

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. 11-1240X
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-430817
	:	
MARCILAGO LLC	:	
1904 CHESTNUT ST.	:	LID - 63980
PHILADELPHIA PA 19103-4602	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-9949	:	

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 a citation that was issued on July 12, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Marcilago, LLC, License Number R-AP-SS-9949 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, December 8, 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 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 May 3, 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.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on May 18, 2011 and ended on June 10, 2011. A notice of violation letter dated June 17, 2011 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on June 30, 2011. A citation dated July 12, 2011 was sent to the licensed premises by certified mail, return receipt requested and was signed as received on July 24, 2011. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises by certified mail, return receipt requested. That certified mailing was returned unclaimed (N.T. 11-18 and Exhibits B-1 and B-2).

2. Michael McNulty is employed as the director of finance by Origlio Beverage, a beer distributor. On May 3, 2011, a beer delivery was made to Kokopelli Restaurant, Origlio Beverage Invoice Number 572574 in the amount of \$356.02 (N.T. 6-8 and Exhibit B-3).

3. A check was presented in payment for that invoice. Check Number 1381 in the amount of \$356.02 was from Kokopelli Restaurant (N.T. 8 and Exhibit B-3).

4. The check was returned to Origlio Beverage for insufficient funds. It was redeposited and paid (N.T. 8).

5. On June 17, 2011, a letter was sent to the licensed premises as a warning for NSF Check Number 1380 dated May 2, 2011 to Antonio Origlio in the amount of \$253.00. The check was returned for nonsufficient funds. That check was honored in a timely fashion and constituted a warning during the calendar year for an NSF check written to a distributor. The warning indicated that, in the future, NSF checks to that distributor would be cause for an administrative citation against the Licensee (N.T. 12-13 and Exhibit B-4).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

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Licensee, by its servants, agents or employes, issued checks or drafts dated May 3, 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(26).

PRIOR RECORD:

Licensee has been licensed since October 4, 2010, and has a record of prior violations as follows:

Citation No. 11-0398. \$200.00 fine.

1. Discounted the price of alcoholic beverages for a period or periods in excess of 2 hours in a business day.
February 16, 2011.

DISCUSSION:

In that Licensee has no prior violations of this nature, a \$150.00 penalty shall be imposed.

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.

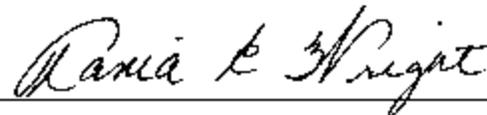
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Marcilago, LLC, License Number R-AP-SS-9949, pay a fine of One Hundred Fifty Dollars (\$150.00) 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.

Jurisdiction of this matter is retained.

Dated this 30TH day of January, 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 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.

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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

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