

Mailing Date: SEP 05 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0389
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-346414
v.	:	
	:	LID – 18816
MALT, LTD.	:	
T/A AUGUSTINE’S CLUB 17	:	
518 N. MAIN ST.	:	
OLD FORGE, PA 18518-1812	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-17643	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Craig A. Strong, Esquire  
Pennsylvania State Police  
8320 Schantz Road, Second Floor  
Breinigsville, PA 18031

For Licensee  
Maria Augustine-Emily  
Corporate Officer

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on March 14, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Malt, Ltd., t/a Augustine’s Club 17 (Licensee), License Number R-AP-SS-17643.

This citation<sup>1</sup> contains two counts.

The first count charges Licensee with violations of Section 471(d) of the Liquor Code [47 P.S. §4-471(d)]. The charge is that from December 15, 2006 through January 12, 2007, Licensee had failed to comply with the Order of the Administrative Law Judge at Citation No. 06-0922C mandating Responsible Alcohol Management Training.

The second count charges Licensee with a violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §4-491(1), 492(2) and 493(16)]. The charge is that on January 12, 2007, Licensee, by servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor license expired on September 30, 2006, and had not been renewed and/or validated.

An evidentiary hearing was conducted on July 25, 2007 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its Corporate Officer, Maria Augustine-Emily.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began and ended its investigation on January 12, 2007. (N.T. 11)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on February 1, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 11)

Count No. 1:

3. Pursuant to Adjudication No. 06-0922C, Licensee was ordered to comply with the Responsible Alcohol Management program by no later than December 21, 2006. Licensee did obtain R.A.M.P. Certification on March 13, 2007. (N.T. 11-12)
4. Licensee did not realize the entire program needed to be completed by December 21, 2006. (N.T. 13-14)

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1. Commonwealth Exhibit No. C-2, N.T. 11.

Count No. 2:

5. Licensee's liquor license expired on September 30, 2006.
6. On the date charged Licensee was open and in operation, selling alcoholic beverages. (N.T. 14-17)

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since February 24, 1987, and has had four prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication No. 93-1395. 2 days suspension.  
Sales to minors.

Adjudication No. 04-1865. Fine \$800.00.

1. Fortified, adulterated and/or contaminated liquor.  
September 27, 2004.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine).  
September 27, 2004.

Adjudication No. 06-0922. Fine \$1,250.00 and RAMP training mandated.

Sales to a minor.  
March 15, 2006.

Adjudication No. 06-2710. Fine \$1,250.00 and 1 day suspension.

Sales after your Restaurant Liquor license expired and had not been renewed.  
October 20, 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 Count No. 1 and a penalty of license suspension or revocation or a fine of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 2 in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudications (04-1865 – Count No. 2, 06-0922 and 06-2710), in combination with the charge in this citation, requires that license revocation or suspension must be included as part of the penalty.

Licensee's Corporate Officer explains she was having some very serious personal problems with the father of her son and her mother. At the hearing, I indicated I would impose a fine of \$1,500.00 for Count No. 2. However, the Liquor Code requires I impose, at least, a suspension.

I impose:

Count No. 1 - \$250.00 fine.

Count No. 2 - \$1,000.00 fine and one day suspension.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,250.00 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

### **Imposition of Suspension**

IT IS FURTHER ORDERED that the Restaurant liquor license (including all permits) of Malt, Ltd., License No. R-AP-SS-1812, be suspended for a period of one day, **BEGINNING** at 7:00 a.m., on Monday, September 24, 2007, and **ENDING** at 7:00 a.m., on Tuesday, September 25, 2007.

Licensee is directed, on Monday, September 24, 2007, at 7:00 a.m., to place a 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 Tuesday, September 25, 2007, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

### **Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 22<sup>nd</sup> day of August, 2007.

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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.**