

Mailing Date: FEB 03 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-1078X
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-430923
v.	:	
	:	LID - 61035
DERRY BEVERAGE, LLC	:	
T/A DERRY BEVERAGE	:	
1660 CONTINENTAL BLVD.	:	
WASHINGTONVILLE, PA 17884	:	
	:	
	:	
MONTOUR COUNTY	:	
LICENSE NO. D-SS-3742	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: MICHAEL VOLIN, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 23, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against DERRY BEVERAGE, LLC, License Number D-SS-3742 (hereinafter "Licensee").

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 27, 2011, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution on which drawn for the payment of such checks.

The investigation which gave rise to the citation began on May 19, 2011 and was completed on June 1, 2011; and notice of the violation was sent to Licensee by Certified Mail on June 1, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 16, 2011 in the Pennsylvania Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania.

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. On April 27, 2011, Licensee purchased malt and/or brewed beverages from Edwin H. Kleckner, Inc. In payment therefore Licensee issued its check in the amount of \$1,870.70. The check was returned by Licensee's bank for insufficient funds (N.T. 10-12 and Exhibit C-4).

2. Licensee was warned concerning the issuance of a dishonored check to Edwin H. Kleckner, Inc. in the 2011 calendar year by letter dated February 25, 2011. The letter was sent relative to Check No. 1595 dated January 19, 2011 in the amount of \$1,458.55. This check was issued in payment for malt or brewed beverages and was dishonored due to insufficient funds. The check was made good in a timely manner (N.T. 12 and Exhibit C-6).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since March 27, 2009, and has had three prior violations:

Citation No. 10-0780X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. February 10, 2010.

Citation No. 11-0257X. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 22, 2010.

Citation No. 11-0801X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. March 2, 2011.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$300.00.

ORDER

THEREFORE, it is hereby ordered that Licensee DERRY BEVERAGE, INC., pay a fine of \$300.00 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.

Dated this 31ST day of January, 2012.



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.

IF YOU WISH TO APPEAL THE DECISION OF 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.

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. 11-1078X
Derry Beverage, Inc.