Mailing Date: OCT 26 2007

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 06-2892X
	:	Incident No. W06-342775
v.	:	
	:	LID - 8562
JOHN R. MARTIN T/A BLOSSBURG BEVERAGE CO. 334 N. WILLIAMSON RD. BLOSSBURG, PA 16912-1211	:	
TIOGA COUNTY LICENSE NO. ID-SS-502	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 21, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against JOHN R. MARTIN, License Number ID-SS-502 (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 his servants, agents or employes, issued checks or drafts dated October 16, 2006, in payment for purchases of malt or brewed beverages, when he 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 November 2, 2006 and was completed on November 6, 2006; and notice of the violation was sent to Licensee by Certified Mail on November 29, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 26, 2007 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at his address of record, 334 N. Williamson Rd., Blossburg, PA 16912-1211 by certified mail, return receipt requested and by first class mail on June 11, 2006. The notice set forth the date and time of the hearing as July 26, 2007 at 11:00 a.m., and the place of hearing as PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

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 October 16, 2006 Licensee purchased malt or brewed beverages from Mid State Beverage Co. In payment therefore, Licensee issued its check in the amount of $5,209.10. The check was returned by Licensee's bank for insufficient funds (N.T. 5, 7-8).

2. Licensee was warned with respect to an NSF Check issued to Mid State Beverage Co. in the amount of $5,097.00 for the purchase of malt or brewed beverages. The check was returned for insufficient funds. The warning letter was dated March 24, 2006 (N.T. 10 and Exhibit C-6).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since July 8, 1976, and has had thirteen prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 91-0064. Fine $1,000.00.
1. Sales to a minor.

Citation No. 93-0758. Fine $200.00.
1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 93-1916. Fine $200.00 and 1 day suspension.

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

Citation No. 93-2331. Fine $250.00 and 3 days suspension.

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

Citation No. 94-1623. 4 days suspension. Common Pleas Court modified penalty to 1 day suspension and $1,000.00 fine.

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

Citation No. 03-0993. Fine $150.00.

1. Issued worthless checks in payment for malt or brewed beverages. April 14, 2003.

Citation No. 03-1060. Fine $150.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 5, 2003.

Citation No. 03-1399. Fine $150.00.

1. Issued worthless checks in payment for malt or brewed beverages. June 23 and 30, 2003.

Citation No. 04-1404. Fine $250.00.

1. Issued worthless checks in payment for malt or brewed beverages. April 29, May 4, 24 and June 28, 2004.

Citation No. 05-1314. Fine $350.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 9, 2005.

Citation No. 06-1205. Fine $100.00.

1. Issued worthless checks in payment for malt or brewed beverages. March 6 and 20, 2006.

Citation No. 06-1865. Fine $100.00.

1. Issued worthless checks in payment for malt or brewed beverages. June 26, 2006.

Citation No. 06-2197. Fine $100.00.

1. Issued worthless checks in payment for malt or brewed beverages. July 31, 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 $350.00.

ORDER

THEREFORE, it is hereby ordered that Licensee JOHN R. MARTIN, pay a fine of $350.00 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.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 10th day of October, 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.

Detach here and submit stub with payment

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

Citation No. 06-2892X