

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. 07-0865X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-343719
v.	:	
	:	LID - 53602
HANNA & AXEL, INC.	:	
T/A THE DUTCHMAN	:	
338 S. FRONT ST.	:	
WRIGHTSVILLE, PA 17368-1614	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-SS-19392	:	

**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 April 26, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against HANNA & AXEL, INC., License Number R-AP-SS-19392 (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 25, November 8, 9 and 16, 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 November 22, 2006 and was completed on March 12, 2007; and notice of the violation was sent to Licensee by Certified Mail on April 2, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 18, 2007 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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, 338 S. Front Street, Wrightsville, PA 17368-1614 by certified mail, return receipt requested and by first class mail on June 1, 2007. The notice set forth the date and time of the hearing as July 18, 2007 at 10:30 a.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

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 November 2, 2006 Licensee purchased malt or brewed beverages Sheffer Beer Distributing Company, Inc. In payment therefore, Licensee issued its check in the amount of \$202.37. The check was returned by Licensee's bank for insufficient funds. The check was not made good in a timely manner (N.T. 14 and Exhibit C-5).

2. On November 8, 2006 Licensee purchased malt or brewed beverages from Brewery Products, Inc. In payment therefore, Licensee issued its check in the amount of \$448.89. The check was returned by Licensee's bank for insufficient funds (N.T. 14-15 and Exhibit C-6).

3. On November 9, 2006 Licensee purchased malt or brewed beverages from Sheffer Beer Distributing Company, Inc. In payment therefore, Licensee issued its check in the amount of \$291.24. The check was returned by Licensee's bank for insufficient funds. The check was not made good in a timely manner (N.T. 15-16 and Exhibit C-7).

4. On November 15, 2006 Licensee purchased malt or brewed beverages from Brewery Products Company, Inc. In payment therefore, Licensee issued its check in the amount of \$241.91. The check was returned by Licensee's bank for insufficient funds. This check is actionable because of the previous NSF check issued by Licensee to Brewery Products Company, Inc. on November 8, 2006 which is the subject of Count 2 of the Citation.

CONCLUSION OF LAW:

The charge in the citation is **sustained** with respect to checks issued on November 8, 9 and 16, 2006 and **dismissed** with respect to the check issued on October 25, 2006.

DISCUSSION:

The record in this case indicates that although the first date listed in the Citation is October 25, 2006, the actual transaction took place on November 2, 2006 and the check was for some reason predated by Licensee. This is born out by the notations on the back of the check indicating that it was not processed until after November 2, 2006. Thus the wrong date (October 25, 2006 instead of November 2, 2006) was listed in the Citation. Since the actual date of the transaction does not comport with the date in the Citation, the Citation will be dismissed as to the date of October 25, 2006.

PRIOR RECORD:

Licensee has been licensed since February 10, 2005, and has had three prior violations:

Citation No. 05-1996, 05-2123 & 05-2186, consolidated. Fine \$500.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. April 6, 27, May 4, 11, June 1 and July 20, 2005.
2. Transported malt or brewed beverages without a license. July 7, 15, 23, 29 and August 4, 2005.
3. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (tickets). September 2 and 3, 2005.

Citation No. 06-0027. Fine \$300.00. Fine not paid and license suspended 1 day and thereafter until fine paid. Fine still not paid and license revoked. Fine paid and licensee's request for reconsideration vacated the revocation.

1. Used loudspeakers or devices whereby music could be heard outside. November 12 and 26, 2005.

Citation No. 06-2553. Fine \$200.00.

1. Failed to return the restaurant liquor license and wholesale liquor purchase permit cards to the Board after the licensed establishment had not been in operation for a period of 15 consecutive days. Between July 28 and September 14, 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 HANNA & AXEL, INC., 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 21st day of September, 2007.

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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.**