

Mailing Date: SEP 13 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2158
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-316725
v.	:	
	:	LID - 53788
THE COPPERHEAD, L.L.C.	:	
296 MAIN STREET	:	
P.O. BOX 481	:	
BEECH CREEK, PA 16822	:	
	:	
	:	
CLINTON COUNTY	:	
LICENSE NO. E-AM-SS-3272	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas Ballaron, Esquire

For Licensee
Frank S. Miceli, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 20, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against THE COPPERHEAD, L.L.C., License Number E-AM-SS-3272 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 442(a) of the Liquor Code [47 P.S. §4-422(a)] in that on September 14, 2005, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

The investigation which gave rise to the citation began on August 17, 2005 and was completed on September 14, 2005; and notice of the violation was sent to Licensee by Certified Mail on September 30, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 13, 2006 in the PA Department of Agriculture, 2130 County Farms Road, Pennsylvania.

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 September 14, 2005 an officer of the Bureau entered the licensed premises in an undercover capacity (N.T. 9).
2. Upon entry, the officer approached a standup cooler, and retrieved a 12-pack of twelve ounce cans of Busch beer and a 6-pack of sixteen ounce cans of Miller Lite beer and placed them on the counter (N.T. 9-10).
3. The counter person turned to the cash register, hit buttons on the register, turned to the officer and requested \$15.00 (N.T. 10).
4. The officer gave the counter person \$20.00, and received \$5.00 change (N.T. 10).
5. The counter person advised the officer that he would have to carry one item out at a time because there was a law that you couldn't carry out 192 fluid ounces (N.T. 10).
6. The officer carried the 12-pack and the 6-pack out individually (N.T. 10).

CONCLUSION OF LAW:

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

DISCUSSION:

The actual intention of the parties was the purchase of more than 192 fluid ounces of malt or brewed beverages for consumption off premises. The charge in the citation is, therefore, sustained.

Section 442(a)(1) of the Liquor Code [47 P.S. §4-442(a)(1)] provides in part:

...no retail dispenser may sell malt or brewed beverages for consumption off premises in quantities in excess of one hundred ninety two fluid ounces; ...

Licensee contends that the events in question amounted to two separate sales, each under 192 fluid ounces, and, therefore, no violation occurred. I disagree.

The issue presented here was addressed by Administrative Law Judge Thau in *Thomas E. D'Andrea*, Citation No. 88-1218, V Sel. Op. 169. In that case Judge Thau, citing the Statutory Construction Act [1 Pa. C.S. §1922(1)] and the interpretational directives of the Liquor Code Section 104 [47 P.S. §1-104], indicated that a statute is not to be interpreted in a manner which renders it meaningless.¹

Judge Thau further indicated that to accept Licensee's position in that case, which is the same as Licensee's position in this case, would allow a patron to purchase five cases of beer so long as the transaction was broken down into separate transactions, each less than 192 fluid ounces. Such an interpretation renders the statutory provision in question meaningless.

I agree with Judge Thau that only those separate transactions which are entered into in good faith and not in an attempt to circumvent the statute should be considered legitimate.

In this case the officer placed a twelve pack of twelve ounce cans and a six pack of sixteen ounce cans for a total of 250 ounces on the counter simultaneously. He was given one price for the purchase of \$15.00. He tendered a \$20.00 bill and received \$5.00 change. It is only at this point that a feeble attempt is made to portray the sale of beer as two transactions when the counter person asks the officer to carry out the parcels separately.

It is clear in this case that the parties intended one sale and purchase of 250 ounces of beer at one time.

Based upon the foregoing, I conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since November 8, 2004, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

¹ In support of this position Judge Thau cited *Commonwealth, Liquor Control Board v. Starr*, 318 A.2d 763 (Pa. Cmwlth 1974), affirmed *Commonwealth, Liquor Control Board v. Starr*, 337 A.2d 914 (Pa. Cmwlth 1975); and *In re School District of Pittsburgh*, 244 A.2d 42 (Pa. 1968).

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 THE COPPERHEAD, L.L.C., 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 5th day of September, 2006.

Daniel T. Flaherty, Jr., J.

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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.