Mailing Date: DEC 30 2014

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

| | | |
|---|---|---|
| PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT | : | In Re: Citation No. 13-1790 |
| v. | : | BLCE Incident No. W01-463460 |
| JP 1502 INC.<br>1502 BROWN ST.<br>PHILADELPHIA PA 19130-2906 | : | PLCB LID - 56963 |
| | : | PLCB License No. R-AP-SS-EHF-3897 |
| PHILADELPHIA COUNTY | : | |

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ANDREW R. BRITT, ESQ.**

FOR THE LICENSEE:

**SCOTT A. PETRI, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 3, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against JP 1502, Inc., License Number R-AP-SS-EHF-3897 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, April 2, 2014, 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*.

Licensee submitted a letter in the nature of a Petition for Rehearing, dated May 19, 2014, and received in the Office of Administrative Law Judge on May 23, 2014. Licensee alleged that he did not receive notice or appear at the scheduled hearing, on April 2, 2014, because of deception and fraud by a former employee/bartender. Licensee did not indicate when or how he ultimately received notice of the hearing. Licensee further alleged criminal activity by the bartender, relevant to fraudulent checks. Licensee claimed that he was not aware of the bad check(s) and that no one had authority to write checks, except for the Licensee and his brother. However, Licensee references checks that are not the subject of the instant citation.

After careful consideration of Licensee's Petition and the Bureau's Response, the Petition for Rehearing was *denied*. The Bureau presented its evidence at the April 2, 2014 hearing, and the Court will consider that record of hearing. However, the matter was ***bifurcated*** such that Licensee would have an opportunity to present oral, documentary or mitigating evidence *relevant* to this citation. The bifurcated hearing was reconvened on Thursday, September 25, 2014, at which time Licensee, through counsel, presented its evidence.

The citation contains two counts.

The first 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 May 14, 2013, 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.

The second count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12) and Section 5.52 of the Liquor Control Board Regulations, 40 Pa. Code §5.52, in that on July 8, 2013, Licensee, by its servants, agents or employes, failed to maintain malt or brewed beverage dispensing system cleaning records.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on June 25, 2013 and ended on July 8, 2013. A notice of violation letter dated July 26, 2013 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation dated September 3, 2013 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 the licensed premises by certified mail, return receipt requested and by first class mail on February 24, 2014 for the April 2, 2014 hearing. The Office of Administrative Law Judge sent notice of the bifurcated hearing to Counsel of record by certified mail return receipt requested on August 20, 2013 for the September 25, 2014 hearing (N.T. 12-16 and Exhibits B-1 and B-2 - Transcript April 2, 2014).

2. By letter dated May 22, 2013, the Pennsylvania Liquor Control Board (PLCB) was notified by Muller Inc. that Check No. 6626, dated May 14, 2013, in the amount of $530.00 for Invoice No. 374927 was returned for insufficient funds. Licensee was told it had ten days from the date of the letter to make payment in full to Muller, Inc. Licensee was further advised that failure to remedy the dishonored check within this time frame would result in the matter being referred to the Bureau for further action (Exhibit B-3 - Transcript April 2, 2014).

3. An officer from the Bureau of Enforcement received information from a compliance officer at the PLCB concerning the dishonored check, Check No. 6626 dated May 14, 2013 in the amount of $530.00, issued by the licensed premises to Muller Inc., for payment of malt or brewed beverages (N.T.5-6 and Exhibit B-3 - Transcript April 2, 2014).

4. On Monday, July 1, 2013 at 8:30 a.m., the officer spoke with a representative at Muller, Inc. who stated that Check No. 6626 had been returned due to insufficient funds and was still outstanding (N.T. 7 - Transcript April 2, 2014).

5. On July 1, 2013, the officer entered the licensed premises. The premises was open and operating with one female bartender, Tiana Barrett, on duty. The officer identified himself to Ms. Barrett and informed her that he was conducting an investigation pertaining to NSF Check No. 6626. The officer was unable to find certain records, including coil cleaning records. Ms. Barrett stated that she was a new employee, and that he would need to speak directly with her supervisor. The bartender contacted Bruce Bottomley by phone. The officer spoke to Mr. Bottomley and informed him that he was leaving a Records Request form at the premises and that he would return on July 8, 2013, to review the requested documents (N.T. 7-8 - Transcript April 2, 2014).

