

Mailing Date: DEC 11 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0912
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-326681
v.	:	
	:	LID - 53459
2346 DE AND R, INC.	:	
2643 W. SERGEANT ST.	:	
PHILADELPHIA, PA 19132-3541	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-15566	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
James E. Dailey, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Third Floor
Philadelphia, PA 19142

For Licensee
Paul L. Herron, Esquire
1700 Market Street
Ste 3112
Philadelphia, PA 19103

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 25, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against 2346 DE and R, Inc. (Licensee), License Number R-AP-15566.

This citation¹ contains two counts.

The first count 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 December 29, 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 a violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §4-491(1), §4-492(2) and §4-493(16)]. The charge is that on February 24, 2006, Licensee, by servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor License expired on October 31, 2005, and had not been renewed and/or validated.

An evidentiary hearing was conducted on October 23, 2006 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #1, 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 began its investigation on February 3, 2006 and completed it on March 13, 2006. (Commonwealth Exhibit No. B-1)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on March 21, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1)

Count No. 1:

3. On December 29, 2005, Licensee issued a check for the purchase of beer to an Importing Distributor which was dishonored due to insufficient funds. The check was not made good within ten days. (N.T. 10-11)

Count No. 2:

4. On February 24, 2006, Licensee was open and in operation selling alcoholic beverages at a time when its Restaurant liquor license had not been renewed and/or validated. (N.T. 12-13)

1. Commonwealth Exhibit No. B-2.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since August 26, 2005, and has had one prior violation:

Adjudication No. 05-2698. Fine \$1,200.00.

1. Sales to a minor.
October 28, 2005.
2. Failed to display on the licensed premises documentary evidence that the premises meets all sanitary requirements for a public eating place.
October 28, 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 Count No. 1 and a penalty of license suspension or revocation or a fine of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 2 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 he 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 five points have been assigned to your record.

I impose:

Count No. 1 - \$100.00 fine.

Count No. 2 - \$1,200.00 fine.

As Licensee has accumulated ten points against its Restaurant liquor license, I also require Licensee to become compliant with and remain compliant with the provisions of Section 471.1 [47 P.S. §4-471.1], relating to the Responsible Alcohol Management Program (R.A.M.P).

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,300.00 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 five (5) points are hereby assessed against the record of 2346 DE and R, Inc., License No.R-AP-15566, as required by 47 P.S. §4-479(b)(4).

R.A.M.P. Requirements

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification was issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 22nd day of November, 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.