

Mailing Date: DEC 15 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1229
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W07-364952
v.	:	
	:	LID - 34796
NCK, INC.	:	
T/A WOLFIE'S WOLFENDALES	:	
560 PHILADELPHIA ST.	:	
INDIANA, PA 15701-3928	:	
	:	
	:	
INDIANA COUNTY	:	
LICENSE NO. H-AP-SS-25	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Emily L. Gustave, Esquire  
Pennsylvania State Police  
313 Mt. Nebo Road  
Pittsburgh, PA 15237-1305

For Licensee  
Kenneth Arthur  
Secretary/Stockholder and  
Manager

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 27, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against NCK, Inc., t/a Wolfie's Wolfendales (Licensee), License Number H-AP-SS-25.

This citation<sup>1</sup> contains four counts.

The first count charges Licensee with violations 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 December 15, 20, 22, 28 and 29, 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 the payment of such checks.

The second count charges Licensee with violations of Section 5.91 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.91]. The charge is that from March 16, 2001 through April 1, 2008, Licensee, by servants, agents or employes, failed to notify the Board within fifteen (15) days of a change of officers, directors and/or stockholders.

The third count charges Licensee with a violation of Sections 403(h) and 471 of the Liquor Code [47 P.S. §4-403(h) and §4-471]. The charge is that Licensee, by servants, agents or employes, supplied false information on application for correction to license or permit for the term expiring June 30, 2007, on form received August 22, 2006.

The fourth count charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 4101 of the Crimes Code [18 Pa. C.S. §4101]. The charge is that on or about August 15, 2006, Licensee, by servants, agents or employes, committed forgery.

An evidentiary hearing was conducted on November 12, 2008 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. Licensee was represented by its Secretary/Stockholder and Manager, Mr. Kenneth Arthurs.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on November 18, 2007 and completed it on April 17, 2008. (N.T. 17)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 29, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 41)

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1. Commonwealth Exhibit No. C-2, N.T. 41

Count No. 1:

3. Licensee issued the following checks in the following amounts on the dates indicated. All of the checks were dishonored due to insufficient funds: (N.T. 23-31)

December 15, 2007	-	\$254.84
December 20, 2007	-	\$303.87
December 22, 2007	-	\$473.61
December 28, 2007	-	\$706.88
December 29, 2007	-	\$595.51

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. The Bureau has **failed** to prove that from March 16, 2001 through April 1, 2008, Licensee, by servants, agents or employees, failed to notify the Board within fifteen (15) days of a change of officers, directors and/or stockholders.

Count Nos. 3 and 4:

4. **Dismissed**, because the citation was issued outside one year from the date of violations.

DISCUSSION:

There was no need to take any evidence with respect to Count Nos. 3 and 4. The conduct giving rise to these charges allegedly occurred on August 22, 2006 and August 15, 2006, respectively. As the citation was issued on May 27, 2008, both charges were issued well in excess of one year from the date the citation was issued.<sup>2</sup>

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2. See: *Mallios v. Pennsylvania State Police*, 633 A.2d 1163 (Pa. 1993), which is now fifteen years old. Count No. 2 may still be litigated even though the conduct began on March 16, 2001, because the alleged illegality was of a continuing nature.

Assuming I had authority to adjudicate the charge of forgery in Count No. 4, I would likely be compelled to dismiss the charge nonetheless based on *Com. v. Vukovich*, Pa.Super. 447 A.2d 267. There, the Superior Court held it is improper to permit prosecution under the provisions of a general penal law when there are applicable special penal provisions available.

Liquor Code Section 403(h) [47 P.S. §4-403(h)], a specific penal provision, renders it unlawful, to falsify an application, with intent. Liquor Code Section 493(12) [47 P.S. §4-493(12)], requires a licensee to maintain complete and truthful records. A violation of the latter provision is a crime by virtue of Liquor Code Section 494 [47 P.S. §4-494]. Therefore, a cogent argument may be made that conduct giving rise to a criminal charge of forgery of a licensee's records, is not an offense which may be charged via the Crimes Code.

I make no findings with respect to Count No. 2 as no testimony was taken. Rather, the Bureau's case was submitted by way of an Offer of Proof. Having heard the Offer, there would have been no basis upon which to sustain the charge.

The Offer was that grandfather passed away on or about March 1, 2001. Grandfather owned one third of the stock of the licensed corporation. Two grandsons each owned the remaining two-thirds equally, so that the three family members each owned one-third of the corporate stock.

The Bureau's argument is that a change in stockholders had to be filed within fifteen days of grandfather's death as his passing created a change in stock ownership. This argument runs against fundamental principles of both Corporate and Estate law.

It is the most basic of corporate law principles that a corporation exists as an independent legal entity regardless of the comings and goings of stockholders or officers. Estate law tells us that death does not end all legal relationships.

Grandfather's passing did not result in the transfer of any stock. Rather, the stock was then held by grandfather's estate. An estate is nothing more than a bundle of assets and liabilities, held or incurred by the decedent. The estate is managed by an Executor/Executrix, whose duty it is to pay all estate encumbrances and safeguard all estate assets, subject to probate court scrutiny.

Whether grandfather passed away with or without a will is largely irrelevant. As of the hearing date, grandfather's estate has not been settled. Without such finality, there has yet to be a stock transfer. Without an actual stock transfer, there is no violation.<sup>3</sup> As of the date of the hearing, official records of the Pennsylvania Liquor Control Board indicated Licensee's corporate stock was held by the same persons and in the same ratio as was the case in March 2001. These records are consistent with the current state of affairs.

PRIOR RECORD:

Licensee has been licensed since August 31, 1994, and has had six prior violations:

Adjudication No. 96-1635. Fine \$1,000.00.  
Sales to a minor.

Adjudication No. 03-0117. Fine \$100.00.  
Permitted a nonlicensee sponsor to award prizes.  
August 1, 2002.

Adjudication No. 04-0974. Fine \$500.00.  
Discounted the price of alcoholic beverages for a  
period or periods other than a consecutive period of  
time not to exceed 2 hours in a business day.  
May 15, 2004.

Adjudication No. 05-1258. Fine \$250.00.  
Issued worthless checks in payment for malt or  
brewed beverages.  
March 12, 30, April 20 and May 4, 2005.

Adjudication No. 06-0244. Fine \$350.00.  
Used loudspeakers or devices whereby music  
could be heard outside.  
October 8 and 9, 2005.

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3. The Offer also suggests that one of the two brothers, after seeking legal advice, wrote a letter in which he disavowed any corporate ownership. Such a letter has no legal significance. The brother retains his one-third stock ownership until formal transfer. If a legal relationship was that easy to undo, our entire divorce court system would be irrelevant.

Adjudication No. 07-2417. Fine \$1,400.00 and R.A.M.P.  
Training mandated.  
Sales to a minor.  
August 11, 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 Count No. 1, in this case.

I impose:

Count No. 1 - \$400.00 fine.  
Count Nos. 2, 3 and 4 – dismissed.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$400.00 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.

**Dismissal of Count Nos. 2, 3 and 4**

IT IS FURTHER ORDERED that Count Nos. 2, 3 and 4 of Citation No. 08-1229, issued to NCK, Inc., is hereby dismissed.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 9TH day of December, 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

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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. 08-1229  
NCK, INC.