6. In that Mr. Bottomley's name was not on the license, on Wednesday, July 2, 2013 at 2:00 p.m., the officer contacted Joseph DeLong, corporate president, by phone. He informed Mr. DeLong that he was conducting an investigation pertaining to NSF Check No. 6626, but that he had been unable to view the necessary paperwork at the premises. He further informed Mr. DeLong that he would return to the premises on July 8, 2013 at 12:00 p.m., and requested that he be present (N.T. 9 - Transcript April 2, 2014) .

7. On Monday, July 8, 2013 the officer entered the licensed premises and met with Mr. DeLong and Mr. Bottomley, informing them that a routine inspection would be conducted. During the course of the Inspection, Mr. DeLong acknowledged that Check No. 6626 had been returned due to insufficient funds. He further acknowledged that he had received correspondence from the PLCB advising him that he had ten days to make payment in full to Muller, Inc. for Invoice No. 374927. Mr. Bottomley gave the officer a written statement verifying that the signature on Check No. 6626 was his and that he was notified that there were insufficient funds available in that bank account. He further stated that the premises had paid the outstanding balance of $530.00 to Muller, Inc. on July 3, 2013 (N.T. 9-10, 15 and Exhibit B-3 - Transcript April 2, 2014).

8. The officer also pointed out to Licensee and Mr. Bottomley that the check utilized for the purchase of malt and brewed beverages was drawn on a bank account in the name of BRC, Inc., seemingly indicating Brown Ridge Café, the trade name, but not the corporate name, of the licensed premises, JP 1502, Inc., The officer informed Mr. DeLong and Mr. Bottomley that the licensed premises could not use checks drawn on accounts other than JP 1502, Inc. They agreed that they would no longer issue checks on accounts other that JP 1502, Inc. (N.T. 10-11 and Exhibit 3 - Transcript April 2, 2014).

9. The officer continued his inspection, but neither Mr. DeLong nor Mr. Bottomley could produce any cleaning records for the beverage dispensing system. The officer informed him that the system must be cleaned regularly and that a record of the cleanings must be maintained (N.T. 10 - Transcript April 2, 2014).

10. Joseph Erb has been employed, by Muller, Inc., a beer distributor, for twenty-eight years and as their Director of Sales for the past four years. As the Director of Sales he is responsible for managing the entire sales department. On December 14, 2013, Muller, Inc. received Check Number 6626, for delivery of beer to "Brown Ridge Café," pursuant to Invoice Number 374927. Notes on the invoice indicate that the total amount due for purchases of bottles, cans and kegs of beer was $579.16, with a credit issued for $30.00. The remaining $549.16 was paid with $19.16 in cash and Check Number 6626, in the amount of $530.00. The maker of the check is indicated as "BRC, Inc." and is referenced as "DBA (Doing Business As) Brown Ridge Café at 1502 Brown Street, Philadelphia, PA 19130." The invoice also references an account number for the licensed premises. Check Number 6626 was returned to Muller, Inc. for non-sufficient funds. The check was made good by a money order dated July 3, 2013 issued to Muller, Inc. and indicating the purchaser as Brown Ridge Café (N.T. 18-25 and Exhibits B-3 and B-4 - Transcript April 2, 2014).

11. Joseph DeLong testified that he, along with his brother Paul DeLong, is the owner of the licensed premises, JP 1502, Inc., which trades as Brown Ridge Café, located at 1502 Brown Street, Philadelphia, PA. Donna DeLong is the board certified manager. In March of 2013, the Licensee hired Bruce Bottomley, who was previously a customer of Joseph DeLong in an unrelated business. Mr. DeLong indicated that Mr. Bottomley was hired as a night head bartender and brought in entertainers for the premises (N.T. 5-8, 33-5 - Transcript September 25, 2014).

