

Mailing Date: OCT 09 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1067X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-372735
v.	:	
	:	LID - 18816
MALT, LTD.	:	
T/A AUGUSTINE'S CLUB 17	:	
518 N. MAIN ST.	:	
OLD FORGE, PA 18518-1812	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-17643	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 28, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Malt, Ltd., t/a Augustine's Club 17 (Licensee), License Number R-AP-SS-EHF-17643.

The citation¹ charges Licensee with a violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by servants, agents or employes, issued checks or drafts dated March 18, 2008, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

An evidentiary hearing was conducted on September 5, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have any representation present.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on July 17, 2008 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was signed for by Maria Augustine on July 21, 2008. (N.T. 5)
2. On July 23, 2008, I issued a Pre-Hearing Order by first class mail directing Licensee to submit its pre-hearing memorandum to this Office. That Order reiterated the date, time and place of hearing. (N.T. 5)
3. The Bureau began its investigation on April 14, 2008 and completed it on April 15, 2008. (N.T. 7)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on April 22, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 13)
5. On March 18, 2008, Licensee issued a check for the purchase of beer to an Importing Distributor in the amount of \$212.00, which was dishonored due to insufficient funds. Licensee's President/Secretary/Treasurer and Stockholder admitted to the dishonor and that they were having financial problems.

1. Commonwealth Exhibit No. C-2, N.T. 13.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since February 23, 1987, and has had thirteen prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-3, N.T. 13):

Adjudication No. 93-1395. 2 days suspension.
Sales to minors.

Adjudication No. 04-1865. Fine \$800.00.

1. Fortified, adulterated and/or contaminated liquor.
September 27, 2004.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine).
September 27, 2004.

Adjudication No. 06-0922. Fine \$1,250.00 and RAMP training mandated.

Sales to a minor.
March 15, 2006.

Adjudication No. 06-2710. Fine \$1,250.00 and 1 day suspension.

Sales after the restaurant liquor license expired and had not been renewed.
October 20, 2006.

Adjudication No. 07-0389. Fine \$1,250.00 and 1 day suspension.

1. Failed to comply with the Order of Administrative Law Judge at Citation No. 06-0922C mandating responsible alcohol management training.
December 15, 2006 through January 12, 2007.
2. Sales after the restaurant liquor license expired and had not been renewed and/or validated.
January 12, 2007.

Adjudication No. 07-0433X. Fine \$150.00.
Issued worthless checks in payment for malt or
brewed beverages.
December 8, 2006.

Adjudication No. 07-1709X. Fine \$200.00.
Issued worthless checks in payment for malt or
brewed beverages.
March 27, 2007.

Adjudication No. 07-1967X. Fine \$250.00.
Issued worthless checks in payment for malt or
brewed beverages.
June 22, 2007.

Adjudication No. 07-2727. Fine \$2,000.00 and 1 day suspension.
Sales after the license expired and had not been
renewed and/or validated.
October 16, 2007.

Adjudication No. 07-2865X. Fine \$350.00.
Issued worthless checks in payment for malt or
brewed beverages.
July 13, 27, August 3, 10, 17, 24 and 31, 2007.

Adjudication No. 08-0233X. Fine \$400.00.
Issued worthless checks in payment for malt or
brewed beverages.
November 6, 16, 30 and December 7, 2007.

Adjudication No. 08-0792. Fine \$1,500.00 and 2 days
suspension.

1. Sales during a time when your license was
suspended.
March 11, 2008.
2. Failed to post in a conspicuous place on the
outside of the licensed premises a notice
of suspension.
March 11, 2008.

Adjudication No. 08-0804X. Fine \$500.00.
Issued worthless checks in payment for purchases of
malt or brewed beverages.
February 8 and 22, 2008.

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.

As Licensee has failed to appear at the hearing and obey process, I impose a \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 30th day of September, 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. 08-1067X
MALT, LTD.