/a McFadden's At Ball Park  
Citation No. 05-0746X

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, McFadden's At Ball Park, LLC, t/a McFadden's At Ball Park, License Number R-AP-SS-11077, pay a fine of One Hundred Fifty Dollars (\$150.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

PLCB - Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg, PA 17110-9661

Dated this  1st  day of  February , 2005.

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Tania E. Wright, J.

**NOTE:** MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

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