

Mailing Date: May 6, 1998

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 96-2691
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W4-150741
	:	
v.	:	
	:	LID - 37527
	:	
KEYSTONE BREWERS INC	:	T/A
PITTSBURGH BREWING CO	:	PLANT
NO. 1 IRON CITY BREWERY	:	3340
LIBERTY AVENUE	:	
PITTSBURGH, PA 15201-1321	:	
ALLEGHENY COUNTY	:	LICENSE NO.
TG-25	:	

**BEFORE:** JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement  
Richard G. Parker, Esquire

For Licensee  
Luther Weaver, III, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on January 23, 1997 by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Keystone Brewers, Inc., t/a Pittsburgh Brewing Co. License Number TG-25 (hereinafter Licensee).

The citation contains three counts.

Count one of the citation charges Licensee with violation of Section 431(d)(2) of the Liquor Code [47 P.S. §4-431(d)(2)], in that on August 13, 1996, Licensee, by its servants, agents or employes, gave distributing rights agreements to more than one importing distributor for designated brands of malt or brewed beverages in the same geographical territory.

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Count two of the citation charges Licensee with violation of Section 492(19) of the Liquor Code [47 P.S. §4-492(19)], in that on August 29, 1996, Licensee, by its servants, agents or employes, cancelled the distributing rights agreement of an importing distributor less than 90 days after written notice of such cancellation had been served and was without consent of the parties to the agreement.

Count three of the citation charges Licensee with violation of Sections 431(b) and 471 of the Liquor Code [47 P.S. §§4-431(b) and 4-471], in that on August 13, 1996, Licensee, by its servants, agents or employes, conspired to circumvent the provisions of Section 431(b) of the Liquor Code.

The investigation which gave rise to the citation began on August 15, 1996 and was completed on November 7, 1996; and notice of the violation was sent to Licensee by Certified Mail on November 21, 1996.

Evidentiary hearings were held on this matter on June 18, July 15 and July 31, 1997 in Pittsburgh, Pennsylvania.

Upon review of the transcript of this hearing, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS ONE, TWO AND THREE

1. Licensee is a corporation whose principal place of business is in Allegheny County, Pennsylvania, and holds Manufacturer License Number TG-25. (N.T., 6/18/97 at 5, 232; 7/15/97 at 246 256, 282-283)

2. Licensee has been an in-state manufacturer of malt and brewed beverages, under several different owners, for approximately 100 years. (N.T. 7/15/97 at 246, 256, 282-283)

3. On June 22, 1980, Act 73 of 1980 amended Section 431 and was effective in 60 days on August 21, 1980. (N.T., 7/15/97 at 306-307 - Exhibit C-15)

4. Prior to August 4, 1980, some but not all of Licensee's territorial agreements with its distributors included language provisions which named the distributors as original or primary suppliers for Licensee's malt beverage products, and provided for at will termination of the agreements. (N.T., 7/15/97 at 277-278, 303-305, 308-309, 312, 364 - Exhibits C-14, C-16, C-17)

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5. On or about August 4, 1980, Licensee issued territorial agreement letters to its wholesale distributors including Iron City Distributing, which named Licensee as the primary or original supplier of its malt beverage products and named the distributors as secondary distributors, and maintained its existing business relationship as nearly as practical while complying with the law. (N.T., 7/15/97 260261, 303-305, 308, 312, 314-315 - Exhibit C-14; 7/31/97 at 377-378)

6. Since 1984, Michael Graham was employed at and a past president of the Licensee until June 30, 1996. (N.T., 7/15/97 at 298-300, 311)

7. Michael Graham was not an officer or employe of importing distributor, Iron City Distributing, which was owned by his family until sold sometime after August 4, 1980. (N.T., 7/15/97 at 299, 302)

8. Between 1984 and 1996, during Michael Graham's tenure as president of Licensee, Licensee was the only designated primary supplier of its products in Pennsylvania. (N.T., 7/15/97 at 311-312)

