

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2997X
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-363363
	:	
BERNIE'S INC	:	
2 WILLOW ST	:	LID-48097
OIL CITY PA 16301-2229	:	
	:	
	:	
VENANGO COUNTY	:	
LICENSE NO. R-AP-13068	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:
Nadia L. Vargo, Esquire

For Licensee:
Ex Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 7, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Bernie's Inc., License Number R-AP-13068 (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(26) of the Liquor Code [47 P.S. §4493(26)], in that Licensee, by its servants, agents or employees, issued checks or drafts dated September 14, 2007, 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.

The investigation which gave rise to the citation began on October 19, 2007 and was completed on November 8, 2007. The notice of violation letter was mailed to Licensee on November 19, 2007.

An evidentiary hearing was held on this matter on April 9, 2008, in Erie, Pennsylvania.

BERNIE'S, INC.

Citation No. 07-2997X

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:

1. Licensee is a corporation located in Venango County, Pennsylvania and holds Restaurant Liquor License Number R-AP-13068. (N.T. 4)
2. On Monday, April 16, 2007, the Bureau issued a warning letter to Licensee for calendar year 2007 for insufficient fund check number 3399. (N.T. 19-20, Exhibit C-7)
3. On Friday, September 14, 2007, Licensee issued check number 3573 in the amount of \$504.55 to Erie Beer Company, Importing Distributor I.D. 57, 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. 11-13, 15-17, Exhibits C-5 and C-6).
5. On Tuesday, October 5, 2007, check number 3573 was satisfied by money order. (N.T. 12)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

Section 493(26) of the Liquor Code provides as follows:

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.

BERNIE'S, INC.
Citation No. 07-2997X

At the hearing held on the matter the enforcement officer, a representative from Erie Beer Company, and Licensee's former bookkeeper appeared and testified. Copies of the beer invoice and check number 3573 were entered into evidence.

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

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

PRIOR RECORD:

Licensee has been licensed since August 1, 2001, and has three (3) prior violations, to wit:

Citation No. 05-0099. License Revoked.

1. Aided, abetted or engaged in the traffic in or sale of a controlled substance on the licensed premises.

April 5, 2004.

2. Possessed a controlled substance on the licensed premises.

April 5, 2004.

Citation No. 07-2127. License revoked.

1. Used loudspeakers or devices whereby music could be heard outside.

March 18, April 24 and July 3, 2007.

Citation No. 07-2170X. License revoked.

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

July 16, 2007.

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 July 31, 2005, and was revoked under Citation Nos. 05-0099, 07-2127 and 07-2170X.

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.

BERNIE'S, INC.
Citation No. 07-2997X

ORDER:

THEREFORE, IT IS HEREBY ORDERED that License Number R-AP-13068 issued to Bernie's, Inc., be REVOKED effective at 7:00 a.m. on Monday, June 23, 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 15th day of May, 2008.

Robert F. Skwaryk, J.