

Mailing Date: FEB 28 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2016X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-329952
v.	:	
	:	LID - 12986
THE ASPEN STREET CORPORATION	:	
741-743 N. 23 RD ST.	:	
742-744 N. CROSKEY ST.	:	
PHILADELPHIA, PA 19130-2619	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-7914	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
James E. Dailey, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Philadelphia, Pa 19142

For Licensee
Edward A. Taraskus, Esquire
The Philadelphia Building
1315 Walnut Street
Suite 1002
Philadelphia, Pa 19107-4721

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 29, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Aspen Street Corporation (Licensee), License Number R-AP-SS-EHF-7914.

The citation¹ charges Licensee with violations of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by servants, agents or employes, issued checks or drafts dated April 18 and 25, 2006, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

An evidentiary hearing was conducted on January 22, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #1, Philadelphia, Pennsylvania.

This matter was presented into the record by way of Stipulations of Fact.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 27, 2006 and completed it on August 1, 2006. (N.T. 4)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 8, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1)
3. On the dates charged, Licensee issued two checks totaling \$2,080.93 to Antonio Origlio, Inc., for payment of beer which were dishonored due to insufficient funds. One of the two checks was made good within ten days.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

1. Commonwealth Exhibit No. B-2.

PRIOR RECORD:

Licensee has been licensed since August 29, 1984, and has had four prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication No. 87-2106. \$400.00 fine.

1. Failed to notify the Board within 30 days of a change of officers.
2. Supplied false information on Form PLCB-866.
3. Supplied false information on application for restaurant liquor license.

Adjudication No. 90-2121. \$250.00 fine.

Failed to notify the Board within 15 days of a change of officers.

Adjudication No. 96-2098. \$500.00 fine.

1. Pecuniary interest.
2. Failed to provide the Board with information regarding the involvement of J. Z., Inc. in the operation of the licensed business.

Adjudication No. 04-0214. \$1,200.00 fine.

1. Permitted patrons to possess alcoholic beverages after 2:30 A.M. January 3, 2004.
2. Sales between 2:00 A.M. and 7:00 A.M. January 3, 2004.

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.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239 OF 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 has been cited for a violation of §471 of the Liquor Code [47 P.S. §4-471], on or after February 6, 2005, must have points assessed as of the date of the final adjudication. Points are in addition to other provisions of the Liquor Code regarding license transfer and renewal. Points are required to be assigned in addition to a monetary penalty and/or suspension and/or revocation 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 §479.

Section 481(a) [47 P.S. §4-481(a)], provides that when any license accumulates ten points or more, the administrative law judge must require the license holder to become compliant with and remain compliant with the provisions of §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 must 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 471.1, two additional points will be removed from the license record.

Notwithstanding other provisions of the Act, §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 must revoke the license.

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

I also adopt the jointly recommended penalty of a \$150.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee 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, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, Pennsylvania 17110-9661

Assessment of Points

IT IS FURTHER ORDERED that one (1) point is hereby assessed against the record of The Aspen Street Corporation, License No.R-AP-SS-EHF-7914, as required by 40 Pa. Code §3.122(d).

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 20th day of February, 2007.

Felix Thau, A.L.J.

pm

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.