

Mailing Date: SEP 25 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-0068X
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-439033
	:	
7312 TJB INC.	:	
7312-16 CASTOR AVE.	:	PLCB LID - 61199
PHILADELPHIA PA 19152	:	
	:	
	:	PLCB License No. R-AP-SS-EHF-4184
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 24, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 7312 TJB, Inc., License Number R-AP-SS-EHF-4184 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, May 17, 2012, 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 October 18, 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 November 14, 2011 and ended on December 8, 2011. A notice of violation letter dated December 23, 2011 was sent to the licensed premises by certified mail, return receipt requested. The mailing was returned unclaimed. A citation dated January 24, 2012 was sent to the licensed premises by certified mail, return receipt requested. That certified mailing was also returned unclaimed. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on March 28, 2012 by certified mail, return receipt requested, and by first class mail. That certified mailing was returned unclaimed (N.T. 8-11 and Exhibits B-1 and B-2).

2. On November 29, 2011, an Enforcement officer contacted Clement & Muller, Inc. concerning the dishonored check that it received from the licensed premises. Clement & Muller indicated that the check had been satisfied. On December 8, 2011, an Enforcement officer contacted the Board approved secretary of the licensed premises, a Mr. Rosso, and questioned him concerning Check No. 416 issued to Clement & Muller, Inc. in the amount of \$260.31 on October 18, 2011. The check was dishonored but was satisfied by redeposit on October 19, 2011. The check was issued for nonpayment for malt and brewed beverages (N.T. 5-18).

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 October 18, 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 March 27, 2009, and has no record of prior violations.

DISCUSSION:

Licensee issued a check or draft dated October 18, 2011 in payment for malt or brewed beverages when they had insufficient funds or credit with the institution upon which drawn for payment of checks. In reviewing the prior history, it is noted that there are no prior violations, however, Licensee was warned concerning the issuance of dishonored checks to Clement & Muller in the 2011 calendar year by letter dated November 9, 2011. The letter was sent relative to Check No. 411 dated September 16, 2011 in the amount of \$239.98. That check was issued in payment for malt or brewed beverages and was dishonored due to insufficient funds.

Under the circumstances, a \$100.00 monetary 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.

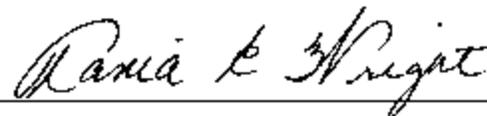
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 7312 TJB, Inc., License Number R-AP-SS-EHF-4184, pay a fine of One Hundred Dollars (\$100.00) 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 20TH day of September, 2012.



Tania E. Wright, J.

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.

7312 TJB, Inc.
In Re: Citation No. 12-0068X

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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

mm

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

In Re: Citation No. 12-0068X
7312 TJB, Inc.