

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2794X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-340182
	:	
v.	:	
	:	LID - 47949
	:	
201 NORTH SECOND STREET, INC.	:	
T/A FISAGA	:	
201-209 N. SECOND ST.	:	
HARRISBURG, PA 17101	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-12649	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Thomas M. Ballaron, Esquire

For Licensee  
Frank C. Sluzis, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on December 14, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 201 NORTH SECOND STREET, INC., License Number R-AP-SS-12649 (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 September 1, 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.

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The investigation which gave rise to the citation began on September 20, 2006 and was completed on November 1, 2006; and notice of the violation was sent to Licensee by Certified Mail on November 22, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on May 3, 2007 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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 September 1, 2006 Licensee purchased malt or brewed beverages from W & L Sales Company, Inc. (Stipulation N.T. 9-10).
2. In payment therefore, Licensee issued its check in the amount of \$1,149.43 (Stipulation N.T. 9-10).
3. The check was presented for payment at Licensee's bank on September 6, 2006 (Stipulation N.T. 10).
4. On September 5, 2006 Licensee had on account in its bank the amount of \$2,002.30. This amount was sufficient to cover the amount of the check mentioned above (Stipulation N.T. 10).
5. On September 6, 2006 the same day the check was presented for payment by the bank, the Internal Revenue Service placed a lien on Licensee's account in the amount of \$102,000.00 (Stipulation N.T. 10).
6. Licensee's bank dishonored the check and returned it to Licensee marked "Frozen/blocked account." (Stipulation N.T. Exhibit C-5).
7. The check was made good by cash payment on September 14, 2006.

8. A warning letter was issued to Licensee by the Bureau with respect to a check dated August 31, 2006 issued by Licensee to W & L Sales Company, Inc. in the amount of \$1,068.96. That check was made good in a timely fashion.

CONCLUSION OF LAW:

The charge in the citation is **dismissed**.  
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DISCUSSION:

Section 493(26) of the Liquor Code [47 P.S. §4-493(26)] makes it unlawful for a Licensee to pay for the purchase of malt or brewed beverages with a check drawn on an account which has insufficient funds in it to cover the amount of the check. In this case Licensee's account had more than enough funds in it to cover the amount of the check. Thus, Licensee has not violated the plain and unambiguous language found in Section 493(26) (supra).

Based on the foregoing, the charge in this citation must be dismissed.

ORDER

IT IS HEREBY ORDERED that Citation No. 06-2794X be **DISMISSED**.

Dated this 8<sup>th</sup> day of June, 2007.

Daniel T. Flaherty, Jr., J. an

**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.**