

Mailing Date: SEPT 24 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0177X
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-385918
	:	
BENNETT BROTHERS	:	
INCORPORATED	:	LID-42566
T/A KAZANSKY'S	:	
2203 & REAR 2201 MURRAY AVE	:	
PITTSBURGH PA 15217-2300	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. E-SS-2852	:	

**ADJUDICATION**

**JUDGE:** ROBERT F. SKWARYK

APPEARANCES:

**BUREAU COUNSEL:** Emily L. Gustave, Esq.

**LICENSEE COUNSEL:** Paul Krause, Pro Se

BACKGROUND:

This proceeding arises out of a citation that was issued on February 4, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Bennett Brothers, Incorporated, T/A Kazansky's, License Number E-SS-2852 (hereinafter Licensee).

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 dated November 25, 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.

The investigation which gave rise to the citation began on December 15, 2008 and was completed on January 12, 2009. The notice of violation letter was mailed to Licensee on January 20, 2009.

A consolidated evidentiary hearing with Citation No. 08-2807X was held on this matter on August 11, 2009, in Pittsburgh, Pennsylvania.

BENNETT BROTHERS, INCORPORATED  
T/A KAZANSKY'S  
Citation No. 09-0177X

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:

1. Licensee is located in Allegheny County, Pennsylvania and holds Eating Place Malt Beverage License Number E-SS-2852. (N.T. 4).
2. On Wednesday, March 5, 2008, the Bureau issued a warning letter to Licensee for insufficient fund check number 12423. (N.T. 14).
3. On Tuesday, November 25, 2008, Licensee issued check number 13199 in the amount of \$1,380.16 to Wilson-McGinley, Inc., Inc. in payment for invoice number 232065 for purchases of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in the account. (N.T. 24-25, Exhibit C-10)
4. On Wednesday, December 3, 2008, check number 13199 was satisfied by redeposit. (N.T. 25)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer and the Distributor's vice-president testified in detail as to Licensee issuing check number 13199 on November 25, 2008, for the purchase of malt and brewed beverages, and that the check was dishonored by Licensee's bank for insufficient funds. A copy of the invoice was admitted as Exhibit C-5. The Bureau had previously issued a warning letter to Licensee for insufficient check number 12423.

Licensee's secretary testified in defense that he has cash flow problems when customers pay him with credit cards, and he is not permitted by the Board to pay his distributor in cash. He also stipulated to issuing the check. (N.T. 21).

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 May 28, 1998, and has two (2) prior violations, to wit:

Citation No. 07-0241. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.  
January 12, 2007.

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T/A KAZANSKY'S  
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Citation No. 08-0184. Fine \$350.00.

1. Failed to comply with the order of the Administrative Law Judge mandating R.A.M.P. training. October 26, 2007 through January 7, 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.

After due consideration of the circumstances giving rise to the citation and the Licensee's citation history, a fine of \$200.00 shall be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Bennett Brothers, Incorporated, T/A Kazansky's, 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.

**JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.**

Dated this 10TH day of SEPTEMBER, 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.**

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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

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