

Mailing Date: APR 30 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2441
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-337215
v.	:	
	:	LID - 52796
NEW YORK BAR AND LOUNGE INC	:	
701-703 LARIMER AVENUE	:	
PITTSBURGH PA 15206-2638	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-2919	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement  
Michael Nickles, Esquire

For Licensee  
No Appearance

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 23, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against New York Bar and Lounge, Inc., License Number R-AP-SS-2919 (hereinafter Licensee).

The citation charges Licensee with violation of Section 305(c) of the Liquor Code [47 P.S. §3-305 (c)], in that Licensee, by its servants, agents or employees, issued checks dated April 21, 27 and May 1, 2006, in payment of liquor purchased from State Store No. 0208, which checks were returned as dishonored, and failed to pay the face amounts and all charges thereon within ten days after demand for payment was made by the Board.

An administrative hearing was conducted on March 27, 2007, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on August 1, 2006, and completed its investigation on September 20, 2006. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated September 27, 2006, which was sent by certified mail and returned unclaimed. (Exhibit C-2)
3. The citation was issued on October 23, 2006, and was sent by certified mail on October 23, 2006, and returned unclaimed and by first class mail on January 27, 2007, which was not returned. (Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on February 8, 2007, by certified mail and first class mail.
5. The certified mailing of the notice of hearing was returned unclaimed. The first class mailing was not returned.
6. An investigation conducted by the Bureau disclosed that Licensee issued the following checks to Wine and Spirits Shoppe #0208 in payment for purchases of alcoholic beverages which checks were dishonored by the drawee bank, Dollar Bank, for nonsufficient funds:  
  
Check No. 1124 dated April 21, 2006, in the amount of \$367.70 at Invoice #0208-001496. On May 1, 2006, the Special Accounting Division of the Board demanded payment of the check, plus a penalty of \$20.00, and a protest fee of \$8.00. (N.T. 10, Exhibit C-5)  
  
Check No. 1055 dated April 27, 2006, in the amount of \$563.99 at Invoice #0208-001510. On May 8, 2006, the Special Accounting Division of the Board demanded payment of the check, plus a penalty of \$30.00, and a protest fee of \$8.00. (N.T. 10, Exhibit C-5)  
  
Check No. 1058 dated May 1, 2006, in the amount of \$412.91 at Invoice #0208-001529. On May 10, 2006, the Special Accounting Division of the Board demanded payment of the check plus a penalty of \$25.00, and a protest fee of \$8.00. (N.T. 10-11, Exhibit C-5)
7. As of the date of this hearing, repayment of the dishonored checks, and the applicable penalty and protest fees has not occurred. (N.T. 12-19, Exhibit C-5)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. Licensee, by its servants, agents or employees, issued checks dated April 21, 27 and May 1, 2006, in payment of liquor purchased from State Store No. 0208, which checks were returned as dishonored, and failed to pay the face amounts and all charges thereon within ten days after demand for payment was made by the Board, in violation of Section 305 (c) of the Liquor Code.

PENALTY:

Section 305(c) of the Liquor Code [47 P.S. §3-305(c)] prescribes a penalty of license suspension or revocation for violations of the type found in this case.

For the foregoing reasons, Licensee's restaurant liquor license shall be suspended for a period of one day, and continuing thereafter until Licensee has submitted proof of payment of the sum of \$1,443.60 to the Order of the Commonwealth of Pennsylvania in the form of a canceled check or receipt.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of New York Bar and Lounge, Inc., License No. R-AP-SS-2919 be suspended for a period of one (1) day, and continuing thereafter until Licensee has submitted proof of payment of the sum of One Thousand four hundred forty-three dollars and sixty cents (\$1,443.60) to the Order of the Commonwealth of Pennsylvania, in the form of a canceled check or receipt. However, the suspension period is deferred pending the reactivation of Licensee's license, at which time the suspension period will be fixed by further Order.

NEW YORK BAR AND LOUNGE, INC.

Citation Number 06-2441

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing the dates for suspension.

IT IS FURTHER ORDERED that in the event proof of payment of the sum of \$1,443.60 to the Order of the Commonwealth of Pennsylvania has not submitted within sixty days from the mailing date of this Order, this Office will reevaluate the penalty of the one (1) day deferred suspension with thereafter conditions and consider revocation of the license.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 24<sup>th</sup> day of April, 2007.

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Roderick Frisk, J.

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NOTE: 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.