

Mailing Date: JUNE 13 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 11-0435
LIQUOR CONTROL ENFORCEMENT	:	& 11-1245
	:	(Consolidated for Hearing
	:	Purposes Only)
	:	
v.	:	Incident Nos. W01-424940
	:	W01-430957
	:	
OA LIP INC.	:	
T/A BRANDT'S BEVERAGE	:	LID - 58628
6100-02 TORRESDALE AVE.	:	
PHILADELPHIA PA 19135-3718	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-SS-1969	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of citations that were issued on March 22, 2011 and July 12, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against OA Lip, Inc., t/a Brandt's Beverage, License Number D-SS-1969 (hereinafter "Licensee").

OA Lip, Inc.
t/a Brandt's Beverage
Citation No. 11-0435

An Administrative hearing was held on Wednesday, October 18, 2011, 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 citations are as follows:

Citation No. 11-0435

This citation contains two counts.

The first count charges Licensee with violation of Sections 492(3) and 493(16) of the Liquor Code, 47 P.S. §§4-492(3) and 4-493(16), in that on February 11, 2011, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Distributor License expired on October 31, 2010 and had not been renewed and/or validated.

The second count charges Licensee with violation of Section 493(26) of the Liquor Code, 47 P.S. §4-493(26), in that Licensee, by its servants, agents or employes, issued checks or drafts dated December 7, 2010, in payment for purchases of malt or brewed beverages, when they had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

Citation No. 11-1245X

The citation charges Licensee with violation of Section 493(26) of the Liquor Code, 47 P.S. §4-493(26), in that Licensee, by its servants, agents or employes, issued checks or drafts dated April 14, 29, May 3 and 5, 2011, in payment for purchases of malt or brewed beverages, when they had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

CITATION NO. 11-0435
COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on January 18, 2011 and ended on February 11, 2011. A notice of violation letter dated March 4, 2011 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received on March 5, 2011 at the licensed premises. A citation dated March 22, 2011 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on March 24, 2011 (N.T. 15-16 and Exhibits B-1 and B-2).

2. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on September 1, 2011 by certified mail, return receipt requested. That certified mailing was sent to Edward B. McHugh at 325 Chestnut Street, Suite 713A, Philadelphia, PA 19106 who was the attorney of record at that time and responsible for notifying the Licensee of the date and time of hearing. By letter dated September 19, 2011, Attorney McHugh withdrew his representation of the Licensee. (N.T. 15-16 and Exhibits B-1 and B-2).

3. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. The officer visited the premises on February 11, 2011 at 3:30 p.m. The distributor's license was inactive at that time (N.T. 9).

4. The officer arrived at the premises at approximately 3:30 p.m. on February 11, 2011, entered the premises and observed that sales were taking place. The officer picked up a case of seven ounce bottles of Coors Lite beer and gave them to the employee that was behind the cash register. The employee rang up the sale and informed the officer that it would be \$14.67. The officer gave the employee a fifty dollar bill. The employee took the currency and placed it in the cash register and returned change to the officer (N.T. 10-11).

5. The officer identified himself to the cashier as an Enforcement officer. The cashier referred him to Robert Lievsch who was described as the owner. The officer then spoke to him with regard to the sale. The officer asked the owner for any evidence of authority to sell alcoholic beverages. He could not produce a license or temporary authority to operate (N.T. 11-12).

6. The officer informed him that the license was inactive because of an unpaid labor and industry tax. The owner attempted to contact his attorney to resolve the issue immediately (N.T. 12-13).

7. After the officer left the premises, he returned to the district office in Philadelphia and placed the purchase with the evidence under Property Record #W1-3815 (N.T. 13).

8. Later in the day, the owner contacted the Enforcement officer. The officer received a fax at 5:11 p.m. on February 11, 2011 granting the Licensee authority to operate. The officer received an attestation from the Bureau indicating that according to a verification of facts from the Board, the Licensee was faxed temporary authority to operate on February 11, 2011 at 17:11 hours, that is to say 5:11 p.m. (N.T. 13-15 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

OA Lip, Inc.
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Count No. 1 - On February 11, 2011, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Distributor License expired on October 31, 2010 and had not been renewed and/or validated, in violation of Sections 492(3) and 493(16) of the Liquor Code, 47 P.S. §§4-492(3) and 4-493(16).

