

Mailing Date: APR 13 2009

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

PENNSYLVANIA STATE
POLICE, BUREAU OF
LIQUOR CONTROL ENFORCEMENT

v.

DELUCA'S BAR INC
20700 RTE 19
CRANBERRY TWP PA 16066

BUTLER COUNTY
LICENSE NO. R-AP-SS-EHF-9899

Citation No. 08-2138

Incident No. W07-375564

LID-14081

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:
Emily L. Gustave, Esquire

For Licensee:
Marian DeLuca, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 12, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Deluca's Bar, Inc., License Number R-AP-SS-EHF-9899 (hereinafter Licensee).

The citation contains four counts.

Count one of the citation charges Licensee with violation of Section 5.23(c) of the Liquor Control Board Regulations [40 Pa. Code §5.23(c)], in that Licensee, by its servants, agents or employees failed to notify the Board within fifteen (15) days of a change of manager which occurred in September, 2007.

Count two of the citation charges Licensee with violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)], in that Licensees, by their servants, agents or employees, issued checks or drafts

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dated April 26 and June 26, 2008, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for payment of such checks.

Count three of the citation charges Licensee with violations of Section 493(12) of the Liquor Code [47 P.S. § 4-493(12)], and Section 5.52 of the Liquor Control Board Regulations [40 Pa. Code §5.52], in that from January 1 to July 16, 2008, Licensee by its servants, agents or employees, failed to maintain coil cleaning records.

Count four of the citation charges Licensee with violation of Section 5.51(a) of the Liquor Control Board Regulations [40 Pa. Code §5.51(a)], in that from January 1 to July 16, 2008, Licensee, by its servants, agents or employees, failed to clean coils, tap rods and connections at least once every seven (7) days.

The investigation which gave rise to the citation began on June 4, 2008 and was completed on August 7, 2008. The notice of violation letter was mailed to Licensee on August 21, 2008.

An evidentiary hearing was held on this matter on March 3, 2009, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Counts 1, 2, 3 & 4

1. Licensee is located in Butler County, Pennsylvania and holds Restaurant Liquor License Number R-AP-SS-EHF-9899. (N.T. 4).
2. On April 26, 2008, Licensee issued check number 4644 in the amount of \$266.06 to Goettler Distributing, Inc. in payment for purchases of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in the account. (By stipulation, N.T. 8-10)
3. On May 12, 2008, check number 4644 was satisfied by redeposit. (By stipulation, N.T. 8-10)
4. On June 26, 2008, Licensee issued check number 4657 in the amount of \$261.17 to Goettler Distributing, Inc. in payment for purchases of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in the account. (By stipulation, N.T. 8-10)
5. On July 9, 2008, check number 4657 was satisfied by redeposit. (By stipulation, N.T. 8-10)
6. No warning letter was issued in this case. (N.T. 9-10)
7. On July 10, 2008, an enforcement officer attempted to contact Licensee's Board-approved manager, Angelica DeLuca, and was told by Mr. Mike Baxter that he had taken over managerial duties for Licensee. (N.T. 18)

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8. On July 16, 2008, at 10:05 a.m., an enforcement officer entered the licensed premises to conduct a routine inspection and found that Licensee was not listing the method of cleaning in its coil records and was not cleaning the coils once every seven days as required. (N.T. 13, Exhibit L-1)

9. The officer met with Licensee's secretary-treasurer, Marian DeLuca, and was informed that the Board approved manager, Angelica DeLuca, had been ill for some time and not performing her duties as manager, and Mr. Mike Baxter had been hired to perform the managerial duties at the establishment. (N.T. 18-19, 22-23, Exhibit C-5)

10. On or about August 23, 2008, Licensee mailed an application to the Board for a change of managers to approve Mr. Baxter via the Allegheny County Tavern Association. (Exhibit L-3)

CONCLUSION OF LAW:

Counts One, Two, Three & Four -- Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer testified in detail as to his routine inspection of the licensed premises on July 16, 2008.

Licensee's corporate secretary-treasurer stipulated to count two and testified in defense of count one that she filed an application for a change of manager through the Allegheny County Tavern Association and entered copies of the paper work and check as exhibit L-3. Counsel for the Bureau entered a certification from the Board that the only change in the corporate setup reported to the Board was dated December 11, 1986, listing Angelica DeLuca as manager. (Exhibit C-5)

As to counts three and four, the officer testified that Licensee was not timely or properly cleaning the draft beer coils and not maintaining appropriate records. Licensee entered copies of their old and current coil cleaning records as Exhibits L-1 and L-2.

I find the testimony of the witnesses to be credible, as such the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since June 21, 1979, and has five (5) prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 94-1231. Fine \$400.00

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (tickets).
2. Offered and/or gave alcoholic beverages as a prize.

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Citation No. 00-0390. Fine \$100.00.

1. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises.

Citation No. 05-1777. Fine \$1,300.00.

1. Sales to a minor.
September 30, 2004.
2. Issued worthless checks in payment for purchases of malt or brewed beverages.
April 27 and May 4, 2005.

Citation No. 05-2541. Fine \$100.00

1. Issued worthless checks in payment for purchases of malt or brewed beverages.
August 31, September 7 and 14, 2005.

Citation No. 06-2118C. Fine \$1,400.00 and R.A.M.P. training mandated.

1. Sales to a minor.
August 4, 2006.

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.

Counsel for the Bureau has recommended fines totaling \$600.00 in this case.

I take administrative notice that the Board has approved Mr. Baxter as the manager.

After due consideration of the circumstances giving rise to the citation and the Licensee's citation history, the following fine shall be imposed as the penalty in this case:

Count One -- \$200.00 fine.

Count Two -- \$200.00 fine.

Counts Three & Four (merged) -- \$200.00 fine.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Deluca's Bar, Inc., pay a fine of \$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.

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JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 9th day of April, 2009.



Robert F. Skwaryk, J.

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

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 17110-966

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