

Mailing Date: NOV 20 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2034X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-377871
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 September 25, 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 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 June 21 and 24, 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 investigation which gave rise to the citation began on July 15, 2008 and was completed on August 5, 2008; and notice of the violation was sent to Licensee by Certified Mail on August 14, 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.

At the hearing in this matter, counsel for the Bureau of Enforcement moved to withdraw the charge in this matter as it relates to the date of June 21, 2008. The Motion was granted (See N.T. 7).

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:

1. On June 24, 2008 Licensee purchased malt or brewed beverages from Durdach Brothers, Inc. In payment therefore, Licensee issued its check in the amount of \$336.72. The check was returned by Licensee's bank for insufficient funds (N.T. 11 and Exhibit C-3).

2. A warning letter was sent to the Licensee on March 21, 2008 with respect to an insufficient fund check issued by Licensee to Durdach Brothers, Inc. in the amount of \$259.81. The check was issued in payment for the purchase of malt or brewed beverages and was returned for insufficient funds. The check was made good in a timely fashion (N.T. 13 and Exhibit C-4).

CONCLUSION OF LAW:

The charge in the citation is **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 this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$150.00.

ORDER

THEREFORE, it is hereby ordered that Licensee ESCOFFIER, INC., pay a fine of \$150.00 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 10TH day of November, 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

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Escoffier, Inc.