

Mailing Date: NOV 10 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1712
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-375217
v.	:	
	:	LID - 52891
CASTLE BEER DISTRIBUTOR INC	:	
1860 W 26 <sup>TH</sup> STREET	:	
ERIE PA 16508-1149	:	
	:	
	:	
	:	
ERIE COUNTY	:	
LICENSE NO. D-SS-3703	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement  
Michael Nickles, Esquire

For Licensee  
Joseph Yamrick  
Corporate President,  
Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on July 23, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Castle Beer Distributor, Inc., License Number D-SS-3703 (hereinafter Licensee).

The citation charges Licensee with violation of Sections 492(3) and 493(16) of the Liquor Code [47 P.S. §§4-492(3) and 4-493(16)], in that on June 9, 2008, Licensee, by its servants, agents or employees, gave, furnished, traded, bartered, sold or delivered malt or brew beverages during a time when its distributor license was suspended at Citation Number 08-0324.

CASTLE BEER DISTRIBUTOR, INC.

Citation Number 08-1712

An administrative hearing was conducted on October 1, 2008, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Joseph Yamrick, Licensee's corporate president appeared on behalf of Licensee.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on May 29, 2008, and completed its investigation on June 9, 2008. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated July 7, 2008, which was sent by certified mail and received by Licensee on July 8, 2008. (Exhibit C-2)
3. The citation was issued on July 23, 2008, and was sent by certified mail and received by Licensee on July 25, 2008. (Exhibits C-3, C-4)
4. In an Adjudication and Order dated April 15, 2008, at Citation Number 08-0324, Licensee's distributorship license was suspended for a period of one day commencing at 7:00 a.m. on Monday, June 9, 2008 and ending at 7:00 a.m. on Tuesday, June 10, 2008. (N.T. 7)
5. On Monday, June 9, 2008 at 1:08 p.m., Liquor Enforcement Officer Patrick O'Neill arrived at Licensee's distributorship and found it to be open for business. (N.T. 7)
6. At this time, Officer O'Neill entered Licensee's premises and purchased a case of 12-ounce cans of Milwaukee's Best beer from a male employee for \$12.00. (N.T. 7-8)
7. During the course of this visit, Officer O'Neill noted that Licensee did not post a suspension placard visible from outside the premises. (N.T. 7-9)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On June 9, 2008, Licensee, by its servants, agents or employees, gave, furnished, traded bartered, sold or delivered malt or brewed beverages during a time when its distributor license was suspended at Citation No. 08-0324, in violation of Section 492(3) and 493(16) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

PRIOR RECORD:

Licensee has been licensed since June 16, 2004, and has had 13 prior violations, to wit:

Citation No. 06-1848X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages.  
May 23, 2006.

Citation No. 07-0001X. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages.  
October 17, 2006.

Citation No. 07-1095X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages.  
February 27 and March 19, 2007.

Citation No. 07-1665X. Fine \$300.00. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.  
May 18, 2007.

Citation No. 07-1756X. Fine \$350.00. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.  
April 6 and 16, 2007.

CASTLE BEER DISTRIBUTOR, INC.

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Citation No. 07-1820X. Fine \$400.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.  
May 29, 2007.

Citation No. 07-2042X. Fine \$450.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.  
May 25, June 19 and 21, 2007.

Citation No. 07-2626X. Fine \$500.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.  
July 12, 13, August 1, 31 and September 7, 2007.

Citation No. 07-3045X. Fine \$550.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.  
September 14, 19, 20 and 21, 2007.

Citation No. 08-0293X. Fine \$600.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.  
November 10 and December 20, 2007.

Citation No. 08-0324. Fine \$1,200.00 and one day suspension. Fine not paid and license suspended one additional day and thereafter until fine paid.

1. Sold or delivered malt or brewed beverages during a time when its license was suspended.  
January 21, 2008.

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Citation No. 08-0562X. Fine \$300.00 and one day suspension.

1. Issued worthless checks in payment for purchases of malt or brewed beverages. December 26, 2007.

Citation No. 08-0856. Fine \$300.00.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension. March 24, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

The record discloses that Licensee has had a prior violation involving sales of malt or brewed beverages at a time when Licensee was suspended at Citation No. 08-0324. Therefore, Licensee shall be treated as a repeat offender.

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,200.00 and Licensee's distributorship shall be suspended for a period of three days.

ORDER:

THEREFORE, it is hereby ordered that Castle Beer Distributor, Inc., License Number D-SS-3703, pay a fine of \$1,200.00 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.

IT IS FURTHER ORDERED that the distributor malt beverage license of Castle Beer Distributor, Inc., License No. D-SS-3703 be suspended for a period of three (3) days. However, the suspension period is deferred pending the reactivation of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing the dates for suspension.

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Jurisdiction is retained to ensure compliance with this Order.

Dated this 31<sup>st</sup> day of October, 2008.



Roderick Frisk, J.

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NOTE: 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 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. 08-1712  
Castle Beer Distributor, Inc.