

Mailing Date: APR 19 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1827X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-3333820
v.	:	
	:	LID - 53530
STWA, LLC	:	
T/A ABILENE	:	
429 SOUTH ST.	:	
PHILADELPHIA, PA 19147-1532	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-2200	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Erik Shmukler, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 8, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against STWA, LLC, License Number R-AP-SS-2200 (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 May 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.

The investigation which gave rise to the citation began on June 2, 2006 and was completed on July 5, 2006; and notice of the violation was sent to Licensee by Certified Mail on July 14, 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 West Germantown Pike, Plymouth Meeting, 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, 429 South Street, Philadelphia, PA 19147-1532 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 2:30 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 May 19, 2006 Licensee purchased malt or brewed beverages from Muller, Inc., an importing beer distributor (N.T. 12 and Exhibit B-3).
2. In payment therefore Licensee issued its check in the amount of \$429.04. The aforementioned check was returned by Licensee's bank for insufficient funds (N.T. 11 and Exhibit B-3).
3. The aforementioned check was made good by cash payments made by Licensee, once on June 9 and again on June 12, 2006 (N.T. 13).
4. A warning letter had been sent to Licensee with respect to a previous NSF check issued by Licensee to Muller, Inc. for the purchase of malt or brewed beverages during the calendar year 2006 (N.T. 8).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since November 1, 2004, and has had two prior violations:

Citation No. 05-1087. Fine \$100.00.

1. Issued worthless checks in payment for malt or brewed beverages. April 1, 2005.

Citation No. 05-2383. Fine \$150.00 and 1 point assessed.

1. Issued worthless checks in payment for malt or brewed beverages. August 19, 2005.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239, 2004

Section 479 of the Liquor Code [47 P.S. §4-479] establishes a numerical system for use in cities of the first class. Every restaurant and eating place licensee in cities of the first class who have been cited for a violation of Section 471 of the Liquor Code [47 P.S. §4-471] on or after February 6, 2005, shall have points assessed as of the date of the final Adjudication. Points are in addition to other provisions of this Act for license transfer and renewal. Points shall be assigned in addition to the imposition of a monetary penalty and/or suspension and/or revocation of the license by the Administrative Law Judge.

An enhanced penalty violation requires that the Administrative Law Judge assign five to ten points, depending upon the circumstances surrounding the violation, to a license record for each and every enhanced penalty violation. The Board has by regulation established a point system ranging from one to five points for other violations of the Liquor Code and Regulations not specifically set forth in Section 479.

Section 481(a) of the Liquor Code [47 P.S. §4-481(a)] provides that when any license accumulates ten points or more, the Administrative Law Judge shall require the license holder to become compliant with and remain compliant with the provisions of Section 471.1 [47 P.S. §4-471.1] relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an Order within ninety days shall result in two additional points being assessed against the license record.

Section 481(b) [47 P.S. §4-481(b)] provides that when any license accumulates fifteen points or more, the Administrative Law Judge shall place the license in safekeeping. The license can only be removed from safekeeping upon approval by the Board of a transfer to a disinterested third party. Upon completion of the transfer, the points assigned to it will be reduced to ten. If, within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the Responsible Alcohol Management provisions of Section 471.1, two additional points shall be removed from the license record.

Notwithstanding other provisions of this Act, Section 481(c) [47 P.S. §4-481(c)] provides that when any license accumulates twenty or more points in more than one citation, the Administrative Law Judge shall revoke the license.

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 \$250.00 and 1 point.

POINTS ASSESSED

Accordingly, you are hereby notified that one point(s) has been assigned to your record.

FINE IMPOSED

THEREFORE, it is hereby ordered that Licensee STWA, LLC pay a fine of \$250.00 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 13th day of April, 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.