

Mailing Date: OCT 16 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0596X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-347532
v.	:	
	:	LID - 48255
PATRICK L. BURKE	:	
T/A THE BASIL LEAF	:	
RR #6 BOX 6021	:	
MONTROSE, PA 18801	:	
	:	
	:	
SUSQUEHANNA COUNTY	:	
LICENSE NO. H-SS-5727	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig Strong, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 2, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PATRICK L. BURKE, License Number H-SS-5727 (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 December 29, 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 January 26, 2007 and was completed on February 22, 2007; and notice of the violation was sent to Licensee by Certified Mail on March 1, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 21, 2007 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee(s) did not appear at the hearing, nor did anyone appear on his behalf. A citation hearing notice was sent to Licensee(s) at his address of record, RR #6, Box 6021, Montrose, PA by certified mail, return receipt requested and by first class mail on May 11, 2007. The notice set forth the date and time of the hearing as June 21, 2007 at 11:30 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 December 29, 2006 Licensee purchased malt or brewed beverages from L.T. Verrastro, Inc. In payment therefore, Licensee issued its check in the amount of \$115.15. The check was returned by Licensee's bank for insufficient funds (N.T. 8-9 and Exhibit C-6).

2. Licensee was issued a warning letter with respect to an NSF check issued by him to L.T. Verrastro, Inc. in payment for malt or brewed beverages on November 17, 2006. The letter was dated December 28, 2006 (N.T. 6 and Exhibit C-5).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since September 20, 2001, and has had one prior violation:

Citation No. 07-0056. Fine \$100.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 24, 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 \$500.00.

ORDER

THEREFORE, it is hereby ordered that Licensee PATRICK L. BURKE, pay a fine of \$500.00 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 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 26th 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.