9. Since August 4, 1980, Licensee has been the primary or original supplier of its malt and brewed beverages within the Commonwealth of Pennsylvania. (N.T., 6/18/97 at 150-153, 159-163, 192193, 201-203, 212, 223, 232-233; 7/15/97 at 249, 253, 255, 282-283)

10. Since November 1995, Licensee has been owned and operated by Joseph Piccirilli. (N.T., 7/15/97 at 245, 282)

11. Shewak Beer Distributorship (hereinafter Shewak) is located in Beaver County, Pennsylvania and holds Importing Distributor License ID-1177. (N.T., 6/18/97 at 10, 55-56)

12. Gelfo Distributor Company, Inc. (hereinafter Gelfo) is located in Beaver County, Pennsylvania and holds Importing Distributor License ID-664. (N.T., 6/18/97 at 58, 102-103)

13. On unknown dates between May 1981 and 1988, Shewak and Gelfo purchased their distribution territories from a portion of territory of importing distributor, Iron City Distributing, which held a territorial agreement letter from Licensee. (N.T. 7/15/97 at 303-304, 307-308, 312-313, 318-319, 328, Exhibit C-14, L-1, 7/31/97 at 377-378, Exhibit C-19)

14. Carl F. D'Atri, t/a Aliquippa Beer Distributor (hereinafter Aliquippa Beer), is located in Beaver County, Pennsylvania and holds Importing Distributor License ID-894. (N.T., 6/18/97 at 107, 110)

15. Penn Beverages (hereinafter Penn Beverage) is located in Beaver County, Pennsylvania and holds Importing Distributor License ID-813. (N.T., 6/18/97 at 193-194 - Exhibit C-7)

16. By letter dated November 15, 1994, Licensee, as primary or original supplier, granted territorial rights to Shewak as a secondary distributor of alcoholic malt beverage products for specified beer brands in the townships and municipalities of Beaver County including Darlington, Big Beaver, South Beaver, Ohioville, Industry, Brighton, Chippewa, North Sewickley, Franklin, Marion, Daugherty, Rochester and New Sewickley. (N.T., 6/18/97 at 11-12, 17, 192-193; 7/15/97 at 247-249 - Exhibit C-5)

17. Under the November 15, 1994 agreement described above in Finding 16, all other distributors and importing distributors purchased Licensee's specified brands from Shewak Beer Distributorship within Shewak's territory. (N.T., 6/18/97 at 11-12, 27-28, 181-183; 7/15/97 at 289)

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18. The November 15, 1994 territorial agreement between Licensee as primary or original supplier and Shewak as secondary distributor provided for immediate termination upon written notice by either party and which had been renewed periodically since 1981. (N.T., 6/18/97 at 12, 26, 30-35, 183184; 7/15/97 at 251, 381-32 - Exhibit L-1 through L-4)

19. Under the November 15, 1994 agreement described in Finding 16 above, Shewak was required to carry a specific amount of inventory, participate in promotional programs, be responsible for overage products, service tavern owners, maintain a sales force and marked delivery vehicles. (N.T., 6/18/97 at 13; 7/15/97 at 287)

20. Under the November 15, 1994 agreement described in Finding 16, Shewak purchased malt and brewed beverages from Licensee at a lower price and marked up the price on resale to another distributor in its territory. (N.T., 6/18/97 at 14-15, 20-21)

21. By letter dated September 10, 1986, Licensee's general sales manager wrote a letter to Shewak advising it that Licensee maintained a direct delivery relationship with 16 Pittsburgh distributorships and no wholesaler was authorized to sell any beer to those distributors without prior approval. (N.T., 6/18/97 at 35-37; 7/15/97 at 252 - Exhibit L-5)

22. At no time did Shewak have an agreement with Licensee in which Shewak was named a primary distributor of Licensee's products. (N.T., 6/18/97 at 40; 7/15/97 at 283, 286-287, 318-320)

23. By letter dated November 15, 1994, Licensee, as primary or original supplier, granted territorial rights to Gelfo as a secondary distributor of alcoholic malt beverage products for specified brands in the specified townships and municipalities of Beaver County including Economy, Harmony, Hopewell, excluding South Heights Distributing. (NT., 6/18/97 at 59-60, 192-193; 7/15/97 at 248-249, 275-276- Exhibit C-8)

