

Mailing Date: OCT 20 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0826
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-407709
v.	:	
	:	LID - 54195
ESCOFFIER, INC.	:	
T/A MULBERRY'S	:	
336 MILL ST.	:	
DANVILLE, PA 17821-1984	:	
	:	
	:	
MONTOUR COUNTY	:	
LICENSE NO. R-AP-SS-EHF-5353	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: NO APPEARANCE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 22, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against ESCOFFIER, INC., License Number R-AP-SS-EHF-5353 (hereinafter "Licensee").

The citation charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)] in that on February 7, 2010, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor license expired on August 31, 2009, and had not been renewed and/or validated.

The investigation which gave rise to the citation began on February 7, 2010 and was completed on March 15, 2010; and notice of the violation was sent to Licensee by Certified Mail on March 17, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 25, 2010 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 336 Mill St., Danville, PA 17821-1984 by certified mail, return receipt requested and by first class mail on July 9, 2010. The notice set forth the date and time of the hearing as August 25, 2010 at 2:30 p.m., and the place of hearing as PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. The restaurant liquor license of Licensee expired on August 31, 2009. Licensee did not possess a valid liquor license or have temporary authority to dispense alcoholic beverages on February 7, 2010 (N.T. Exhibit C-7).
2. On February 7, 2010 an officer of the Bureau arrived at the licensed premises at 5:15 p.m. There were five patrons present when the officer walked in (N.T. 7).
3. Tending bar was a female bartender (N.T. 7).
4. During this visit the officer ordered a Coors Light draft beer for which he paid \$2.00. Later, he ordered a Yuengling draft beer for which he paid \$2.00. Both of these beverages were served to him by the bartender (N.T. 7).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since February 18, 2005, and has had two prior violations:

Citation No. 08-1381. Fine \$1,600.00.

1. Issued worthless checks in payment for malt or brewed beverages. March 14 and 22, 2008.
2. Sales after the license expired and had not been renewed and/or validated. May 20, 2008.
3. Operated another business on the licensed premises without Board approval. May 20, 2008.

Citation No. 08-2034X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. June 21 and 24, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,750.00.

ORDER

THEREFORE, it is hereby ordered that Licensee ESCOFFIER, INC., pay a fine of \$1,750.00 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 pending final resolution of the penalty in this matter.

Dated this 30TH day of September, 2010.



Daniel T. Flaherty, Jr., J.

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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 submit 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.** Make 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

Citation No. 10-0826
Escoffier, Inc.