

Mailing Date: OCT 1 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2959X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-341299
v.	:	
	:	LID - 50471
KILLKENNY FUR FARMS, INC.	:	
T/A CREEKSIDE INN	:	
406 SR 92N	:	
TUNKHANNOCK, PA 18657-5613	:	
	:	
	:	
WYOMING COUNTY	:	
LICENSE NO. R-AP-SS-2517	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 5, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against KILLKENNY FUR FARMS, INC., License Number R-AP-SS-2517 (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 October 5, 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 October 11, 2006 and was completed on November 20, 2006; and notice of the violation was sent to Licensee by Certified Mail on December 4, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 12, 2007 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 406 SR92N, Tunkhannock, PA 18657-5613 by certified mail, return receipt requested and by first class mail on February 28, 2007. The notice set forth the date and time of the hearing as April 12, 2007 at 9:30 a.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

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 5, 2006 Licensee purchased malt or brewed beverages from L.T. Verrastro, Inc. (N.T. 10 and Exhibit C-6).
2. In payment therefore, Licensee issued its check in the amount of \$517.44. The check was returned for insufficient funds (N.T. 11 and Exhibit C-6).
3. On July 12, 2006 Licensee was issued a warning letter with respect to an NSF check issued by Licensee to L.T. Verrastro, Inc. for malt or brewed beverages. The check was dated May 11, 2006 and was in the amount of \$431.95. The check was honored by Licensee in a timely fashion (N.T. 7 and Exhibit C-5).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since November 21, 2002, and has had nine prior violations:

Citation No. 04-0644. Fine \$250.00.

1. Engaged in unlawful discrimination in that you provided alcoholic beverages to female patrons at a reduced price while charging full price to male patrons. March 10, 2004.

Citation No. 04-1280. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. April 15, 16 and May 13, 2004.

Citation No. 04-2000. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. July 8 and 15, 2004.

Citation No. 05-0771. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. October 7, 13, 21, November 12, 2004 and January 27, 2005.

Citation No. 05-1217. Fine \$200.00.

1. Operated the licensed establishment without a valid health permit or license which expired on April 30, 2005. May 17, 2005.

Citation No. 05-2318. Fine \$350.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. June 30, July 1 and 15, 2005.

Citation No. 05-2576. Fine \$350.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. September 15, 16, 22, 23 and October 5, 2005.

Citation No. 06-0321. Fine \$375.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 1, 10, 11, 16, 18, December 2, 8 and 9, 2005.

Citation No. 06-1853. Fine \$500.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 12, 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 \$1,000.00 and suspension of license for a period of seven days.

ORDER

THEREFORE, it is hereby ordered that Licensee KILLKENNY FUR FARMS, INC., pay a fine of \$1,000.00 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.

IT IS FURTHER ORDERED that the restaurant liquor license (including all permits) of KILLKENNY FUR FARMS, INC., License No. R-AP-SS-2517 be suspended for a period of seven days **BEGINNING** at 7:00 a.m. on December 3, 2007 and **ENDING** at 7:00 a.m. on Monday, December 10, 2007.

Licensee is directed on December 3, 2007 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on December 10, 2007 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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 21st day of September, 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.