

Mailing Date: JUN 22 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 05-0988X
LIQUOR CONTROL ENFORCEMENT	:	& 05-1198X
	:	(Consolidated for Hearing
	:	and Adjudication Purposes
	:	Only)
	:	
v.	:	Incident Nos. W01-309043
	:	& W01-311488
SLICK 920 INC.	:	
T/A MARTY JUNIOR PUB	:	LID - 48797
505 MORTONVILLE RD.	:	
EAST FALLOWFIELD TWP.	:	
COATESVILLE PA 19320-4660	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. R-AP-SS-17237	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of citations that were issued on May 25, 2005 and June 21, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Slick 920, Inc., t/a Marty Junior Pub, License Number R-AP-SS-17237 (hereinafter "Licensee").

Slick 920, Inc.
t/a Marty Junior Pub
Citation Nos. 05-0988X & 05-1198X

An Administrative hearing was held on Wednesday, August 24, 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*.

The citations are as follows:

Citation No. 05-0988X

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 March 10, 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.

Citation No. 05-1198X

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 April 18, 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.

CITATION NO. 05-0988X

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises, which began April 7, 2005 and ended April 20, 2005. A notice of violation letter was sent to the licensed premises on April 27, 2005. The mailing was returned unclaimed and was subsequently sent by first class mail. A citation dated May 25, 2005 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received on May 28, 2005. A citation hearing notice was sent to the licensed premises by certified mail, return receipt requested on July 7, 2005. The mailing was sent by certified mail, return receipt requested as well as by first class mail. That mailing was returned unclaimed (N.T. 8-13, 21 and Exhibits B-1 and B-2).

2. Officer Seth Graham is employed by the Bureau of Enforcement and was so employed in April of 2005 when he conducted an investigation of the licensed premises (N.T. 6).

Slick 920, Inc.
t/a Marty Junior Pub
Citation Nos. 05-0988X & 05-1198X

3. The officer conducted an investigation of the licensed premises for checks, which had bounced due to insufficient funds. The officer found several individuals at the licensed premises including a bartender who was identified as Valerie. He did not get in contact with the owner of the premises, but told the bartender and Valerie that he needed to speak with the owner. They indicated that they would pass that information along. Officer Graham never received any information from the Licensee (N.T. 7-8).

4. A warning letter was sent by the Bureau on March 15, 2005 with regard to Check No. 454 dated February 16, 2005 regarding a check in the amount of \$322.71 that was issued to Penn Distributors and returned for non-sufficient funds. The letter indicated that any future NSF checks issued to Penn Distributors, Inc. within the 2005 calendar year could result in administrative citations being issued against the Licensee (N.T. 14-15 and Exhibit B-4).

5. Joe Ryan is employed at Penn Distributors. He indicated that Penn Distributors made a delivery of malt or brewed beverages to the Licensee on March 10, 2005 in the amount of \$347.01 relevant to Invoice No. 51582. Check No. 473 was returned and then redeposited on March 16, 2005 and subsequently cleared (N.T. 16).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Licensee, by its servants, agents or employes, issued checks or drafts dated March 10, 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, in violation of Section 493(26) of the Liquor Code, 47 P.S. Section 4-493(26).

CITATION NO. 05-1198X

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises, which began May 18, 2005 and ended May 20, 2005. A notice of violation letter was sent to the licensed premises on May 27, 2005. The mailing was signed as received on May 29, 2005. A citation dated June 21, 2005 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received. A citation hearing notice was sent to the licensed premises by the Office of Administrative Law Judge by certified mail, return receipt requested and first class mail on July 7, 2005. That mailing was returned unclaimed (N.T. 25-126 and Exhibits B-1 and B-2).

Slick 920, Inc.
t/a Marty Junior Pub
Citation Nos. 05-0988X & 05-1198X

2. Pursuant to Section 493(26) of the Liquor Code, on May 27, 2005, a warning letter was issued to the Licensee with regard to Check No. 514 dated April 11, 2005 issued to Lamb Beverage, Inc. in the amount of \$162.80. The warning indicated that if any future NSF checks were written to Lamb Beverage, Inc. within the 2005 calendar year, it could result in an administrative citation being issued against the Licensee (N.T. 24-25 and Exhibit B-3).

3. Officer Ford is employed by the Bureau of Enforcement and conducted an investigation of the Licensee relative to checks written where there were insufficient funds. The officer contacted Lamb Beverage, Inc. and determined that Check No. 492 in the amount of \$317.76 and Check No. 514 in the amount of \$162.80 written for the purchases of malt and brewed beverages had initially bounced, but had subsequently been made good by cash payments. The Licensee was advised that he would receive a warning letter for Check No. 514 dated April 11, 2005, and a letter of violation for Check No. 492 dated April 18, 2005 (N.T. 23-24 and Exhibit B-3).

4. Mr. Michael McGinley is employed by Lamb Beverage, Inc., which is a beer distributor. He is the operations manager. On February 11, 2005, a delivery was made to the Licensee for malt and brewed beverages. It was paid with Check No. 514 in the amount of \$162.80. The net amount of the purchase was \$200.80, but Licensee had a \$38.00 credit (N.T. 29-30).

5. The purchase was paid by Check No. 514, which was subsequently dishonored and made good by cash (N.T. 30).

6. An additional delivery was made to the Licensee on April 18, 2005. The purchases of malt and brewed beverages were in the amount of \$317.72. The purchase was paid for with Check No. 492. Check No. 492 was dishonored, but subsequently made good (N.T. 30-31 and Exhibits B-4, B-5, B-6 and B-7).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Licensee, by its servants, agents or employes, issued checks or drafts dated April 18, 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, in violation of Section 493(26) of the Liquor Code, 47 P.S. Section 4-493(26).

PRIOR RECORD:

Licensee has been licensed since October 4, 2002, and has a record of prior violations as follows:

Slick 920, Inc.
t/a Marty Junior Pub
Citation Nos. 05-0988X & 05-1198X

Citation No. 04-2215. \$150.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
October 29, 2004.

Citation No. 05-0024. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
November 11, 2004.

DISCUSSION:

With regard to these two citations, Licensee has made good on the checks. All the checks were for relatively small amounts of money. However, Licensee would be advised to make necessary changes to avoid enforcement action in the future. Licensee has prior violations for worthless checks. Under the circumstances, a \$400.00 penalty shall be imposed.

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.

Therefore, penalties shall be assessed as follows:

Citation No. 05-0988X
Count No. 1 - \$200.00.

Citation No. 05-1198X
Count No. 1 - \$200.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Slick 920, Inc., t/a Marty Junior Pub, License Number R-AP-SS-17237, pay a fine of Four Dollars (\$400.00) 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.

Slick 920, Inc.
t/a Marty Junior Pub
Citation Nos. 05-0988X & 05-1198X

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 13th day of June, 2006.

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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