

Mailing Date: NOV 20 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1286
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-331380
v.	:	
	:	LID - 49486
MCW, INC.	:	
T/A ALLEGHENY HOUSE	:	
253-255 ALLEGHENY ST.	:	
JERSEY SHORE, PA 17740-1422	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. H-AP-894	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 1, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MCW, INC., License Number H-AP-894 (hereinafter "Licensee").

The citation charges Licensee with violation of Sections 401(a) and 407 of the Liquor Code [47 P.S. §§4-401(a) and 4-407] in that on April 15, 2006, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

The investigation which gave rise to the citation began on April 14, 2006 and was completed on April 15, 2006; and notice of the violation was sent to Licensee by Certified Mail on May 4, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 24, 2006 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. Licensee(s) did not appear at the hearing, nor did anyone appear on its behalf. A citation hearing notice was sent to Licensee(s) at its address of record, 253-255 Allegheny Street, Jersey Shore, PA 17740-1422 by certified mail, return receipt requested and by first class mail on July 7, 2006. The notice set forth the date and time of the hearing as August 24, 2006 at 1:00 p.m., and the place of hearing as PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

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 April 15, 2006, at 9:15 p.m. an officer of the Bureau entered the licensed premises where he observed two male bartenders rendering service to 10 patrons (N.T. 8).
2. At 9:55 p.m., a male patron entered the premises and ordered four six packs of 24-ounce cans of Busch Light beer to go (N.T. 8).
3. The bartender retrieved four six packs of Busch Light beer and set them on the bar in front of the patron. The patron gave the bartender \$20.00 and the bartender went to the register, rang up the sale, put the \$20.00 in the register and retrieved two \$1.00 bills and handed them to the male patron (N.T. 8).
4. The bartender put two six packs in one plastic bag and two six packs in another plastic bag and a second male patron took the four six packs out of the bar (N.T. 8).
5. The first male patron then ordered four more six packs of 24 ounce cans of Busch Light beer. The bartender went to the cooler, took four more six packs of 24 ounce cans of Busch Light beer from the cooler and packaged them the same way (N.T. 8).
6. The male patron handed the bartender another \$20.00 bill. The bartender rang up the sale on the cash register and gave the patron \$2.00 in change (N.T. 8-9).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since July 31, 2002, and has had seven prior violations:

Citation No. 03-0208. Fine \$500.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (tickets). September 18, 2002.

Citation No. 03-0347. Fine \$1,850.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 p.m. January 1, 2003.
2. Permitted dancing to a disc jockey until 2:15 a.m. January 1, 2003.
3. Sales to a visibly intoxicated person. December 31, 2002 and January 1, 2003.

Citation No. 03-0376. Fine \$150.00.

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

Citation No. 03-2031. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 11 and 25, 2003.

Citation No. 04-1170. Fine \$750.00 and 1 day suspension. Fine not paid and license suspended 2 additional days and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. November 20, 26 and December 11, 2003.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (cards). March 13, 2004.

Citation No. 05-0090. Fine \$400.00.

1. Not a bona fide hotel in that bedrooms maintained for the accommodation of guests are insufficient in number and/or inadequately equipped. December 29, 2004.

Citation No. 05-2086. 1 day suspension and thereafter until conditions corrected.

1. Not a bona fide hotel where the public may, for a consideration, obtain meals in that you failed to provide food upon request. July 19, 25 and August 4, 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.

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

ORDER

THEREFORE, it is hereby ordered that Licensee MCW, 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.

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

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

Dated this 26th day of October, 2006.

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.