

Mailing Date: MAR 06 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0891
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-361877
v.	:	
	:	LID - 43572
CHUCK'S SPORTS BAR, INC.	:	
T/A RUSSELL'S TAVERN	:	
537 S. MARKET ST.	:	
SELINGROVE, PA 17870-1819	:	
	:	
	:	
SNYDER COUNTY	:	
LICENSE NO. R-AP-SS-18940	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew Lovette, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 29, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against CHUCK'S SPORTS BAR, INC., License Number R-AP-SS-18940 (hereinafter "Licensee").

The citation contains three counts.

The first count 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 September 4, October 18, November 1, 8, 13, 14 and 20, 2007, 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 second count charges Licensee with violation of Section 491(10) of the Liquor Code [47 P.S. §4-491(10)] in that on December 11, 2007, Licensee, by its servants, agents or employes, fortified, adulterated and/or contaminated liquor.

The third count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on December 21, 2007, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, eighteen years of age.

The investigation which gave rise to the citation began on September 21, 2007 and was completed on March 27, 2008; and notice of the violation was sent to Licensee by Certified Mail on April 2, 2008. The notice of violation was received by Licensee.

On November 19, 2008, counsel for the Bureau filed a Motion to Withdraw Count No. 3 of the citation. The Motion was granted.

An evidentiary hearing was held on this matter on December 9, 2008 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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, 537 South Market Street, Selinsgrove, PA 17870 by certified mail, return receipt requested and by first class mail on October 22, 2008. The notice set forth the date and time of the hearing as December 9, 2008 at 9:30 a.m., and the place of hearing as PA Department of Agriculture, 2130 County Farms Road, Montoursville, PA.

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:

COUNT 1

1. On September 4, 2007, Licensee purchased malt or brewed beverages from Edwin H. Kleckner, Inc. In payment therefore, Licensee issued its check in the amount of \$165.59. The aforementioned check was returned by Licensee's bank for insufficient funds (N.T. 8-9 and Exhibit C-5).

2. On September 4, 2007, Licensee purchased malt or brewed beverages from Durdach Brothers, Inc. In payment therefore, Licensee issued its check in the amount of \$520.50. The check was returned by Licensee's bank for insufficient funds (N.T. 9-10 and Exhibit C-6).

3. On October 18, 2007, Licensee purchased malt or brewed beverages from Durdach Brothers, Inc. In payment therefore, Licensee issued its check in the amount of \$649.73. The check was returned by Licensee's bank for insufficient funds (N.T. 11-12 and Exhibit C-7).

4. On October 18, 2007, Licensee purchased malt or brewed beverages from Mid State Beverage. In payment therefore, Licensee issued its check in the amount of \$233.73. The check was returned by Licensee's bank for insufficient funds (N.T. 12-13 and Exhibit C-8).

5. On October 18, 2007, Licensee purchased malt or brewed beverages from Quality Beverage Distributor of Hazleton, Inc. In payment therefore, Licensee issued its check in the amount of \$241.63. The check was returned by Licensee's bank for insufficient funds (N.T. 13-14 and Exhibit C-9).

6. On November 1, 2007 Licensee purchased malt or brewed beverages from Mid State Beverage. In payment therefore, Licensee issued its check in the amount of \$60.90. The check was returned by Licensee's bank for insufficient funds (N.T. 14 and Exhibit C-10).

7. On November 1, 2007 Licensee purchased malt or brewed beverages from Durdach Brothers, Inc. In payment therefore, Licensee issued its check in the amount of \$246.24. The check was returned by Licensee's bank for insufficient funds (N.T. 14-15 and Exhibit C-11).

8. On November 1, 2007 Licensee purchased malt or brewed beverages from Quality Beverage Distributor of Hazleton, Inc. In payment therefore, Licensee issued its check in the amount of \$149.41. The check was returned by Licensee's bank for insufficient funds (N.T. 15-16 and Exhibit C-12).

9. On November 8, 2007 Licensee purchased malt or brewed beverages from Mid State Beverage Co. In payment therefore, Licensee issued its check in the amount of \$194.72. The check was returned by Licensee's bank for insufficient funds (N.T. 17-18 and Exhibit C-13).

10. On November 13, 2007 Licensee purchased malt or brewed beverages from Russ Moyer Distributor. In payment therefore, Licensee issued its check in the amount of \$80.05. The check was returned by Licensee's bank for insufficient funds (N.T. 18 and Exhibit C-14).

11. On November 14, 2007 Licensee purchased malt or brewed beverages from Russ Moyer Distributor. In payment therefore, Licensee issued its check in the amount of \$538.80. The check was returned by Licensee's bank for insufficient funds (N.T. 19 and Exhibit C-15).

12. On November 20, 2007 Licensee purchased malt or brewed beverages from Russ Moyer Distributor. In payment therefore, Licensee issued its check in the amount of \$681.32. The check was returned by Licensee's bank for insufficient funds (N.T. 20 and Exhibit C-16).

13. On June 1, 2007 the Bureau of Enforcement sent a warning letter to Licensee with respect to NSF checks issued by Licensee which were returned to insufficient funds. The checks were on the following dates and issued to the following distributors:

Check No. 1246 dated April 7, 2007 - Mid State Distributors in the amount of \$123.60

Check No. 1247 dated April 12, 2007 – Quality Beverage Distributors of Hazleton, Inc. in the amount of \$292.81

Check No. 1253 dated April 16, 2007 – Durdach Brothers, Inc. in the amount of \$41.72

(N.T. Exhibit C-17).

14. On April 2, 2008, a warning letter was sent to Licensee by the Bureau with respect to the following checks written by Licensee for malt or brewed beverages to the following distributors and in the following amounts. The checks were returned by Licensee's bank for insufficient funds:

Check No. 3558 dated August 27, 2007 – Edwin H. Kleckner in the amount of \$40.51.

(N.T. Exhibit C-18).

COUNT 2

15. On December 11, 2007 an officer of the Bureau entered the licensed premises to conduct a routine inspection. During the inspection the officer found two open bottles of liquor containing insects (N.T. 27-28).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since March 8, 1999, and has had six prior violations:

Citation No. 00-0688. Fine \$1,000.00.

1. Sales to a minor.

Citation No. 04-1663. 4 days suspension.

1. Sales to a visibly intoxicated person. April 22, 2004.

Citation No. 05-1583. 9 days suspension.

1. Sunday sales between 2:00 a.m. and 11:00 a.m.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time. June 19, 2005.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. June 19, 2005.
4. Sales during at time when the restaurant liquor license was suspended. June 20 through 24, 2005.

Citation No. 06-2826. 10 days suspension and RAMP training mandated.

1. Sales to a visibly intoxicated person. November 3 and 4, 2006.

Citation No. 07-0261. 9 days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension. January 8, 10, 11, 12 and 16, 2007.
2. Posted notices on the licensed premises which stated that the licensed establishment was closed for a reason other than the suspension of the license. January 8, 10 and 16, 2007.

Citation No. 07-1170. Fine \$250.00 and one day suspension and thereafter until conditions corrected.

1. Operate the licensed establishment without a valid health permit or license. April 9, 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.

Under the circumstances of this case, the penalty imposed shall be as follows:

- Count 1 - \$150.00 fine
- Count 2 - \$150.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee CHUCK'S SPORTS BAR, INC., pay a fine of \$300.00 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.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 26TH day of February, 2009.



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.

Detach here and submit stub with payment

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

Citation No. 08-0891
Chuck's Sports Bar, Inc.