

Mailing Date: NOV 10 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1381
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-372812
v.	:	
	:	LID - 54195
ESCOFFIER, INC.	:	
T/A MULBERRY'S	:	
336 MILL ST.	:	
DANVILLE, PA 17821-1984	:	
	:	
	:	
MONTOUR COUNTY	:	
LICENSE NO. R-AP-SS-EHF-5353	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PATTERSON
LICENSEE: R. MATSON PIERCE, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 10, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against ESCOFFIER, INC., License Number R-AP-SS-EHF-5353 (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 employes, issued checks or drafts dated March 14 and 22, 2008, 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 Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §4-491(1), 4-492(2) and 4-493(16)] in that on May 20, 2008, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor license expired on August 31, 2007, and had not been renewed and/or validated.

The third count charges Licensee with violation of Section 3.52(c) of the Liquor Control Board Regulations [40 Pa. Code §3.52(c)] in that on May 20, 2008, and divers other occasions within the past year, Licensee, by its servants, agents or employes, operated another business on the licensed premises without Board approval.

The investigation which gave rise to the citation began on April 14, 2008 and was completed on May 22, 2008; and notice of the violation was sent to Licensee by Certified Mail on May 29, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 28, 2008 in the PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania.

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 March 14, 2008 Licensee purchased malt or brewed beverages from Henry Voelcker, Inc. of Danville, PA. In payment therefore, Licensee issued its check in the amount of \$479.05. The aforementioned check was returned by Licensee's bank for insufficient funds (N.T. Exhibit C-3).

2. On March 22, 2008, Licensee purchased malt or brewed beverages from Henry Voelcker, Inc. In payment therefore, Licensee issued its check in the amount of \$156.98. The check was returned by Licensee's bank for insufficient funds (N.T. Exhibit C-4).

3. Licensee was issued a warning letter on May 29, 2008 for an insufficient funds check written to Henry Voelcker, Inc. for malt or brewed beverages on February 12, 2008. The check was returned for insufficient funds (N.T. Exhibit C-6).

COUNTS 2 AND 3

4. Licensee's restaurant liquor license expired on August 31, 2007, and Licensee was without operating authority as of May 20, 2008 (N.T. Exhibit C-7).

5. On May 20, 2008, two officers of the Bureau entered the licensed premises in an undercover capacity (N.T. 16). While on the licensed premises the agents ordered and were served a beer and a mixed alcoholic drink known as a fuzzy navel (N.T. 16-17).

6. While on the licensed premises on May 20, 2008, the officers conducted a routine inspection (N.T. 17).

7. During the inspection, one of the officers noticed a glass counter that had jewelry items for sale (N.T. 17).

8. Upon questioning the corporate principal for Licensee, Mr. Pierce stated that there was a lady in Danville that made jewelry, and that he sold the jewelry on the licensed premises for her (N.T. 18).

9. As of May 20, 2008, Licensee did not have authority from the Liquor Control Board to operate another business on the licensed premises (N.T. Exhibit C-5).

CONCLUSIONS OF LAW:

Counts 1, 2, and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since February 18, 2005, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 Counts 1 and 3 of this case.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 2 of this case.

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

Count 1 - \$150.00 fine
Count 2 - \$1,250.00 fine
Count 3 - \$200.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee ESCOFFIER, INC., pay a fine of \$1,600.00 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 29TH day of October, 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. 08-1381
Escoffier, Inc.