

Mailing Date: APR 08 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0945
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-379757
v.	:	
	:	LID - 51032
MALI'S CAFÉ LLC	:	
400 ILLICK'S MILL RD	:	
BETHLEHEM PA 18018	:	
	:	
NORTHAMPTON COUNTY	:	
LICENSE NO. GR-AP-SS-18	:	

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE COUNSEL: B. Lincoln Treadwell, Jr., Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 27, 2009.

The first count alleges that Licensee violated §473 of the Liquor Code, 47 P.S. §4-473, by refusing and/or failing to provide the Board with information regarding the involvement of Starters Golf, LLC, in the operation of the licensed premises from April 23 to September 15, 2008.

The second count alleges that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, during the period April 23, through September 15, 2008, because the licensed corporation was not the only one pecuniarily interested in the operation of the licensed business.

The third count alleges that Licensee violated §493(2) of the Liquor Code, 47 P.S. §4-493(2), on April 28, May 20, 23 and 27, 2008, by paying for purchases of malt or brewed beverages with other than licensee's checks, cashier's checks or money orders.

A hearing was held on February 12, 2010, Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Between March of 2003 and the second week of January of 2008, Stephen Chanitz, Jr., was an officer in Licensee. The purpose of this limited liability company was to operate a restaurant at the Bethlehem Municipal Golf Course on 400 Illick's Mill Road. The owner of the building in which the business was conducted was the City of Bethlehem (N.T. 7-8).

2. In March, 2003, Mr. Chanitz signed a lease with the City to take over the restaurant from the previous owner. This agreement recites that the City's Municipal Golf Course Restaurant Liquor License has been transferred to Mali's Café, LLC, and places all responsibility for the cost of maintaining that license on it. Licensee acknowledged that this liquor license would remain with the lessor at the termination of the lease, or any renewal thereof. Licensee had the obligation upon termination of the lease to convey the license to the City or its designee (N.T. 9-10, Exhibit L-1).

3. At one point during 2007, Mali's Café, LLC, decided that the lease would not be renewed, and notified the City of that fact six months later. Licensee turned over the keys to the facility on January 16, 2008. After that, Licensee had nothing further to do with the operation of the restaurant (N.T. 10-11).

4. During the third week of April, 2008, Licensee was contacted by a representative of Starters Golf, LLC, Dave Rank. Mr. Rank stated that the transfer of the liquor license might take a couple of months; therefore, he and his attorney proposed a management agreement so that operations could commence in the meantime. Licensee believed he was required by the provisions of his lease with the City to cooperate with the new tenant in this way, and so agreed (N.T. 11-12).

5. After April 23, 2008, Licensee did not participate in the business in any way. All purchases and sales of alcoholic beverages were done by the management company, Starters Golf, LLC. Licensee's member did not participate in these activities, and first learned of this citation when a liquor enforcement officer called him (N.T. 12-14).

6. On September 7, 2008, a liquor enforcement officer conducted outside surveillance at the licensed premises and saw a sign at the entrance to the parking lot with the name "Starters" on it. On October 5, 2008, the officer visited the premises and spoke with the manager, Dave Rank, Jr., who informed the officer about the management agreement. The officer obtained a copy of the agreement and learned from the PLCB that no management agreement had been submitted to it for approval. The Board approved a Municipal Golf Course Liquor License, LID 60509, in the name of Starters Golf, LLC, on September 16, 2008. That license is now active, until April 30, 2010 (Exhibit C-3 and PLCB computerized records).

7. The checking account of Starters, LLC, t/a Starters Clubhouse Grille, was debited for the following checks, given on the dates indicated for the purchase of malt or brewed beverages:

Check No.	Amount	Date	Payee
1000	\$ 181.26	4/28/08	Banko Beverage Co.
1051	251.06	5/20/08	Allentown Beverage
1052	707.08	5/20/08	Banko Beverage Co.
1054	893.74	5/23/08	Geiger Beverage Co.
1060	88.51	5/27/08	Geiger Beverage Co.
1081	203.95	5/27/08	Allentown Beverage
1082	418.91	5/27/08	Banko Beverage Co.

(Exhibit C-3).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Until the Board approves a transfer or the issuance of a new license, the licensee in whose name the license is being exercised retains all legal responsibility for everything done in connection with the premises. Therefore, the penalty imposed in this case is the responsibility in the first instance of Mali's Café, LLC, and that company must make payment of the fine as instructed below.

I trust it will have not escaped notice, however, that Starters, LLC, promised to hold Mali's Café, LLC, harmless as a part of the management agreement. Licensee, Mali's Café, LLC, should not have permitted its licensed privilege to be exercised by another without Board approval, but Starters, LLC, was the beneficiary of the agreement, and it should ultimately bear the weight which fell upon Mali's Café, LLC, because of the inattention of both to the requirements of the law.

PRIOR RECORD:

Licensee has been licensed since April 1, 2003, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type. Penalties are assessed as follows:

Count 1 – a fine of \$200.00.

Count 1 – a fine of \$200.00.

Count 1 – a fine of \$100.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Mali's Café, LLC, License No. GR-AP-SS-18, shall pay a fine of five hundred dollars (\$500.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 19TH day of MARCH, 2010.



David L. Shenkle, J.

jb

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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Mali's Café, LLC