

Mailing Date: JUL 29 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2797X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-384110
v.	:	
	:	LID - 10437
L. & M. BAR & GRILL, INC.	:	
T/A L. & M. BAR & GRILL	:	
24 S. MAIN ST.	:	
CARBONDALE, PA 18407-2366	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-2288	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 1, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against L. & M. Bar and Grill, Inc., t/a L. & M. Bar & Grill (Licensee), License Number R-AP-SS-2288.

The citation charges Licensee with a violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by servants, agents or employes, issued checks or drafts dated October 7, 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 the payment of such checks.

An evidentiary hearing was conducted on July 1, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have any representation.

1. Commonwealth Exhibit No. C-2, N.T. 8.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on May 15, 2009 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked unclaimed. (N.T. 5)
2. On May 15, 2009, I issued a Pre-Hearing Order directing Licensee to submit its pre-hearing memorandum to this Office and to Bureau Counsel. That Order reiterated the date, time and place of hearing. (N.T. 5)
3. The Bureau began its investigation on November 3, 2008 and completed it on November 6, 2008. (N.T. 7)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on November 14, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)
5. On October 7, 2008, Licensee issued a check for the purchase of beer to an Importing Distributor in the amount of \$332.09, which was dishonored due to insufficient funds. The check was not made good within ten days. (N.T. 9-10)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since July 19, 1974, and has had three prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-3:

Adjudication No. 95-2883. 1 day suspension.
Sales during prohibited hours on an Election Day.

Adjudication No. 03-1955. Fine \$350.00.
Possessed or operated gambling devices or permitted
gambling on your licensed premises (sports pools).
November 13, 2003.

Adjudication No. 07-2232X. Fine \$150.00.
Issued worthless checks in payment for malt
or brewed beverages.
June 11, 2007.

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.

Although Licensee has failed to appear and obey process, there was an indication in the file that Licensee did intend to file an Admission, Waiver and Authorization form.

Accordingly, I impose a \$200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 17TH day of July, 2009.



Felix Thau, A.L.J.

pm

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 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 17110-9661

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L. & M. BAR & GRILL, INC.