Count No. 2 - There is insufficient evidence to conclude that Licensee, by its servants, agents or employes, issued checks or drafts dated December 7, 2010, in payment for purchases of malt or brewed beverages, when they 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. §4-493(2).

CITATION NO. 11-1245

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on May 17, 2011 and ended on June 15, 2011. A notice of violation letter dated June 24, 2011 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received at the licensed premises. A citation dated July 12, 2011 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to Attorney McHugh who represented the Licensee at time. It was sent on September 1, 2011 notifying the attorney of record of the hearing. He subsequently withdrew on September 19, 2011. The Licensee did not appear at the scheduled hearing. However, the Court finds that notice was given to the then attorney of record and it is presumed that counsel notified Licensee of the pending hearing or did all that was legally required to attempt to do so (N.T. 15-16 and Exhibits B-1 and B-2).

2. Bill Conwell is employed by Clement Mueller, Inc., now known as Mueller, Inc. He is an associate at the office, management and customer service. In April, May and June of 2011, the Licensee was a client of the beer distributor. He had been a client for approximately fifteen years, and stated that the Licensee is presently closed and that they were notified that the Licensee is in bankruptcy (N.T. 23-24).

3. Check No. 1059 dated March 25, 2011 was issued to Mueller, Inc. by the licensed premises in the amount of \$15,642.75. The check was returned for non-sufficient funds. The check was honored in a timely fashion, therefore, a warning for the calendar year 2011 was issued for this check to Mueller, Inc. The Licensee was notified that any future NSF checks which include this distributor within the 2011 calendar year could result in administrative citations being issued against the license (N.T. 25 and Exhibit B-3).

4. On May 3, 2011, Licensee made a purchase of alcoholic beverages to Mueller, Inc. in the amount of \$6,728.10. Check number 1120 was returned for insufficient funds and was not satisfied by the Licensee (N.T. 25 and Exhibit B-3).

5. On April 14, 2011, Licensee submitted Check No. 1096, Mueller, Inc. in payment for alcoholic or brewed beverages in the amount of \$14,026.90. The check was returned for insufficient funds and has not been satisfied (N.T. 26-27 and Exhibit B-4).

6. On May 6, 2011, Licensee presented Check No. 1125 to Mueller, Inc. in the amount of \$11,705.50 for purchases of brewed or alcoholic beverages. That check was returned unpaid in that there was a stop payment placed on the check. That check was not satisfied (N.T. 27 and Exhibit B-5).

7. Michael McAnulty is employed as the director of finance for Antonio Origlio, Inc., a beer distributor. During April and May of 2011, the Licensee was its customer. During that time, the distributor delivered malt and brewed beverages to that establishment (N.T. 29-30).

8. On May 3, 2011, the Licensee presented Check No. 1119 in the amount of \$20,656.35 for purchases of malt and brewed beverages relative to Invoice Number 573011 in the amount of \$323.50 and Invoice Number 573854 in the amount of \$20,333.85. The check was returned for insufficient funds. It was deposited, twice but it remained unpaid (N.T. 30-31 and Exhibit B-7).

9. Mr. Conwell also received Check Number 1124 dated May 6, 2011 in the amount of \$21,612.35 relative to Invoice Number 575225 in the amount of \$289.00 and Invoice Number 574975 in the amount of \$21,471.35. The Licensee submitted the check for payment of the malt and brewed beverages. The check was returned for insufficient funds twice and the check remains unpaid (N.T. 31-32 and Exhibit B-8).

10. According to a consent order from the United States Bankruptcy for the Eastern District of Pennsylvania, the premises is now in bankruptcy (N.T. 34 and Exhibit B-9).

11. Check Number 1069 dated March 25, 2011 was issued to Mueller, Inc. in the amount of \$15,642.75. The check was returned for insufficient funds. The check was paid in the timely fashion. A warning letter was sent indicating to the Licensee that in the future, NSF checks written to this distributor within the 2011 calendar year could result in an administrative citation being issued against the license (Exhibit B-6).

