

Mailing Date: FEB 09 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1530X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-415262
v.	:	
	:	LID - 54471
DB'S SPOT, LLC	:	
279 S. RIVER ST.	:	
PLAINS, PA 18705-1135	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-10501	:	
	:	
	:	

**BEFORE:** JUDGE THAU  
**BUREAU COUNSEL:** Craig A. Strong, Esquire  
**LICENSEE:** Daryl Boich - Sole Corporate Officer

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on July 26, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against DB's Spot, LLC (Licensee), License Number R-AP-SS-10501.

The citation<sup>1</sup> 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 May 28, 2010, 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.

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1. Commonwealth Exhibit No. C-2, N.T. 11.

An evidentiary hearing was conducted on January 11, 2011 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its Sole Corporate Officer, Mr. Daryl Boich.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began and completed its investigation on June 29, 2010. (N.T. 13)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on July 6, 2010. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)
3. On the date charged, Licensee issued a check to L.T. Verrastro, Inc., in the amount of \$99.91, for the purchase of beer which was returned due to insufficient funds. It was subsequently made good on June 29, 2010. (N.T. 11-12)
4. On June 7, 2010, Mr. B., Licensee's Sole Corporate Officer, received a call from the beer distributor advising him that the check in question was returned due to insufficient funds. Mr. B. told the caller there were sufficient funds in the account at that time. He asked that the check be redeposited. It is the beer distributor's practice to deposit checks approximately three times a month depending upon the volume of checks. (N.T. 16-17)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau **failed** to prove that Licensee, by servants, agents or employes, issued checks or drafts dated May 28, 2010, 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.

DISCUSSION:

I dismiss the charge because Licensee authorized the beer distributor to redeposit the check on the tenth day following the issue date; there were sufficient funds in the Licensee's account to cover the check. It was the importing distributor which, in the normal course of business, waited to redeposit the check. Hence, it was not Licensee's action which caused the check to be redeposited outside of ten days.

The pertinent provision allows a licensee one insufficient funds check per year, per distributor if that check is made good within ten days. The facts of this case comport completely with that provision.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 10-1530X, issued against DB's Spot, LLC, is DISMISSED.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 28<sup>TH</sup> day of January, 2011.



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.**