12. Mr. DeLong states that mail was stolen from him and he did not receive the notice regarding the check, which was issued to Muller, Inc., for purchases of brewed beverages on May 14, 2013, and returned for insufficient funds. Mr. DeLong indicated that he learned of the check after being contacted by Bureau officers in July. He indicated that the check was not drawn on the Licensee's account and that he had neither knowledge nor control over the account used to make the purchase. Mr. DeLong also claims to have been unaware of purchases of beer from Muller, Inc., the beer distributor. Mr. DeLong indicated that he utilizes Bell Beverage for malt and brewed beverage purchases. He had no explanation as to why the invoice showed a previous balance from an invoice of April 17, 2013 or whether the products purchased from Mueller were sold at the licensed premises. He stated that the manager, Donna DeLong also had no knowledge of the purchases (N.T. 9-16, 26-29, 32, 57 and Exhibit L-1, L-2 and Exhibit B-4 - Transcript September 25, 2014).

13. Mr. DeLong claims that he did not authorize Bruce Bottomley to issue any checks on behalf of the licensed premises. Mr. DeLong questioned Mr. Bottomley regarding the officer's call and was told by Mr. Bottomley that it was *nothing to worry about*. Mr. DeLong then instructed Mr. Bottomley that he was not to issue any checks. Mr. Bottomley was authorized to make cash purchases for food (N.T. 14-16, 21-22 and 28 - Transcript September 25, 2014).

14. Mr. DeLong was unable to produce the cleaning records at the time he met with the Bureau officer saying that he was unaware that the records had to be maintained. Mr. DeLong stated to the Court that the records were locked up in the basement office and offered records for the courts perusal (N.T. 8-23, 36 and Exhibit L-3 - Transcript September 25, 2014).

15. Mr. DeLong indicated that Mr. Bottomley stopped working for him in January of 2014, but was likely at the premises after that date in that his name appears on mailing return receipts sent to the premises by the Bureau as late as February 24, 2014 (N.T. 45-49 - Transcript September 25, 2014).

<u>CONCLUSIONS OF LAW</u>:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - Licensee, by its servants, agents or employes, issued checks or drafts dated May 14, 2013, 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).

Count No. 2 - On July 8, 2013, Licensee, by its servants, agents or employes, failed to maintain malt or brewed beverage dispensing system cleaning records, in violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12) and Section 5.52 of the Liquor Control Board Regulations, 40 Pa. Code §5.52.

PRIOR RECORD:

Licensee has been licensed since September 13, 2006, and has no record of prior violations.

DISCUSSION:

Count one of the citation charges that Licensee, by its servants, agents or employes, issued a check dated May 14, 2013 in the amount of $530.00 for Invoice No. 374927 to Muller Inc., a beer distributor, in payment for purchases of malt or brewed beverages. The check was dishonored and not paid within ten days from the date of the notice. Mr. Joseph DeLong, one of the owners, asserts that it is unfair that the licensed corporation be penalized for what he claims is the misconduct of his former employee and/or others, acting without Mr. DeLong's knowledge.

An officer from the Bureau went to the premises to conduct an investigation and was directed by the bartender to speak with her *supervisor*, Mr. Bottomley, who she then contacted by phone. Upon learning that Mr. Bottomley was not of record as an owner or manager; the officer contacted Mr. Joseph DeLong and scheduled a meeting and advised Mr. DeLong as to the subject of the meeting, i.e., to discuss the dishonored check and to review records.

Mr. DeLong described Mr. Bottomley as the head night bartender, saying he needed a male presence at night. Mr. DeLong also indicated that Mr. Bottomley was bringing in night entertainment and had authority to purchase small items with cash, such as food. He further claimed that Mr. Bottomley had no authority to write checks for purchases.

