Mailing Date: SEP 13 2006

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 06-1148X
	:	Incident No. W08-329581
v.	:	
	:	LID - 51369
COLLISS DOLAN INC T/A FIRESIDE RESTAURANT & LOUNGE 2108 CLARK ROAD ERIE PA 16510-4406	:	
ERIE COUNTY LICENSE NO. R-AP-19565	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Nadia Vargo, Esquire

For Licensee
No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 16, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Colliss Dolan, Inc., t/a Fireside Restaurant & Lounge, License Number R-AP-19565 (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 employees, issued checks or drafts dated January 19, 2006, 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.

An administrative hearing was conducted on August 8, 2006, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on March 20, 2006, and completed its investigation on March 20, 2006. (Exhibit C-1)

2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated April 17, 2006, which was sent by certified mail and returned unclaimed. (Exhibit C-2)

3. The citation was issued on May 16, 2006, and was sent by certified mail and returned unclaimed. (Exhibits C-3, C-4)

4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on June 23, 2006 by certified mail and first class mail.

5. The aforementioned certified mailing of the notice of hearing was returned unclaimed. The first class mailing was not returned.

6. Official notice is taken that Licensee's correct address of premises is: Colliss Dolan, Inc., t/a Fireside Restaurant & Lounge, 2108 Clark Road, Erie, PA 16510-4406. (N.T. 8)

7. An investigation conducted by Liquor Enforcement Officer Douglas Keys revealed that Licensee issued Check No. 2379 dated January 19, 2006, drawn on National City Bank issued in payment for malt or brewed beverages purchased from Penn Beer Company, at Invoice #145814 in the amount of $425.11 (L.C.E. Exs. C-6, C-7, N.T. 12-15)

8. Upon presentation of the aforementioned check by the payee, the drawee bank refused payment for nonsufficient funds. (L.C.E. Ex. C-7, N.T. 14-15)

9. The aforementioned "NSF" check was subsequently honored by the drawee bank upon a second presentation by the payee on February 24, 2006. (N.T. 15)

10. Licensee issued a prior "NSF" check to Penn Beer Company dated January 6, 2006, which was subsequently honored within ten days of the date of issuance. On March 17, 2006, Licensee was issued a warning letter and was not cited by the Bureau for this infraction. (L.C.E. Ex. C-5, N.T. 9-10)

DISCUSSION:

Upon review of the testimony and evidence presented, this court is of the opinion that the Bureau established the violation as charged by a clear preponderance of the evidence. ***Pennsylvania Liquor Control Board v. Leggens,*** 542 A.2d 653 (Pa. Cmwlth. 1988); ***Omicron Enterprises,*** 449 A.2d 857 (Pa. Cmwlth. 1982).

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. Licensee, by its servants, agents or employees, issued checks or drafts dated January 19, 2006, 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, in violation of Section 493(26) of the Liquor Code.

PRIOR RECORD:

Licensee has been licensed since August 6, 2003, and has had four prior violation(s), to wit:

Citation No. 04-1615. Fine $100.00.
1. Issued worthless checks in payment for malt or brewed beverages.
July 22, 2004.

Citation No. 04-1954. Fine $150.00.
1. Issued worthless checks in payment for malt or brewed beverages.
August 26, 27 and September 7, 2004.

Citation No. 05-0755. Fine $200.00.
1. Issued worthless checks in payment for malt or brewed beverages.
January 28 and February 12, 2005.

Citation No. 05-2298. Fine $300.00.

1. Issued worthless checks in payment for malt or brewed beverages.
   June 17, 21, July 28, August 16, September 6 and 8, 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.

The record discloses that this citation represents Licensee's fifth violation of this type. Therefore, Licensee shall be treated as a repeat offender.

Licensee's failure to appear at the administrative hearing demonstrates a clear lack of interest in this liquor license.

For the foregoing reasons, a penalty shall be imposed in the amount of $400.00.

ORDER:

THEREFORE, it is hereby ordered that Colliss Dolan, Inc., t/a Fireside Restaurant & Lounge, License Number R-AP-19565, pay a fine of $400.00 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 PA 17110-9661

Jurisdiction is retained to ensure compliance with this Order.

Dated this 5th day of September, 2006.

Roderick Frisk, J.

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NOTE: 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.