

Mailing Date: FEB 10 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1996
LIQUOR CONTROL ENFORCEMENT	:	Citation No. 05-2123X
	:	Citation No. 05-2186
	:	Incident No. W03-308715
v.	:	Incident No. W03-317453
	:	Incident No. W03-314696
	:	LID – 53602
HANNA & AXEL, INC.	:	
T/A THE DUTCHMAN	:	As Consolidated Under
338 S. FRONT ST.	:	Citation No. 05-1996
WRIGHTSVILLE, PA 17368-1614	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-PSS-19392	:	

**BEFORE: JUDGE THAU**

APPEARANCES:

For Bureau of Enforcement  
Andrew J. Lovette, Esquire  
Pennsylvania State Police  
3655 Vartan Way  
Harrisburg, PA 17110

For Licensee  
Albert G. Barnes, Esquire  
268 E. Market Street  
York, PA 17403

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of three citations that were issued by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Hanna & Axel, Inc., t/a The Dutchman (Licensee), License Number R-AP-PSS-19392.

**Citation No. 05-1996<sup>1</sup>**

This citation was issued on September 29, 2005 and contains two counts.

The first count charges Licensee with violations of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by servants, agents or employes, issued checks or drafts dated April 6, 27, May 4, 11 and June 1, 2005, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The second count charges Licensee with violations of Section 492(8) of the Liquor Code [47 P.S. §4-492(8)]. The charge is that on July 7, 15, 23, 29 and August 4, 2005, Licensee, by servants, agents or employes, transported malt or brewed beverages without a license.

**Citation No. 05-2123X<sup>2</sup>**

This citation was issued on October 20, 2005 and charges Licensee with a violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by servants, agents or employes, issued checks or drafts dated July 20, 2005, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

**Citation No. 05-2186<sup>3</sup>**

This citation was issued on October 27, 2005 and charges Licensee with violations of Sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §5512 and/or §5513] which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as “other sufficient cause.” The charge is that on September 2 and 3, 2005, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

---

1. Commonwealth Exhibit No. C-1, 05-1996, N.T. 8.  
2. Commonwealth Exhibit No. C-3, 05-2123X, N.T. 8.  
3. Commonwealth Exhibit No. C-5, 05-2186, N.T. 9.

An evidentiary hearing was conducted on January 10, 2006 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. The Bureau moved to consolidate all three citations. Without objection, I granted the Bureau's Motion and consolidated Citation Nos. 05-2123X and 05-2186 under Citation No. 05-1996. (N.T. 5-6)

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on April 1, 2005 and completed it on September 17, 2005. (N.T. 6)

2. The Bureau sent three notices of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on September 15, 26 and 30 2005. The notices alleged violations as charged in the citations. (Commonwealth Exhibit Nos. C-2, C-4 and C-6, N.T. 8)

Count No. 1:

3. On the dates charged as Consolidated, Licensee issued checks for the purchase of beer to Importing Distributors. The checks were dishonored due to insufficient funds. The checks for April 27 and May 11, 2005 were made good within ten days. (N.T. 12-17)

Count No. 2:

4. On the dates charged, Licensee purchased beer at an Importing Distributor and transported that beer in its own vehicle. (N.T. 18-19)

Count No. 3:

5. On the dates charged, Licensee conducted a 50/50 drawing. It cost \$1.00 per ticket. (N.T. 30-33)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. **Sustained** as charged.

Count No. 3:

4. **Sustained** as charged.

DISCUSSION:

The majority view among my colleagues is that the notice of dishonor of a check sent by the Bureau, if the check is made good within ten days, need not precede other dishonored instruments. The only limitation is that the notice precede a citation for dishonored checks made good within ten days, and issued before the notice is sent. Accordingly, I adopt that majority position.

Licensee interposed a defense that the proceeds of the raffle were to benefit a motorcyclist who sustained injuries and needed a prosthetic leg. Licensee asserts the winner traditionally does not accept the funds. The funds are donated to the charity. Because the donation is voluntary, the charge will nevertheless be sustained.

PRIOR RECORD:

Licensee has been licensed since February 10, 2005, and has had no prior violations.

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 Count Nos. 1, 2 and 3 in this case.

I impose:

Count No. 1 – \$250.00 fine.  
Count No. 2 – \$150.00 fine.  
Count No. 3 – \$100.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$500.00 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, 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 to:

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

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 6<sup>th</sup> day of February, 2006.

---

Felix Thau, A.L.J.

pm

**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.**