

Mailing Date: JUNE 23 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2053
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-343236
	:	
A L ABRAMOVITZ	:	
T/A WHITEHALL BEVERAGE	:	LID-4745
COMPANY	:	
4102 CLAIRTON BLVD	:	
BRENTWOOD	:	
PITTSBURGH PA 15227-2610	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. D-SS-2592	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:
Emily L. Gustave, Esquire

For Licensee:
Ex Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 26, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against A. L. Abramovitz, T/A Whitehall Beverage Company, License Number D-SS-2592 (hereinafter Licensee).

The citation contains two counts.

Count one of 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 employees, issued checks or drafts dated October 4 and November 21, 2006, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for payment of such checks.

Count two of the citation charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471], and Sections 4101 and 4104 of the Crimes Code [18 Pa. C.S. §4101 and §4104], in that on October 24 and November 15, 2006, Licensee, by its servants, agents or employees, committed forgery, in that you altered the writing of another without his authority with intent to defraud.

The investigation which gave rise to the citation began on November 13, 2006 and was completed on August 2, 2007. The notice of violation letter was mailed to Licensee on August 30, 2007.

An evidentiary hearing was held on this matter on April 29, 2008, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Counts One & Two

1. Licensee is located in Allegheny County, Pennsylvania and holds Malt Beverage Distributor License Number D-SS-2592. (N.T. 4).
2. On September 7, 2005, Licensee obtained a valid letter from PNC bank regarding an erroneous dishonor of a check issued by Licensee. (N.T. 23-24)
3. On April 3, 2006, a warning letter for N.S.F. checks was issued to Licensee. (N.T. 20)
4. On Wednesday, October 4, 2006, Licensee issued check number 5075 in the amount of \$6,177.65 to Wilson-McGinley, Inc. in payment for purchases of malt or brewed beverages, which was subsequently dishonored by Licensee's bank due to insufficient funds in the account. (N.T. 9)
5. On Friday, October 27, 2006, check number 5075 was satisfied by a cashier's check. (N.T. 9)
6. On Wednesday, November 15, 2006, an enforcement officer contacted Licensee, who stated that the check was returned in error by his bank. (N.T. 9)
7. On Tuesday, November 21, 2006, the enforcement officer received a fax of a letter signed by the Whitehall branch manager of PNC bank stating that the bank returned check number 5075 in error. (N.T. 9-10)
8. The officer contacted PNC bank and was told that the manager signing the PNC bank was no longer employed and that the bank had not issued the letter faxed by Licensee. (N.T. 10)
9. On Wednesday, November 21, 2006, Licensee issued check number 5102 in the amount of \$5,277.10 to Wilson-McGinley, Inc. in payment for purchases of malt or brewed beverages, which was subsequently dishonored by Licensee's bank due to insufficient funds in the account. (N.T. 11)

10. On Thursday, November 30, 2006, check number 5102 was satisfied by redeposit. (N.T. 11)

11. Subsequent investigations by the bank and the enforcement officer showed that these PNC letters were not produced by the bank but by Licensee. (N.T. 12)

12. Licensee admitted to bank employees that he cut and pasted PNC's logo and authorized signatures to produce forged letters stating that the bank had dishonored his checks in error. (N.T. 29)

13. PNC bank did not suffer any monetary loss from Licensee's actions. (N.T. 31)

CONCLUSION OF LAW:

Counts One & Two -- Sustained as charged.

DISCUSSION:

As to count one, Section 493(26) of the Liquor Code provides as follows:

It shall be unlawful—

Worthless checks. For any retail liquor licensee or any retail dispenser, distributor or importing distributor, to make, draw, utter, issue or deliver, or cause to be made, drawn, uttered, issued or delivered, any check, draft or similar order, for the payment of money in payment for any purchase of malt or brewed beverages, when such retail liquor licensee, retail dispenser, distributor or importing distributor, has not sufficient funds in, or credit with, such bank, banking institution, trust company or other depository, for the payment of such check. Any person who is a licensee under the provisions of this article, who shall receive in payment for malt or brewed beverages sold by him any check, draft or similar order for the payment of money, which is subsequently dishonored by the bank, banking institution, trust company or other depository, upon which drawn, for any reason whatsoever, shall, within five days of receipt of notice of such dishonor, notify by certified mail the person who presented the said worthless check, draft or similar order. If the violation of this clause is the first such violation by the licensee that calendar year involving a check, draft or similar order from the purchaser to the seller and if the check, draft or similar order is subsequently honored within ten (10) days from the day it was made, drawn, uttered, issued or delivered, then the enforcement bureau shall issue an administrative warning in lieu of citation.

As to count two, the general rule is that violations of criminal laws other than the Liquor code may constitute "sufficient cause" for the purpose of invoking penalties under Section 471 of the Liquor Code. Pa. Liquor Control Board v. T. L. K., Inc., 544 A.2d 931(Pa. 1988); Primo's Bar, Inc. v. Liquor License Case, 48 Pa. Commonwealth Ct. 1988, 409 A.2d 1369(1979).

At the hearing held on the matter, the enforcement officer, a representative from Wilson-McGinley, Inc., and two representatives from PNC Bank testified in detail as to the facts of this case.

A. L. ABRAMOVITZ
T/A WHITEHALL BEVERAGE COMPANY
Citation No. 07-2053

Licensee or his counsel did not appear at the hearing although duly notified of the place and time thereof.

I find the testimony of the Bureau's witnesses to be credible. As such, the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since June 30, 1977, and has nine (9) prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 90-1294. Fine \$1,250.00.

1. Sales to a minor.

Citation No. 90-2141. Fine \$1,500.00.

1. Sales to a minor.

Citation No. 91-0193 and 91-0596 consolidated under Citation No. 91-0193. Fine \$200.00.

1. Failed to expose distributor license under a transparent substance.
2. Sales to a minor. (Withdrawn by Bureau)

Citation No. 91-1210. Fine \$150.00.

1. Delivered malt or brewed beverages in a vehicle not properly lettered.

Citation No. 95-1304. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 95-2083 and 95-2647 consolidated. Fine \$200.00 and 1 day suspension.

1. Sold malt or brewed beverages on credit.

Citation No. 96-0113. Fine \$250.00 and 1 day suspension.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 96-2831. 1 day suspension.

1. Issued worthless checks in payment for malt or brewed beverages.

A. L. ABRAMOVITZ
T/A WHITEHALL BEVERAGE COMPANY
Citation No. 07-2053

Citation No. 99-1563. Fine \$300.00 and 1 day suspension.

1. Issued worthless checks in payment for purchase of malt or brewed beverages.

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.

I take administrative notice that the license expired on May 31, 2007, and is inactive.

Counsel for the Bureau requested that the license be revoked.

After due consideration of the circumstances giving rise to the citation and the Licensee's citation history, revocation of license is imposed as the penalty in this case.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that License Number D-SS-2592 issued to A. L. Abramovitz be REVOKED effective at 7:00 a.m. on Monday, July 28, 2008. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is CANCELLED.

Since the license is inactive, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been REVOKED. Licensee's right to renew this license is hereby CANCELLED.

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 10TH day of JUNE, 2008.

Robert F. Skwaryk, J.

ab