

Mailing Date: DEC 31 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1099
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-362459
v.	:	
	:	LID - 57169
AGS ENTERPRISES INC	:	
T/A SHANES TAVERN	:	
4050 CONRAD WEISER PKWY	:	
WOMELSDORF PA 19567-1639	:	
	:	
BERKS COUNTY	:	
LICENSE NO. H-AP-SS-EHF-6067	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Roy Harkavy, Esq.

For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 23, 2008. The citation alleges that Licensee violated §§104(c), 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§1-104(c), 4-401(a) and 4-406(a)(1), on December 2, 2007, by offering and/or giving liquor and/or malt or brewed beverages as a prize.

At the hearing scheduled for October 31, 2008, in Hamburg, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period October 3 through April 2, 2008, and mailed written notice of its investigation on April 22, 2008 (N.T. 5-6, Exhibit C-1).

2. This citation was issued on May 23, 2008, and a copy of it was mailed to Licensee on that date. (N.T. 5-6, Exhibit C-2).

3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, on September 11, 2008.

4. Liquor Enforcement Officer Brian Fetterolf entered the licensed premises at about 11:20 p.m. on December 1, 2007. A woman at the door collected two dollars as a cover charge, and gave the officer a ticket. The ticket was in two parts, each bearing the same number. The woman divided the ticket, gave one part to the officer and put one part in a bucket (N.T. 6-7).

5. Officer Fetterolf asked a bartender in the premises what the ticket was for, because it seemed to him that he had paid a two dollar cover charge and gotten the ticket for free. The bartender said that the D.J. was giving away prizes, and that's what the ticket was for (N.T. 7-8).

6. At 12:10 a.m., now Sunday, December 2, 2007, the D.J. announced that he was going to start giving away prizes. He called out a number from the tickets. No one answered, so he threw it away. He called out a second number, which was on the ticket given to Officer Fetterolf. The officer told the D.J. of this, and was called up to the D.J.'s area. He was given a choice of prizes laid out on a speaker. One of them was a 24-ounce can of beer, which the officer chose as his prize (N.T. 8-9).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since October 18, 2006, and has had prior violations as follows:

Citation No. 08-0574X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
May 18, August 16, 24, 31 and October 26, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, AGS Enterprises, Inc., t/a Shanes Tavern, License No. H-AP-SS-EHF-6067, shall pay a fine of two hundred dollars (\$200.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 18th day of December, 2008.



David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 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