

Mailing Date: OCT 28 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0015X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-320536
v.	:	
	:	LID - 25943
D.C.A.C., INC.	:	
T/A FINISH LINE	:	
2014 W. 4 TH ST.	:	
WILLIAMSPORT, PA 17701-4342	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. R-AP-SS-2918	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Michelle Knauff, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 26, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against D.C.A.C., INC., License Number R-AP-SS-2918 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)] in that Licensee, by its servants, agents or employes, issued checks or drafts dated September 23, 2005, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The investigation which gave rise to the citation began on October 17, 2005 and was completed on December 6, 2005; and notice of the violation was sent to Licensee by Certified Mail on December 12, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 18, 2007 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. The hearing was continued at that time, rescheduled and heard on September 11, 2008.

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 23, 2005, Licensee purchased malt or brewed beverages from Mid State Beverage Co. In payment therefore, Licensee issued its check in the amount of \$197.15. The check was returned by Licensee's bank for insufficient funds. Licensee made the check good with a money order on October 25, 2005 (N.T. 17-22 and Exhibit C-3).

2. On September 23, 2005 Licensee purchased malt or brewed beverages from Edwin H. Kleckner, Inc. In payment therefore, Licensee issued its check in the amount of \$141.20. The check was returned by Licensee's bank for insufficient funds. The check was made good by Licensee with a money order on October 20, 2005 (N.T. 23-29 and Exhibit C-4).

3. On September 23, 2005 Licensee purchased malt or brewed beverages from Durdach Bros., Inc. In payment therefore, Licensee issued its check in the amount of \$178.28. The check was returned by Licensee's bank for insufficient funds. The check was made good by Licensee with a money order on October 28, 2005 (N.T. 30-34 and Exhibit C-5).

CONCLUSION OF LAW:

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

DISCUSSION:

Licensee introduced information at the hearing that it was supposed to have overdraft protection to cover situations as those established by the findings in this case. However, the bank through its error did not honor its commitment to do so. Unfortunately, the fact remains that the bank's failure to honor its overdraft protection commitments does not change the fact that Licensee did not have enough in the way of funds in its account to cover the checks written by Licensee for beer as illustrated by the findings. Consequently, I conclude that the Bureau has met its burden and the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since August 15, 1990, and has had eleven prior violations:

Citation No. 97-1268. Fine \$150.00.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 97-2500. Fine \$450.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (machine).

Citation No. 99-2021. Fine \$50.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 2 and 4, 1999.

Citation No. 01-0635. 1 day suspension.

1. Issued worthless checks in payment for malt or brewed beverages. November 28, December 7, 29, 30, 2000 and January 6, 2001.

Citation No. 01-1017. Fine \$50.00 and 2 days suspension.

1. Issued worthless checks in payment of liquor purchases and failed to pay the face amounts and all charges thereon within 10 days after demand for payment was made by the Board. January 10, 2001.
2. Issued worthless checks in payment for malt or brewed beverages. March 9, 2001.

Citation No. 02-2067. Fine \$100.00 and 2 days suspension.

1. Issued worthless checks in payment for malt or brewed beverages. August 30 and September 6, 2002.

Citation No. 03-2077. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. October 24, 2003.

Citation No. 04-0970. Fine \$2,100.00. OALJ reconsidered and suspended license for 7 days.

1. Sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code. February 28, 2004.
2. Sales between 2:00 a.m. and 7:00 a.m. February 28, 2004.
3. Sold liquor for consumption off premises. February 28, 2004.
4. Your corporate president consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages. April 17, 2004.

Citation No. 04-2317. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 26, 2004.

Citation No. 05-1367. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 13, 2005.

Citation No. 05-1471. Fine \$350.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 20, 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.

Because Licensee had made a good faith effort to prevent a recurrence of NSF checks for the payment of beer which failed due to no fault of its own, I am inclined to impose a lesser penalty in this case than would normally be the case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$200.00.

ORDER

THEREFORE, it is hereby ordered that Licensee D.C.A.C., INC., pay a fine of \$200.00 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.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 17th day of October, 2008.



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.

Detach here and submit stub with payment

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

Citation No. 06-0015X
D.C.A.C., Inc.