

Mailing Date: OCT 1 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1300
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-319806
v.	:	
	:	LID - 53602
HANNA & AXEL, INC.	:	
T/A THE DUTCHMAN	:	
338 S. FRONT ST.	:	
WRIGHTSVILLE, PA 17368-1614	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-SS-19392	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, 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 HANNA & AXEL, INC., License Number R-AP-SS-19392 (hereinafter "Licensee").

The citation contains two counts.

The first count 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 7, 8, 14, 15, 19, October 19, 20, 26, November 3, 9 and 10, 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 second count charges Licensee with violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations [40 Pa. Code §5.41] in that during the period February 1 through April 24, 2006, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on January 31, 2006.

The investigation which gave rise to the citation began on October 7, 2005 and was completed on April 25, 2006; and notice of the violation was sent to Licensee by Certified Mail on May 11, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 9, 2006 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 338 S. Front St., Wrightsville, PA 17368-1614 by certified mail, return receipt requested and by first class mail on September 21, 2006. The notice set forth the date and time of the hearing as November 9, 2006 at 11:00 a.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110.

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:

COUNT 1

1. On September 7, 2005 Licensee purchased malt or brewed beverages from Ace Distributors, Inc. In payment therefore, Licensee issued its check in the amount of \$381.27. The check was returned by Licensee's bank for insufficient funds (N.T. 14-15 and Exhibit C-5).

2. On September 8, 2005 Licensee purchased malt or brewed beverages from Sheffer Beer Distributor. In payment therefore, Licensee issued its check in the amount of \$219.95. The check was returned by Licensee's bank for insufficient funds (N.T. 15-16 and Exhibit C-6).

3. On September 14, 2005 Licensee purchased malt or brewed beverages from Ace Distributing Company. In payment therefore, Licensee issued its check in the amount of \$105.54. The check was returned by Licensee's bank for insufficient funds and an indication that the account had been closed (N.T. 16 and Exhibit C-7).

4. On September 15, 2005 Licensee purchased malt or brewed beverages from Sheffer Beer Distributor. In payment therefore, Licensee issued its check in the amount of \$98.21. The check was returned by Licensee's bank with a notation showing the account was closed and also a stamp saying, "Do Not Present Again." (N.T. 16-17 and Exhibit C-8).

5. On September 19, 2005 Licensee purchased malt or brewed beverages from Ace Distributing Company. In payment therefore, Licensee issued its check in the amount of \$158.30. The check was returned by Licensee's bank with an indication showing the account was closed and a notation saying, "Do Not Present Again." (N.T. 17 and Exhibit C-9).

6. On October 19, 2005 Licensee purchased malt or brewed beverages from Ace Distributing Company. In payment therefore, Licensee issued its check in the amount of \$394.83. The check was returned by Licensee's bank for insufficient funds (N.T. 17-18 and Exhibit C-10).

7. On October 20, 2005 Licensee purchased malt or brewed beverages from Sheffer Beer Distributors. In payment therefore, Licensee issued its check in the amount of \$298.66. The check was returned by Licensee's bank for insufficient funds (N.T. 18 and Exhibit C-11).

8. On October 26, 2005 Licensee purchased malt or brewed beverages from Ace Distributing Company. In payment therefore, Licensee issued its check in the amount of \$134.15. The check was returned by Licensee's bank for insufficient funds (N.T. 18 and Exhibit C-12).

9. On November 3, 2005 Licensee purchased malt or brewed beverages from Sheffer Beer Distributors. In payment therefore, Licensee issued its check in the amount of \$234.31. The check was returned by Licensee's bank for insufficient funds (N.T. 19 and Exhibit C-13).

10. On November 9, 2005 Licensee purchased malt or brewed beverages from Henry's Beverage. In payment therefore, Licensee issued its check in the amount of \$242.35. The check was returned by Licensee's bank for insufficient funds (N.T. 19-20 and Exhibit C-14).

11. On November 10, 2005 Licensee purchased malt or brewed beverages from Sheffer Beer Distributors. In payment therefore, Licensee issued its check in the amount of \$432.23. The check was returned by Licensee's bank for insufficient funds (N.T. 20 and Exhibit C-15).

12. On September 29, 2005 Licensee purchased malt or brewed beverages from Ace Beer Distributor. In payment therefore, Licensee issued its check in the amount of \$416.27. The check was returned by Licensee's bank marked account closed with a notation indicating, "Do Not Present Again." (N.T. 20-21 and Exhibit C-16).

13. In the case of the check to Henry's Beverage, that check is actionable because Licensee did not make it good in a timely fashion (N.T. 23).

14. The checks issued by Licensee to Brewery Products, Inc. and Universal Projects, Inc. a/k/a Ace Beer Distributors were actionable because Licensee had previously issued NSF checks to Brewery Products Company during the year 2005. On April 1, 2005 Licensee issued an NSF check in payment for purchase of malt or brewed beverages to Brewery Products Company in the amount of \$441.44. On May 11, 2005 Licensee issued an NSF check to Universal Projects, Inc. a/k/a Ace Beer Distributors in the amount of \$316.06. The aforementioned check was issued to Universal Projects, Inc. for the purchase of malt or brewed beverages. A warning letter covering these checks was sent out on September 15, 2005 (N.T. 24 and Exhibit C-19).

COUNT 2

15. On April 24, 2006 an officer of the Bureau entered the licensed premises. Upon entry, the officer found a bartender on duty rendering service to patrons. He found cash on the bar counter (N.T. 10).

16. While on the premises, the officer took notice of the fact that there was an expired PA Department of Agriculture Health License posted on the wall in the bathroom. The license had expired January 31, 2006 (N.T. 11 and Exhibit C-17).

CONCLUSIONS OF LAW:

1. Count 1 of the citation is **sustained**.
2. Count 2 of the citation is **sustained** as to the date of April 24, 2006.

DISCUSSION:

Count No. 2 is only sustained as to April 24, 2006 since the record contains no evidence that Licensee was operating on any of the other dates charged in Count No. 2.

PRIOR RECORD:

Licensee has been licensed since February 10, 2005, and has had two prior violations:

Citation No. 05-1996, 05-2123 & 05-2186, consolidated. Fine \$500.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. April 6, 27, May 4, 11, June 1 and July 20, 2005.
2. Transported malt or brewed beverages without a license. July 7, 15, 23, 29 and August 4, 2005.

3. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (tickets). September 2 and 3, 2005.

Citation No. 06-0027. Fine \$300.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Loudspeakers or devices whereby music could be heard outside. November 12 and 26, 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 as follows:

Count 1 - \$500.00 fine
Count 2 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee HANNA & AXEL, INC., pay a fine of \$750.00 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 20th day of September, 2007.

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.