

Mailing Date: MAY 28 2009

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

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| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 08-2774X |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W02-383290 |
| v. | : | |
| | : | LID - 18816 |
| MALT, LTD. | : | |
| T/A AUGUSTINE'S CLUB 17 | : | |
| 518 N. MAIN ST. | : | |
| OLD FORGE, PA 18518-1812 | : | |
| | : | |
| | : | |
| LACKAWANNA COUNTY | : | |
| LICENSE NO. R-AP-SS-EHF-17643 | : | |

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
CRAIG A. STRONG, ESQUIRE

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 24, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MALT, LTD., License Number R-AP-SS-EHF-17643 (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 September 26, 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 October 21, 2008 and was completed on October 22, 2008; and notice of the violation was sent to Licensee by Certified Mail on November 3, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 19, 2008 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 518 N. Main St., Old Forge, PA 18518-1812 by certified mail, return receipt requested and by first class mail on January 29, 2009. The notice set forth the date and time of the hearing as March 19, 2009 at 2:30 p.m., and the place of hearing as PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton PA 18503.

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 September 26, 2008 Licensee purchased malt or brewed beverages from Banko North, Inc. In payment therefore, Licensee issued its Check No. 24269 in the amount of \$351.92 which was dishonored by Licensee's bank for insufficient funds (N.T. 6-7).
2. The aforementioned check was good with cash on October 17, 2008 (N.T. 7).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since February 23, 1987, and has had eighteen prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 93-1395. 2 days suspension.

1. Sales to minors.

Citation No. 04-1865. Fine \$800.00.

1. Fortified, adulterated and/or contaminated liquor. September 27, 2004.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine). September 27, 2004.

Citation No. 06-0922. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a minor.
March 15, 2006.

Citation No. 06-2710. Fine \$1,250.00 and 1 day suspension.

1. Sales after the restaurant liquor license expired and had not been renewed.
October 20, 2006.

Citation No. 07-0389. Fine \$1,250.00 and 1 day suspension.

1. Failed to comply with the Order of Administrative Law Judge at Citation No. 06-0922C mandating responsible alcohol management training.
December 15, 2006 through January 12, 2007.
2. Sales after the restaurant liquor license expired and had not been renewed and/or validated.
January 12, 2007.

Citation No. 07-0433X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages.
December 8, 2006.

Citation No. 07-1709X. Fine \$200.00.

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

Citation No. 07-1967X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages.
June 22, 2007.

Citation No. 07-2727. Fine \$2,000.00 and 1 day suspension.

1. Sales after the license expired and had not been renewed and/or validated.
October 16, 2007.

Citation No. 07-2865X. Fine \$350.00.

1. Issued worthless checks in payment for malt or brewed beverages.
July 13, 27, August 3, 10, 17, 24 and 31, 2007.

Citation No. 08-0233X. Fine \$400.00.

1. Issued worthless checks in payment for malt or brewed beverages.
November 6, 16, 30 and December 7, 2007.

Citation No. 08-0792. Fine \$1,500.00 and 2 days suspension.

1. Sales during a time when your license was suspended.
March 11, 2008.
2. Failed to post in a conspicuous place on the outside of the licensed premises a Notice of Suspension.
March 11, 2008.

Citation No. 08-0804X. Fine \$500.00.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.
February 8 and 22, 2008.

Citation No. 08-1067X. Fine \$1,000.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.
March 18, 2008.

Citation No. 08-1196X. Fine \$1,000.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.
April 3, 2008.

Citation No. 08-1641X. Fine \$800.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for purchases of Malt or brewed beverages.
May 22, 2008.

Citation No. 08-2485X. Fine \$1,000.00. Fine not paid and license revoked without bond forfeiture.

1. Issued worthless checks in payment for purchases of malt or brewed beverages. July 10, 25 and August 1, 2008.

Citation No. 08-2545X. Fine \$550.00. Fine not paid and license suspended 1 day and thereafter until fine paid. Fine not paid and license revoked without bond forfeiture.

1. Issued worthless checks in payment for purchases of malt or brewed beverages. August 28, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

This office takes notice that Licensee's license has been previously revoked at Citation Nos. 08-2485X and 08-2545X.

Under the circumstances of this case, the penalty imposed shall be revocation without bond forfeiture.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. R-AP-SS-EHF-17643, issued to MALT, LTD., be **REVOKED** effective at 7:00 a.m. on Monday, July 20, 2009. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license is already revoked there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been **REVOKED**. The Licensee's right to renew his license is hereby CANCELLED.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 20th day of May, 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.