

Mailing Date: MAR 26 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1946X
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-397623
	:	
2 ND ST. ANNIES INC.	:	
626-628 N. FRONT ST.	:	LID - 60569
PHILADELPHIA PA 19123	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-237	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 25, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 2nd St. Annies, Inc., License Number R-AP-SS-EHF-237 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, November 17, 2009, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 493(26) of the Liquor Code, 47 P.S. Section 4-493(26), in that Licensee, by its servants, agents or employes, issued checks or drafts dated June 12, 2009, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on July 21, 2009 and ended on July 21, 2009. A notice of violation letter dated August 6, 2009 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received on August 10, 2009. A citation dated August 25, 2009 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on August 28, 2009. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on October 10, 2009 by certified mail, return receipt requested, and by first class mail (N.T. 4-5 and 9-11 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises which was assigned to him on July 21, 2009. The investigation was for a check written by the Licensee which was dishonored because there were not sufficient funds available. The Licensee received notification from Origlio Beverage and also from Penn Distributors with regard to insufficient checks (N.T. 5-6).

3. A warning letter was issued to the licensed premises for a check issued to Muller, Inc., another beer distributor. This was the first check issued in the calendar year (N.T. 8).

4. No warning letters were issued with regard to Antonio Origlio, Inc. or Penn Beer Distributors because the check to Origlio Beverage was the second bounced check within a twelve month calendar year and the check to Penn Distributors was not made good within the twenty day grace period (N.T. 8).

5. Leon Hankin is employed by Antonio Origlio, a beer distributor. He is responsible for handling returned checks. Licensee had Check No. 1056 to Origlio Beverage in the amount of \$999.43 for purchases of malt and brewed beverages on June 12, 2009 (N.T. 9-10 and Exhibits B-3 and B-4).

6. The check was returned the second time from the bank for insufficient funds (N.T. 15 and Exhibit B-5).

7. As of the date of the hearing, the beer distributor had not received the \$999.43 from the Licensee (N.T. 17).

8. Tom Langianese is employed by Penn Distributors. Penn Distributors is a beer wholesaler in Philadelphia in Chester County. The Licensee submitted a check in the amount of \$674.96 on June 12, 2009 for the purchase of malt and brewed beverages. The check was dishonored and redeposited on June 18, 2009 (N.T. 20-22 and Exhibits B-6 and B-7).

9. As of the date of the hearing, Penn Distributors had not received the \$674.96 from the Licensee for the purchase of malt and brewed beverages (N.T. 22).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Licensee, by its servants, agents or employes, issued checks or drafts dated June 12, 2009, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks, in violation of Section 493(26) of the Liquor Code, 47 P.S. Section 4-493(26).

PRIOR RECORD:

Licensee has been licensed since February 26, 2009, and has a record of prior violations as follows:

Citation No. 09-1248X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
March 27, 2009.

DISCUSSION:

The Licensee is in violation for issuing the checks for nonsufficient funds and for not repaying them in a timely fashion. A \$300.00 fine shall be imposed. Licensee is strongly advised to pay the checks in the amount of \$999.43 and \$674.96 owed to the beer distributor.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Accordingly, we issue the following

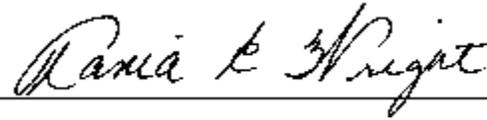
2nd St. Annies, Inc.
Citation No. 09-1946X

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 2nd St. Annies, Inc., License Number R-AP-SS-EHF-237, pay a fine of Three Hundred Dollars (\$300.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 5TH day of MARCH, 2010.



Tania E. Wright, J.

NOTE: 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.

mm

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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Citation No. 09-1946X
2nd St. Annies, Inc.