

Mailing Date: MAY 05 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-1933
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-482510
	:	
JP 1502, INC.	:	
1502 BROWN ST.	:	PLCB LID - 56963
PHILADELPHIA, PA 19130-2906	:	
	:	
	:	PLCB License No. R-AP-SS-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 30, 2014, 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 Tuesday, April 28, 2015, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

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 employees, issued checks or drafts dated June 27, 2014, 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(2) of the Liquor Code, 47 P.S. §4-493(2), in that on June 27, 2014, Licensee, by its servants, agents or employees, paid for purchases of malt or brewed beverages with other than Licensee's checks, cashier's checks or money orders.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. An officer from the Bureau received information from the Pennsylvania Liquor Control Board concerning one worthless check issued to Muller, Inc., a beer distributor, at the licensed premises for payment of malt or brewed beverages (N.T. 8-10 and Exhibit B-3).

2. On Monday, August 4, 2014, the officer spoke with Danielle Cash at Muller, Inc. regarding the check (N.T. 10- 11).

3. On Tuesday, August 12, 2014, the officer contacted Paul DeLong via telephone, who identified himself as the corporate vice-president. However, records of the Pennsylvania Liquor Control Board indicate that Paul DeLong is the treasurer/secretary. Mr. DeLong stated that his friend Bill Nuemiller was there to help the manager, Marie DeLong, run the day to day operations of the licensed premises. Mr. Nuemiller placed the beer order with Muller, Inc. and wrote a check to pay for the delivery. He further stated that he was not aware that the check was written on other than the corporate account or that it had been returned NSF. However, Mr. DeLong also stated that he reimburses Mr. Nuemiller for purchases he makes for the premises. The officer informed Mr. DeLong that she would like to arrange a meeting to review the bank statements and to take a written statement (N.T. 11-14).

4. On Thursday, August 21, 2014 at 10:30 a.m., the officer met with Mr. Joseph DeLong, the corporate president, and his attorney. Mr. DeLong was unable to provide bank statements related to the check, since the check was not drawn on their corporate bank account. The check was drawn on a bank account in the name of Scoop It Up, LLC., 430 Clayton Road, Williamstown, NJ 08004. Mr. DeLong indicated that he had no knowledge of the corporation (N.T. 14-17 and 112).

5. Mr. DeLong informed the officer that he had allowed Mr. Nuemiller to place beer orders and pay for the deliveries. He claimed to be unaware that the deliveries were paid for with other than corporate checks (N.T. 15-16 and 113-116).

6. Mr. Nuemiller allegedly was to pay for the beer with cash or a corporate check and be reimbursed. Mr. DeLong would reimburse him with a corporate check. Mr. DeLong showed the officer a copy of a check from his corporate account in the amount of \$425.86. Mr. DeLong stated that this check was issued to reimburse Mr. Nuemiller for the \$308.86 paid for a beer invoice and included an additional reimbursement amount of \$125.00 for another service performed at the premises (N.T. 17-21).

7. Mr. DeLong submitted a signed statement indicating that he had no knowledge of the check drawn on a bank account in the name of Scoop It Up, LLC. Mr. DeLong indicated that he had no knowledge of the corporation. He states that by letter dated July 22, 2013, he had notified Muller Inc. that they were only authorized to accept funds from J.P. 1502, Inc. He further stated that the employee, William Nuemiller, was not authorized to issue the check with a different company name. He indicated that he fired Mr. Nuemiller when he found out about the bounced check (N.T. 116 and Exhibits B-4 and B-6).

8. William Conwell is employed as a customer service manager and has been employed by Muller, Inc. in various positions for over nineteen years. After payment of the check in August of 2014, Muller ceased business with the Licensee because of recurring issues regarding bad checks. Muller received a notice and copy of a check from TD Bank indicating a check, dated June 27, 2014, in the amount of \$308.00, had been returned for nonsufficient funds. The check was attached to invoice 514422 and given to Mueller for purchase and delivery of beer to the licensed premises. Check number 1027 indicated that it was drawn on the account of Scoop It Up, a New Jersey company. Mr. Conwell also presented a copy of Western Union Money Order #14-643269598, dated August 25, 2014, in the amount of \$340.86, which represents payment for the returned check in the amount of \$300.86 and the \$40.00 bank fee. The money order was provided by the Licensee. Drivers are not permitted to accept cash for deliveries of brewed beverages (N.T. 46- 66 and Exhibit B-7).

CONCLUSIONS OF LAW:

Count No. 1 - Licensee, by its servants, agents or employes, issued checks or drafts dated June 27, 2014, 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 June 27, 2014, Licensee, by its servants, agents or employes, paid for purchases of malt or brewed beverages with other than Licensee's checks, cashier's checks or money orders, in violation of Section 493(2) of the Liquor Code, 47 P.S. §4-493(2).

PRIOR RECORD:

Licensee has been licensed since September 13, 2006, and has a record of prior violations as follows:

In Re:

Citation No. 13-1790. \$600.00 fine. Licensee suspended for one day and continuing thereafter for failure to timely pay the fine.

1. Issued worthless checks in payment for malt or brewed beverages.
May 14, 2013.
2. Failed to maintain malt or brewed beverage dispensing system cleaning records.
July 8, 2013.

DISCUSSION:

The Licensee testified that they have no knowledge of Scoop It Up, Inc., the company upon which the check was drawn and dishonored. However, there was sufficient evidence to show that the check was provided to Muller Inc. for purchase of beer that was delivered to the licensed premises. Licensee supposedly has a full time manager, but hired a Bill Neumiller and cloaked him with the apparent, if not actual, authority to make purchases on behalf of the licensed premises.

The Licensee had every reason to be aware of what was going on, but failed to properly oversee the operations of this establishment. It is unknown if other purchases were made with other than Licensee's checks, because this one is only at issue because it bounced and was not immediately paid. The Licensee attempts to shift the blame to the distributor for taking a check drawn from other than Brown's Café, because they had supposedly written the distributor and authorized only cash payments. Licensee interpreted his own letter to mean cash and Licensee's own corporate checks. The distributor denied receiving the letter; however, the distributor's drivers are not permitted to take cash for deliveries. Further, there are many instances when the name of the premises and the corporate name of the entity upon which the check is drawn are not the same. Licensee is the responsible party and failed to diligently carry out its duties as a Licensee.

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.

JP 1502, Inc.
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Therefore, penalties shall be assessed as follows:

Count No. 1 - \$400.00.
Count No. 2 - \$400.00.

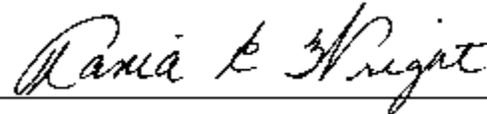
Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, JP 1502, Inc., License Number R-AP-SS-EHF-3897, pay a fine of Eight Hundred Dollars (\$800.00) 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 3RD day of MAY, 2016.



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.

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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

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