24. Under the November 15, 1994 agreement described in Finding 13 above, all other distributors and importing distributors purchased Licensee's specified brands from Gelfo within Gelfo's territory. (N.T., 6/18/97 at 96-97, 145-146, 181-183; 7/15/97 at 289)

25. Under the November 15, 1994 agreement described in Finding 13 above, Gelfo was required to carry a specific amount of inventory and participate in advertising programs. (N.T., 6/18/97 at 99101; 7/15/97 at 287)

26. The November 15, 1994 agreement between Licensee as primary or original supplier and Gelfo as secondary distributor provided for immediate termination upon written notice by either party and which had been renewed periodically since April 14, 1988. (N.T., 6/18/97 at 83-89, 145-146, 183184; 7/15/97 at 251- Exhibits C-8, L-7, L-8, L-9, L-10, L-11)

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27. At no time did Gelfo have an agreement with Licensee in which Gelfo was named a primary distributor of Licensee's products. (N.T., 6/18/97 at 94-95; 7/15/97 at 283, 286-287)

28. Under Case Number 90-2032, mailed July 8, 1991, the Office of Administrative Law Judge sustained a citation against Gelfo as a primary distributor for selling Licensee's malt or brewed products to a restaurant liquor licensee located outside Gelfo's assigned territory. (N.T., 6/18/97 at 63-66, Exhibit C-10, C-11)

29. Licensee was not a party to Case Number 90-2032. (N.T., 6/18/97 at 65-67)

30. By letter dated November 15, 1994, Licensee, as primary or original supplier, granted territorial rights to Aliquippa Beer as a secondary distributor of alcoholic malt beverage products for specified brands in the specified townships and municipalities of Beaver County including Hanover, Greene, Independence, Racoon, Potter and Hopewell excluding the town of South Heights but including South Heights Distributing, 220 Jordan Street, South Heights, and the towns of Georgetown and Shippingport; all of Center Township, and Cresson Township in Allegheny County. (N.T., 6/18/97 at 107-109, 192-193; 7/15/97 at 248-249 - Exhibit C-12)

31. Under the November 15, 1994 agreement described in Finding 30 above, all other distributors and importing distributors purchased Licensee's specified brands from Aliquippa Beer within Aliquippa Beer's territory. (N.T., 6/18/97 at 108-110, 181-183; 7/15/97 at 289)

32. Under the November 15, 1994 agreement described in Finding 30 above, Aliquippa Beer was required to carry a specific amount of inventory and participate in advertising programs. (N.T., 6/18/97 at 111; 7/15/97 at 287)

33. Under the November 15, 1994 agreement described in Finding 30 above, Licensee reserved the right to deliver its beer directly in Aliquippa Beer's assigned territory. (N.T., 6/18/97 at 113)

34. The November 15, 1994 agreement described in Finding 30 above is essentially identical except for brands, to earlier agreements between Licensee and Aliquippa Beer dated August 21, 1991, January 21, 1992 and December 23, 1992 which provided for immediate termination upon written notice by either party. (N.T., 6/18/97 at 113-115, 183-184; 7/15/97 at 251-252, 321-322 - Exhibits L-12, L-13, L-14 and L-15)

35. By letter dated September 10, 1986, Licensee's general sales manager wrote a letter to Aliquippa advising it that Licensee maintained a direct delivery relationship with 16 Pittsburgh distributorships and no wholesaler was authorized to sell any beer to those distributors without prior approval. (N.T., 6/18/97 115-117; 7/15/97 at 252-253, 267 - Exhibit L-16)

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36. By letter dated August 13, 1996, Licensee, as primary or original supplier, granted territorial rights to Penn Beverage as a secondary distributor of alcoholic malt beverage products for specified brands in all of Beaver County. (N.T., 6/18/97 at 17; 7/15/97 at 284-285, 338-339, 345 - Exhibit C-7).

