

Mailing Date: MAY 15 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2750X
LIQUOR CONTROL ENFORCEMENT	:	
	:	
	:	
	:	
	:	
v.	:	Incident No. W01-321690
	:	
119 TRAN ENTERPRISES INC.	:	
119-121 EAST ALLEGHENY AVE.	:	LID - 49058
PHILADELPHIA PA 19134-2228	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-1873	:	

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 a citation that was issued on January 4, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 119 Tran Enterprises, Inc., License Number D-1873 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, March 29, 2006, 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 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 September 30, 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 November 7, 2005 and ended November 14, 2005. A notice of violation letter was sent to the licensed premises dated November 22, 2005 by certified mail, return receipt requested. A citation hearing notice dated January 3, 2006 was sent to the licensed premises by certified mail, return receipt requested and by first class mail. That certified mailing was returned unclaimed. On March 11, 2005, a letter was sent to this Licensee with regard to a check to Clement and Muller, which was “dishonored” (N.T. 6-7 and Exhibits B-1 and B-2).

2. Bill Conwell is employed by Clement and Muller, a distributor. He is the officer manager who is responsible for processing all invoices for delivery and also handling the processing of checks that are returned by the bank (N.T. 11).

3. Clement and Muller delivered malt or brewed beverages to the Licensee on September 30, 2005 and received Check No. 1120 for \$172.00. The check was deposited in the bank and returned for insufficient funds (N.T. 11-12).

4. The delivery invoice indicates that there was a purchase of beer and/or malt liquor for \$1,972.00, however, they only gave a check for \$172.00 because the remainder of the money had been deposited as cash directly into Clement and Muller’s account. The deposit ticket would have been for \$1,800.00, but that amount was not reflected on the invoice (N.T. 13-14 and Exhibit B-3).

5. The deposit ticket is made based upon an estimation of how much the delivery will be. Because the actual delivery was more than the deposit ticket, a check for \$172.00 was written by the Licensee (N.T. 14).

6. Fourteen days after the original delivery, the check was redeposited on October 14, 2005 and made good on that date (N.T. 14-15).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

119 Tran Enterprises, Inc.
Citation No. 05-2750X

Licensee, by its servants, agents or employes, issued checks or drafts dated September 30, 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 February 4, 2002, and has a record of prior violations as follows:

Citation No. 02-1877. \$50.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
August 1, 2002.

Citation No. 03-0108. \$50.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
October 31, 2002.

Citation Nos. 03-0351 and 03-0510. Consolidated. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
November 26 and December 20, 2002.

Citation No. 03-1601. \$200.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
March 14, April 14, 23, 24, May 14 and June 13, 2003.

Citation No. 03-1693. \$200.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid. ALJ reconsidered and suspension vacated.

1. Issued worthless checks in payment for malt or brewed beverages.
July 3 and 15, 2003.

Citation Nos. 03-1900 and 03-2062. Consolidated. \$400.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
September 8, 12 and October 17, 2003.

Citation Nos. 04-0139 and 04-0262. Consolidated. \$500.00 fine and one day suspension.

1. Issued worthless checks in payment for malt or brewed beverages.
December 12, 2003.

Citation No. 04-1480. \$600.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
June 14 and 25, 2004.

Citation Nos. 04-1770 and 04-2001. Consolidated. \$600.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
August 2, 3, 13, 23 and September 24, 2004.

Citation No. 04-2271. \$700.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
October 8 and 25, 2004.

Citation No. 05-0109. \$800.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
November 23, 2004.

Citation Nos. 05-0976 and 05-1172. Consolidated. \$2,000.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
March 1, 2, 7, 10, 15, 16 and 25, 2005.

DISCUSSION:

Licensee has a very long history of bad checks. Clement and Muller and the Licensee made provisions to pay for the delivery via a cash deposit sent in advance. Because the amount of purchase exceeded the cash deposit, the Licensee wrote a check for \$172.00, which then bounced.

Under these unusual circumstances, even though the Licensee has a very extensive history, the Court, after considering the circumstances, shall impose a moderate monetary penalty.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239, 2004

Section 479 of the Liquor Code, 47 P.S. Section 4-479 establishes a numerical system for use in cities of the first class. Every restaurant and eating place licensee in cities of the first class who have been cited for a violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, on or after February 6, 2005, shall have points assessed as of the date of the final Adjudication. Points are in addition to other provisions of this Act for license transfer and renewal. Points shall be assigned in addition to the imposition of a monetary penalty and/or suspension and/or revocation of the license by the Administrative Law Judge.

An enhanced penalty violation requires that the Administrative Law Judge assign five to ten points, depending upon the circumstances surrounding the violation, to a license record for each and every enhanced penalty violation. The Board has, by regulation, established a point system ranging from one to five points for other violations of the Liquor Code and Regulations not specifically set forth in Section 479.

Section 481(a), 47 P.S. Section 4-481(a) provides that when any license accumulates ten points or more, the Administrative Law Judge shall require the license holder to become compliant with and remain compliant with the provisions of Section 471.1, 47 P.S. Section 4-471.1 relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an Order within ninety days shall result in two additional points being assessed against the license record.

Section 481(b), 47 P.S. Section 4-481(b) provides that when any license accumulates fifteen points or more, the Administrative Law Judge shall place the license in safekeeping. The license can only be removed from safekeeping upon approval by the board of a transfer to a disinterested third party. Upon completion of the transfer, the points assigned to it will be reduced to ten. If, within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of section 471.1, two additional points shall be removed from the license record.

Notwithstanding other provisions of this Act, Section 481(c), 47 P.S. Section 4-481(c), provides that when any license accumulates twenty or more points in more than one citation, the Administrative Law Judge shall revoke the license.

POINTS ASSESSED:

Accordingly, you are hereby notified that one point has been assigned to your record.

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, 119 Tran Enterprises, Inc., License Number D-1873, pay a fine of Three Hundred Dollars (\$300.00) 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.

IT IS FURTHER ORDERED that one (1) point is hereby assessed against the record of Licensee, 119 Tran Enterprises, Inc., License Number D-1873, as required by 40 Pa. Code Section 3.122(d).

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 2nd day of May, 2007.

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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