

Mailing Date: SEP 17 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1666X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-332854
v.	:	
	:	LID - 49443
NINE IS ENOUGH, INC.	:	
T/A THE DRAFT HOUSE	:	
670-672 BAER AVE.	:	
HANOVER, PA 17331-2705	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-19733	:	

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 July 20, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against NINE IS ENOUGH, INC., License Number R-AP-19733 (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 28 and May 12, 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 16, 2006 and was completed on June 21, 2006; and notice of the violation was sent to Licensee by Certified Mail on June 27, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 7, 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, 670-672 Baer Ave., Hanover, PA 17331-2706, by certified mail, return receipt requested and by first class mail on September 20, 2006. The notice set forth the date and time of the hearing as November 7, 2006 at 10:00 a.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

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 28, 2006, Licensee purchased malt or brewed beverages from Brewery Products, Inc. In payment therefore, Licensee issued its check in the amount of \$517.72. The check was returned by Licensee's bank for insufficient funds (N.T. 9 and Exhibit C-5).

2. On May 12, 2006 Licensee purchased malt or brewed beverages from Brewery Products, Inc. In payment therefore, Licensee issued its check in the amount of \$553.99. The check was returned by Licensee's bank for insufficient funds (N.T. 10 and Exhibit C-6).

3. Neither of the aforementioned checks was made good by Licensee in a timely manner (N.T. 11-12).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since May 21, 2002, and has had four prior violations:

Citation No. 03-0617. Fine \$600.00.

1. Used loudspeakers or devices whereby music could be heard outside. September 20 and October 20, 2002.
2. Noisy and/or disorderly operation. September 20 and October 20, 2002.
3. Engaged in disorderly conduct. October 20, 2002.

4. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pools). February 27, 2003.

Citation No. 04-0408. Fine \$2,300.00.

1. Used loudspeakers or devices whereby music could be heard outside. April 27, May 11, June 14, 21, July 19, August 10 and 30, 2003.
2. Sales to a visibly intoxicated person. June 21, 2003.
3. Noisy and/or disorderly operation. On 22 dates from April 27 through October 17, 2003.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time. November 26, 2003.
5. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. November 26, 2003.

Citation No. 06-0896. Fine \$1,000.00 and 1 day suspension and thereafter until conditions corrected.

1. Failed to appoint a Board approved full time manager for the licensed premises. April 9, 2005 through March 8, 2006.

Citation No. 06-1245. Fine \$150.00. Fine not paid and license suspended for one day and until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. March 22, 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 \$200.00.

ORDER

THEREFORE, it is hereby ordered that Licensee NINE IS ENOUGH, 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 6th 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.