

Mailing Date: SEP 25 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1495X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-332540
v.	:	
	:	LID - 52909
AVANI, INC.	:	
1440-42 FEDERAL ST.	:	
PHILADELPHIA, PA 19146-3137	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-SS-1099	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Erik S. Shmukler, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 26, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against AVANI, INC., License Number D-SS-1099 (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 April 18 and 20, 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.

The investigation which gave rise to the citation began on May 10, 2006 and was completed on May 23, 2006; and notice of the violation was sent to Licensee by Certified Mail on June 1, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 13, 2006 in the Office of Administrative Law Judge, 140 Germantown Pike, Plymouth Meeting, Pennsylvania. No one appeared on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 1440-42 Federal Street, Philadelphia, PA 19146-3137 by certified mail, return receipt requested and by first class mail on September 28, 2006. The notice set forth the date and time of the hearing as November 13, 2006 at 1:30 p.m., and the place of hearing as 140 W. Germantown Pike, Suite 100, Plymouth Meeting, PA 19462-1421.

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 18, 2006 Licensee purchased malt or brewed beverages from Penn Beer Distributors, Inc. In payment therefore Licensee issued its check in the amount of \$5,630.80. The check was returned by Licensee's bank for insufficient funds (N.T. Exhibit B-5).
2. On April 20, 2006 Licensee purchased malt or brewed beverages from Antonio Origlio, Inc. In payment therefore Licensee issued its check in the amount of \$1,611.00. The check was returned by Licensee's bank for insufficient funds (N.T. Exhibit B-3).
3. This office takes Administrative Notice that Licensee issued a check dated February 1, 2006 to Penn Beer Distributors, Inc. in payment for purchases of malt or brewed beverages, which was dishonored due to insufficient funds.

CONCLUSION OF LAW:

1. The charge in the citation is **sustained** as to the check dated April 18, 2006.
2. The charge in the citation is **dismissed** as to the check dated April 20, 2006.

DISCUSSION:

The record contains no evidence of a warning letter or other qualifications to make the check dated April 20, 2006, issued to Antonio Origlio, Inc. a violation.

PRIOR RECORD:

Licensee has been licensed since May 19, 2004, and has had one prior violation:

Citation No. 06-0881. Fine \$100.00.

1. Issued worthless checks in payment for malt or brewed beverages. February 1, 2006.

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 \$150.00.

ORDER

THEREFORE, it is hereby ordered that Licensee AVANI, INC., pay a fine of \$150.00 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 4th 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.