On July 8, 2013, Mr. Bottomley met with the Bureau officer, along with Mr. DeLong. Mr. Bottomley signed the inspection report, as the *shift manager*, and wrote the witness statement, indicating the bad check had been paid. Mr. DeLong contends that the dishonored check, written for purchases of alcoholic beverages, was not that of the licensed corporation, JP 1502, Inc., which does business as Brown Ridge Café, located at 1502 Brown Street, Philadelphia, PA. Mr. DeLong insists that Muller, Inc. had no authority to accept a check from Mr. Bottomley and that Mr. Bottomley had no authority to write it. The check was written from the account of BRC. Inc. which are, incidentally, initials for the trade name of the licensed premises, Brown Ridge Café.

The meeting with the Bureau officer, at the very least, reflects Licensee's less than diligent management and oversight of the premises, cloaking Mr. Bottomley with the indicia of authority, if not *actual* authority, to act on behalf of the premises. Mr. Bottomley may have exceeded his actual authority in issuing the check, but if Mr. DeLong was victimized, it was by his lack of attentiveness as an owner and responsible party, and by his failure to have a board approved manager and other reliable persons actually operating the premises.

Prior to July of 2013, when the Bureau officer asked to meet with Mr. DeLong about the bad check, Mr. DeLong claims no prior knowledge that beer was being delivered to the premises by Muller, Inc. and states that he utilizes Bell Beverage. Clearly, this was not the first purchase and delivery of beer to the premises by Muller, Inc., in that the invoice, relative to the dishonored check, references a recent previous invoice, with a balance and a credit issued for what appears to be return of kegs.

Mr. DeLong indicates that the checks drawn on the account of BRC, Inc., were not checks of the Licensee and that he did not authorize Mr. DeLong to make malt or brewed beverage purchases. Even accepting Mr. DeLong's assertions as true, the Court is baffled that when asked whether those products were utilized at the premises, Mr. DeLong claimed not to know. According to Licensee, Donna DeLong, his wife and board approved manager, also had no knowledge of the purchases or checks, although she did not appear or testify. Considering that Mr. DeLong is strictly liable for unlawful activities on the premises, it is only prudent that he knows what is going on at the establishment and to not have been satisfied by Mr. Bottomley telling him not to worry about it and agreeing not to write more checks. That Mr. Bottomley had obtained checks, with BRC, Inc., should have sounded an alarm, if in fact not approved by the owners of the premises. Mr. DeLong claims to have not received notice of the bad check, and complained that he wasn't getting his mail. But, Mr. Bottomley admitted that he had received the notice.

We are left to ponder whether the real issue for the Licensee was that the check bounced creating a problem for the Licensee, and not so much that Mr. Bottomley was making purchases of brewed beverages for the licensed premises. Mr. Bottomley, despite this incident, remained in Licensee's employment until at least February of 2014.

The second count charges that Licensee failed to maintain malt or brewed beverage dispensing system cleaning records. The officer was able to obtain and review all financial records from Mr. Bottomley, but was not able to obtain cleaning records. The Bureau officer testified credibly that Mr. DeLong claimed to not know that he was required to maintain the cleaning records. In Court, Mr. DeLong testified that the records were locked in an office. If in fact the records that Licensee produced in Court were being maintained on the premises, which is highly doubtful, they were not accessible for inspection by the Bureau as is required by the Liquor Code and its regulations.

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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - $300.00.
Count No. 2 - $300.00.

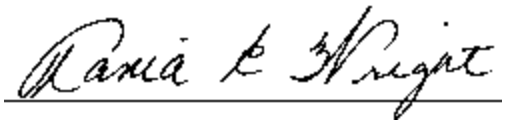
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, JP 1502, Inc., License Number R-AP-SS-EHF-3897, pay a fine of Six Hundred Dollars ($600.00) 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 12TH day of December, 2014.



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.

**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 - Note Citation Number on Check**

---

The fine must be paid by Treasurer's Check, Cashier's Check, Money Order or a check drawn on the account of an attorney, who must be licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless they are certified by your bank.** If you are paying by guaranteed check, please make it 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

**Credit/Debit Cards may be used:** visit www.lcb.state.pa.us and look under LEGAL/Office of ALJ for instructions.

In Re: Citation No. 13-1790
JP 1502, Inc.