

Mailing Date: NOV 13 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1465X
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-394490
	:	
JEFFERSON MANAGEMENT CO	:	
T/A JEFFERSON HIDEAWAY	:	LID-60364
1172 JEFFERSON HEIGHTS DR	:	
PENN HILLS TWP	:	
PITTSBURGH PA 15235-4737	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-SS-9944	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Nadia L. Vargo, Esq.

LICENSEE COUNSEL: Ex Parte

BACKGROUND:

This proceeding arises out of a citation that was issued on June 24, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Jefferson Management Co., T/A Jefferson Hideaway, License Number R-SS-9944 (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 February 24 and March 2, 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 payment of such checks.

The investigation which gave rise to the citation began on May 20, 2009 and was completed on May 27, 2009. The notice of violation letter was mailed to Licensee on June 5, 2009, and received on June 8, 2009.

An evidentiary hearing was held on this matter on October 20, 2009, in Pittsburgh, Pennsylvania.

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 Restaurant Liquor license number R-SS-9944. (N.T. 4)
2. On Tuesday, February 24, 2009, Licensee issued check number 1019 in the amount of \$569.29 to Balson Distributing, Inc. in payment for purchases of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in the account. (N.T. 11-13, Exhibit C-6)
3. On February 25, 2009, the beer was delivered to the licensed premises (N.T. 11-12, Exhibit C-5)
4. On Monday, March 2, 2009, Licensee issued check number 1018 in the amount of \$515.95 to Balson Distributing, Inc. in payment for purchases of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in the account. (N.T. 13-15, Exhibit C-7 & C-8)
5. Check numbers 1018 and 1019 were satisfied by late cash payments. (N.T. 14-16)
6. The Bureau did not issue a warning letter to Licensee because the checks were not made good in a timely fashion. (N.T. 7-8)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

Section 493(26) of the Liquor Code provides as follows:

It shall be unlawful—

Worthless checks. For any retail liquor licensee or any retail dispenser, distributor or importing distributor, to make, draw, utter, issue or deliver, or cause to be made, drawn, uttered, issued or delivered, any check, draft or similar order, for the payment of money in payment for any purchase of malt or brewed beverages, when such retail liquor licensee, retail dispenser, distributor or importing distributor, has not sufficient funds in, or credit with, such bank, banking institution, trust company or other depository, for the payment of such check. Any person who is a licensee under the provisions of this article, who shall receive in payment for malt or brewed beverages sold by him any check, draft or

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similar order for the payment of money, which is subsequently dishonored by the bank, banking institution, trust company or other depository, upon which drawn, for any reason whatsoever, shall, within five days of receipt of notice of such dishonor, notify by certified mail the person who presented the said worthless check, draft or similar order. If the violation of this clause is the first such violation by the licensee that calendar year involving a check, draft or similar order from the purchaser to the seller and if the check, draft or similar order is subsequently honored within ten (10) days from the day it was made, drawn, uttered, issued or delivered, then the enforcement bureau shall issue an administrative warning in lieu of citation.

At the hearing held on the matter, the enforcement officer testified as to his investigation. An officer from Balson Distributing, Inc., appeared and testified that Licensee issued two checks dated February 24 and March 2, 2009, for beer purchases which were dishonored by Licensee's bank due to insufficient funds.

Licensee did not appear at the hearing, although notified of the place and time. On the day of the hearing Licensee faxed its waiver to this office. However, it was received too late. A copy was entered into the record as Licensee's Exhibit, L-1.

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 July 25, 2008, and has 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 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 status as a first time offender, a fine of \$150.00 shall be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Jefferson Management Co., T/A Jefferson Hideaway, pay a fine of \$150.00 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.

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JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 5TH day of November, 2009.

Robert F. Stawank

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.

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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