

Mailing Date: SEP 19 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2839X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-315684
v.	:	
	:	LID - 43851
OLJAGRIF, INC.	:	
22 S. 3 RD ST.	:	
PHILADELPHIA, PA 19106-2701	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-162	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Erik S. Shmukler, Esquire
Pennsylvania State Police
6901 Woodland Avenue, 3rd Floor
Philadelphia, PA 19142

For Licensee
Edward A. Taraskus, Esq.
1315 Walnut Street
Suite 1002
Philadelphia, PA 19107

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 18, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against OLJAGRIF, Inc. (Licensee), License Number R-AP-SS-162.

The citation 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 June 30, 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.

An evidentiary hearing was conducted on August 7, 2006 at the Philadelphia State Office Building, 1400 West Spring Garden Street, Philadelphia, Pennsylvania.

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 complied with the applicable investigatory and notice requirements of the Liquor Code. (N.T. 6)

2. On June 30, 2005, Licensee issued two checks to Importing Distributors, for the purchase of beer which were dishonored due to insufficient funds. Neither check was made good within ten days.

CONCLUSIONS OF LAW:

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

2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since June 14, 2001, and has had six prior violations:

Adjudication No. 02-1165. \$100.00 fine.
Loudspeakers could be heard outside.
May 4, 2002.

Adjudication No. 02-1673. \$100.00 fine.
Bad checks for liquor purchases.
May 10, 2002.

Adjudication No. 04-0539. \$350.00 fine.
Unlimited or indefinite amount of alcoholic beverages for a fixed price.
February 24, 2004.

Adjudication No. 04-1747. \$300.00 fine.
Loudspeakers could be heard outside.
September 18, 2004.

Adjudication No. 05-0178. \$200.00 fine.
Bad checks for liquor purchases.
November 18, 2004.

Adjudication Nos. 05-1380 and 05-1628, As Consolidated. Fine \$900.00.

1. Loudspeakers could be heard outside.
May 28, June 22, July 7, 14 and 21, 2005.
2. Unlimited or indefinite amount of free alcoholic beverages
for a period of one hour.
June 2, 2005.

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.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239 OF 2004

Section 479 of the Liquor Code [47 P.S. §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 has been cited for a violation of §471 of the Liquor Code [47 P.S. §4-471], on or after February 6, 2005, must have points assessed as of the date of the final adjudication. Points are in addition to other provisions of the Liquor Code regarding license transfer and renewal. Points are required to be assigned in addition to a monetary penalty and/or suspension and/or revocation 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 §479.

Section 481(a) [47 P.S. §4-481(a)], provides that when any license accumulates ten points or more, the administrative law judge must require the license holder to become compliant with and remain compliant with the provisions of §471.1 [47 P.S. §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. §4-481(b)], provides that when any license accumulates fifteen points or more, the administrative law judge must 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 471.1, two additional points will be removed from the license record.

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

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

I also impose a \$225.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$225.00 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

Assessment of Points

IT IS FURTHER ORDERED that one (1) point is hereby assessed against the record of OLJAGRIF, Inc., License No.R-AP-SS-162, as required by 40 Pa. Code §3.122(d).

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 29th day of August, 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.