

Mailing Date: DEC 12 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0791X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-307649
v.	:	
	:	LID - 51293
PROSPECT STREET CAFÉ, INC.	:	
23 S. PROSPECT STREET	:	
NANTICOKE, PA 18634-2319	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-10788	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 2, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PROSPECT STREET CAFÉ, INC., License Number R-AP-SS-10788 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)] in that Licensee, by its servants, agents or employes, issued checks or drafts dated February 14, 18, 22, March 4, 11, 14, 17 and 18, 2005, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The investigation which gave rise to the citation began on March 11, 2005 and was completed on March 30, 2005; and notice of the violation was sent to Licensee by Certified Mail on April 4, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 14, 2005 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee(s) did not appear at the hearing, nor did anyone appear on its behalf. A citation hearing notice was sent to Licensee(s) at its address of record, 23 S. Prospect Street, Nanticoke, PA 18634-2319 by certified mail, return receipt requested and by first class mail on July 28, 2005. The notice set forth the date and time of the hearing as September 14, 2005 at 9:30 a.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On February 14, 2005 Licensee purchased malt or brewed beverages from L.T. Verrastro, Inc. In payment therefore Licensee issued its check in the amount of \$165.11. The check was returned for insufficient funds on February 22, 2005. It was redeemed for cash on March 11, 2005 (N.T. 9-10 and Exhibit C-5).
2. On February 18, 2005 Licensee purchased malt or brewed beverages from L.T. Verrastro, Inc. In payment therefore Licensee issued its check in the amount of \$235.32. The check was dishonored for insufficient funds on February 25, 2005. The check was redeemed for cash on March 11, 2005 (N.T. 10 and Exhibit C-6).
3. On February 22, 2005 Licensee purchased malt or brewed beverages from L.T. Verrastro, Inc. In payment therefore Licensee issued its check in the amount of \$224.84. The check was dishonored by Licensee's bank for insufficient funds on March 1, 2005. The check was redeemed for cash on March 11, 2005 (N.T. 11 and Exhibit C-7).
4. On March 4, 2005 Licensee purchased malt or brewed beverages from L.T. Verrastro, Inc. In payment therefore Licensee issued its check in the amount of \$441.42. The check was dishonored by Licensee's bank for insufficient funds on March 14, 2005. The check was redeemed for cash on March 24, 2005 (N.T. 11-12 and Exhibit C-8).
5. On March 11, 2005 Licensee purchased malt or brewed beverages from L.T. Verrastro, Inc. In payment therefore Licensee issued its check in the amount of \$278.07. The check was dishonored by Licensee's bank for insufficient funds on March 21, 2005. The check was redeemed for cash on March 24, 2005 (N.T. 12 and Exhibit C-9).

6. On March 17, 2005 Licensee purchased malt or brewed beverages from L.T. Verrastro, Inc. In payment therefore Licensee issued its check in the amount of \$343.05. The check was dishonored by Licensee's bank for insufficient funds on March 23, 2005. The check was redeemed for cash on March 24, 2005 (N.T. 12 and Exhibit C-10).

7. On March 14, 2005 Licensee purchased malt or brewed beverages from Northeast Eagle Distributors, Inc. In payment therefore Licensee issued its check in the amount of \$256.31. The check was dishonored for insufficient funds on March 18, 2005. The check was replaced with a certified check on April 4, 2005 (N.T. 14-15 and Exhibit C-11 and C-12).

8. On March 18, 2005 Licensee purchased malt or brewed beverages from Northeast Eagle Distributors, Inc. In payment therefore Licensee issued its check in the amount of \$213.80. The check was dishonored by Licensee's bank for insufficient funds on March 24, 2005. The check was finally redeemed for cash on May 31, 2005 (N.T. 15-16 and Exhibit C-13 and C-14).

9. A warning letter was sent to the Licensee concerning an insufficient funds check issued by Licensee to Northeast Eagle Distributors, Inc. in payment for malt or brewed beverages in the amount of \$280.85 on April 4, 2005 (N.T. C-17).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since September 3, 2003, and has had one prior violation:

Citation No. 03-1963. Fine \$100.00. Fine not paid, license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. September 20, 2003.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or 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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee PROSPECT STREET CAFÉ, INC., pay a fine of \$250.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make check payable to the Commonwealth of Pennsylvania and mail to:

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

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 30th day of November, 2005.

Daniel T. Flaherty, Jr., J.

an

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.