

Mailing Date: OCT 1 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1328X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-394139
v.	:	
	:	LID - 58397
FJB3 INCORPORATED	:	
415 LACKAWANNA AVE.	:	
OLYPHANT, PA 18447-1523	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-2617	:	
	:	
	:	

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 June 8, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against FJB3 Incorporated (Licensee), License Number R-AP-2617.

The citation¹ 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 April 10, 2009, 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 August 27, 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. 6.

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 July 9, 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. 4)
2. On July 9, 2009, I issued a Pre-Hearing Order, by first class mail, to the licensed premises directing Licensee to submit its pre-hearing memorandum to this Office. That Order reiterated the date, time and place of hearing. (N.T. 4)
3. The Bureau began and completed its investigation on May 13, 2009. (N.T. 5)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on May 18, 2009. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)
5. On April 10, 2009, Licensee issued a check in the amount of \$1,263.40 to an Importing Distributor for the purchase of beer. The check was dishonored due to insufficient funds. (N.T. 7)

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 2, 2007, and has had five prior violations (Commonwealth Exhibit No. C-3):

Adjudication No. 07-2598X. Fine \$150.00.
Issued worthless checks in payment for
purchases of malt or brewed beverages.
August 4, 10 and 17, 2007.

Adjudication No. 07-2904X. Fine \$200.00.
Issued worthless checks in payment for
purchases of malt or brewed beverages.
September 28, 2007.

Adjudication No. 08-0199X. Fine \$200.00.
Issued worthless checks in payment for
purchases of malt or brewed beverages.
December 7, 2007.

Adjudication No. 08-2220X. Fine \$225.00.
Issued worthless checks in payment for malt
or brewed beverages.
July 10, 2008.

Adjudication No. 09-1100X. Fine \$250.00.
Issued worthless checks in payment for malt or
brewed beverages.
February 11, 2009.

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.

As Licensee has failed to appear or obey process, I impose a \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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 23RD day of September, 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 cashier's check, certified check or money order. **Personal and business checks, are not acceptable unless bank certified.** 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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FJB3 INCORPORATED