

Mailing Date: APR 25 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0483X
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-343328
	:	
DEEP PUB INC.	:	
427 RHAWN ST.	:	LID – W01-343328
PHILADELPHIA PA 19111-2226	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-6911	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 13, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against Deep Pub, Inc., License Number R-AP-SS-OPS-6911 (hereinafter “Licensee”).

An Administrative hearing was held on Tuesday, June 19, 2007, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 493(26) of the Liquor Code, 47 P.S. Section 4-493(26), in that Licensee, by its servants, agents or employes, issued checks or drafts dated November 14, 2006, in payment for purchases of malt or brewed beverages, when they had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began November 15, 2006 and ended February 12, 2007. A notice of violation letter was sent to the licensed premises on February 23, 2007 by certified mail, return receipt requested. The certified mailing was returned unclaimed. The Bureau of Enforcement issued a citation to the licensed premises dated March 13, 2007 by certified mail, return receipt requested. The mailing was signed as received on March 19, 2007. The Office of Administrative Law Judge sent a notice of hearing to the licensed premises by certified mail, return receipt requested and by first class mail on May 11, 2007. The mailing was returned unclaimed (N.T. 8 and Exhibits B-1 and B-2).

2. Officer C. McGrath from the Bureau of Enforcement conducted an investigation of the licensed premises based upon a complaint from the Liquor Control Board with regard to a bad check. The officer contacted Penn Distributors and spoke with Maryann Lanza who informed him that Check No. 1062 written from the Licensee's account was returned once and then returned a second time and replaced with cash (N.T. 5-6).

3. Check No. 1062 was for malt and brewed beverages. The check was in the amount of \$459.92. The check was dated November 14, 2006 (N.T. 5-6).

4. Joseph Ryan is employed by Penn Distributors. He indicated he made a delivery on November 14, 2006 of malt and brewed beverages to the licensed premises and that the Licensee paid by check. The Licensee paid with Check No. 1062. The check was written in the amount of \$459.92 and was returned to the bank for insufficient funds. Mr. Ryan is responsible for handling accounts receivable and particularly checks which are returned for insufficient funds (N.T. 8-10).

5. Mr. Ryan presented a check and invoice regarding both of the transactions (N.T. 11 and Exhibit B-3).

6. The check was redeposited on November 21, 2006 and returned a second time (N.T. 11).

7. On December 22, 2006, it was paid in cash (N.T. 11-12).

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CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Licensee, by its servants, agents or employes, issued checks or drafts dated November 14, 2006, in payment for purchases of malt or brewed beverages, when they had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks, in violation of Section 493(26) of the Liquor Code, 47 P.S. Section 4-493(26).

PRIOR RECORD:

Licensee has been licensed since April 21, 2005, and has a record of prior violations as follows:

Citation No. 06-0769. \$50.00 fine.

1. Sold malt or brewed beverages for consumption off premises.
January 18, 2006.

DISCUSSION:

The check was eventually made good by cash. The Licensee has one prior violation for an unrelated matter. Under the circumstances, a \$100.00 penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Deep Pub, Inc., License Number R-AP-SS-OPS-6911, pay a fine of One Hundred Dollars (\$100.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 21st day of April, 2008.

Tania E. Wright, J.

Deep Pub, Inc.
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NOTE: 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.

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Detach Here and Return Stub with Payment

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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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