12. A warning letter was issued for any checks with regard to Antonio Origlio, Inc. in the 2011 calendar year. The check was not made good in a timely fashion (N.T. 19).

13. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises in May and June of 2011 pursuant to insufficient funds complaints relative to Penn Distributor, Mueller, Inc. and Antonio Origlio beer distributors (N.T. 19).

14. The officer indicated that she made one visit to the licensed premises, but it was closed and the premises is currently not operating (N.T. 21).

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 April 14, 29, May 3 and 6, 2011, in payment for purchases of malt or brewed beverages, when they 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. §4-493(2).

PRIOR RECORD:

Licensee has been licensed since August 6, 2007, and has a record of prior violations as follows:

Citation No. 08-1589. \$500.00 fine.

1. Purchased malt or brewed beverages after the Distributor License expired and had not been renewed and/or validated.
April 4 and May 9, 2008.

Citation No. 08-2071X. \$200.00 fine.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.
May 16, June 12, 13 and 20, 2008.

Citation No. 08-2843X. \$300.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
October 8 and 10, 2008.

Citation No. 10-0158X. \$350.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
December 7, 2009.

Citation No. 10-0700X. \$400.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
February 25, 2010.

Citation No. 10-1070X. \$450.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
March 15 and 24, 2010.

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Citation No. 10-1865X. \$500.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
August 3, 2010.

Citation No. 10-2024X. \$550.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
July 7, 2010.

Citation No. 10-2398X. \$600.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
August 10, 17 and 20, 2010.

DISCUSSION:

Citation No. 11-0435

On February 11, 2011 at the time of the officer's visit, the license had expired and the Licensee had no authority to operate and therefore is in violation. The Licensee immediately sought his attorney's assistance and was granted temporary authority to operate pending resolution of the underlying issue. This officer received a notice that this Licensee is currently in bankruptcy. The notice was received in this office on January 26, 2012. The Court notes that the underlying charge was operating without a license, an unlawful act, and that this matter had already been heard at the time of receipt of the notice of bankruptcy. In deference to the bankruptcy proceedings, a suspension shall be imposed rather than a monetary fine or revocation of the license.

Under the circumstances, a one day suspension shall be imposed, which shall be deferred pending reactivation of the license.

Citation No. 11-1245

The evidence is sufficient to determine that the Licensee violated the Liquor Code in failing to satisfy the checks issued for purchases of malt or brewed beverages. Generally, the Court will require Licensee to satisfy payments to the distributors or state store, in addition to any monetary penalty or suspension or revocation. In this instance, the Court was notified, after the matter was heard, that the premises had filed for bankruptcy. In deference to the bankruptcy proceedings, there will be no revocation of the license nor will there be a monetary penalty. However, the license will be suspended for one day pending reactivation of the license.

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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 Count No. 2 of Citation No. 11-0435 and Count No. 1 of Citation No. 11-1245.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 1 of Citation No. 11-0435.

Therefore, penalties shall be assessed as follows:

Citation No. 11-0435

Count No. 1 - One day suspension
Count No. 2 - DISMISSED.

Citation No. 11-1245

Count No. 1 - One day suspension.

Accordingly, we issue the following

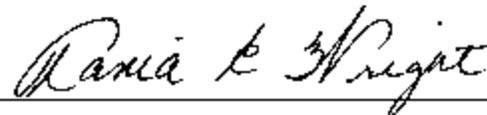
ORDER:

THEREFORE, it is hereby Ordered that the Distributor Liquor License of OA Lip, Inc., t/a Brandt's Beverage, License Number D-SS-1969 (including all permits and Licensee Discount Card), be suspended for a period of two (2) days. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

Jurisdiction of this matter is retained.

Dated this 6TH day of JUNE, 2012.



Tania E. Wright, J.

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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.

If you wish to appeal the decision on the Administrative Law Judge's Order, the appeal must be filed within 30 days of the mailing date of the Order. Please contact Chief Counsel's Office at 717-783-9454.

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