

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. 07-1490
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-352290
v.	:	
	:	LID - 36742
D & M SHUMBRIS, INC.	:	
T/A THE SWIZZLE STICK	:	
434 MAIN ST.	:	
EDWARDSVILLE	:	
KINGSTON, PA 18704	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-8145	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
Frank J. Aritz, Esquire
23 West Walnut Street
Kingston, PA 18704

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 18, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against D & M Shumbris, Inc., t/a The Swizzle Stick (Licensee), License Number R-AP-SS-8145.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Section 491(10) of the Liquor Code [47 P.S. §4-491(10)]. The charge is that on May 23, 2007, Licensee, by servants, agents or employes, fortified, adulterated and/or contaminated liquor.

The second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on May 23, 2007, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.²

An evidentiary hearing was conducted on March 19, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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 its investigation on April 15, 2007 and completed it on May 23, 2007. (N.T. 12)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 4, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 11)

Count No. 1:

3. On May 23, 2007, a Bureau Enforcement Officer conducted an administrative inspection of the premises finding six bottles of liquor which were contaminated. The six bottles of liquor were removed from the premises and stored in the Bureau's evidence room and presented for my inspection at the hearing. Several of the bottles did contain visible contaminants. (N.T. 24-30)

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

2. The Bureau motioned to withdraw Count No. 2 of the Citation. I granted said Motion.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. **Withdrawn.**

DISCUSSION:

Licensee challenged the chain of custody regarding the six bottles of liquor. I am satisfied that the bottles that were presented to me at the hearing were in identical condition to that when they were removed from the premises.

PRIOR RECORD:

Licensee has been licensed since September 22, 1995, and has had two prior violations (Commonwealth Exhibit No. C-3):

Adjudication No. 03-0912. 3 days suspension.

Sales to a minor.

May 9, 2003.

Adjudication No. 06-2332. Fine \$200.00.

Fortified, adulterated and/or contaminated liquor.

September 3, 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 in this case.

This is Licensee's second offense. I warn Licensee that future violations will be treated much more severely. I impose a \$500.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee 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.

Count No. 2 Withdrawn

IT IS FURTHER ORDERED that Count No. 2 of the Citation issued to D & M Shumbris, Inc., is hereby WITHDRAWN.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 21st day of April, 2008.

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.

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 to:

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

Citation No. 07-1490