37. Between August 13 and 29, 1996, Licensee directly sold its malt and beer products in Beaver County to Shewak, Gelfo, Aliquippa Beer and Penn Beverage. (By stipulation - N.T., 6/18/97 at 123, 193-195; 7/15/97 at 284-286, 344-345)

38. The territorial agreement letters between Licensee and Shewak, Gelfo, Aliquippa Beer and Penn Beverage did not constitute franchise agreements, did not contain a 90-day notice of termination provision, and provided for immediate termination upon written notice by either party. (N.T., 6/18/97 at 226 - Exhibits C-5, C-7, C-8 and C-12; 7/15/97 at 286)

39. By letter dated August 29, 1996, Licensee terminated the territorial agreement without reason with Shewak dated November 15, 1994 and reacquired its brands effective immediately. (N.T., 6/18/97 at 15-17, 28-29; 7/15/97 at 285-286, 288 - Exhibit C-6)

40. By letter dated August 29, 1996, Licensee terminated the territorial agreement without reason with Gelfo dated November 15, 1994 and reacquired its brands effective immediately. (N.T., 6/18/97 at 59-61; 7/15/97 at 285-286, 288 - Exhibit C-9)

41. By letter dated August 29, 1996, Licensee terminated the territorial agreement without reason with Aliquippa Beer dated November 15, 1994 and reacquired its brands effective immediately. (N.T., 6/18/97 at 109; 7/15/97 at 285-286, 288 - Exhibit C-13)

42. Prior to 1996, Licensee had issued 20 or more 90-day notice of termination letters to its wholesale distributors citing "good cause" for terminating their distribution agreements and allowing the distributors to correct any deficiencies. (N.T., 6/18/97 at 125, 131-132, 136-137, 160-161, 173-175, 225, 228-229)

43. In November 1994, Licensee removed some of its malt beverage brands from a Greensburg Beverage distributor with less than 90 days notice. (N.T., 6/18/97 at 226-228; 7/15/97 at 253-254 - Exhibit L-22)

44. Since before 1980, on occasion, Licensee made direct distribution of its malt beverage products to several distributors, Licensees or special permit holders in Allegheny and Beaver County. (N.T., 6/18/97 at 196-203, 206-207, 211, 232-233; 7/15/97 at 276-278, 314)

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45. On June 20, 1990, Licensee directed an importing distributor, Tony Savatt, Inc., to deliver a keg of beer to Gelfo for delivery to a retail Licensee in Beaver County. (N.T., 7/15/97 at 347, 368-369 - Exhibit C-18)

46. Since the early 1980's, Licensee and an association of its distributors known as "Wholesalers Advisory Board" met to discuss the distributor's concerns including their desire to be named primary distributors of Licensee's products. (N.T., 7/15/97 at 324-325 - Exhibit L-25)

47. On September 4, 1996, the Court of Common Pleas of Beaver County issued a temporary restraining order against Licensee and in favor of Shewak, Gelfo and Aliquippa Beer under which they continued to purchase beer from Licensee in accordance with their November 15, 1994 agreements. (N.T., 6/18/97 at 19, 120-121; 7/15/97 at 285, 296-297, Exhibit L-24)

48. On February 13, 1997, the temporary restraining order was dissolved effective February 28, 1997. (N.T., 6/18/97 at 19, 120-121; 7/15/97 at 296-297, 345 - Exhibit L-24)

49. Since the temporary restraining order was dissolved, Shewak has not been able to purchase malt or brewed beverages directly from Licensee. (N.T., 6/18/97 at 26, 28)

CONCLUSIONS OF LAW:

Counts one, two and three - Dismissed.

DISCUSSION:

Counsels for the Bureau and Licensee submitted Post-Hearing and Supplemental Post-Hearing briefs in this case.

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d 521 (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d 857 (Pa. Cmwlth. 1982).

Section 431 and its subsections and Section 492(19) of the Liquor Code set forth certain licensing and distribution requirements for a manufacturer of malt and brewed beverages and its distributors and importing distributors including giving 90-day notice for termination of territorial agreements for cause and prohibiting overlapping territories. Under Counts One and Two, the Bureau cited Licensee for not following several of these requirements, and under Count Three for allegedly conspiring with Penn Beverage to circumvent the provisions of Section 431(b)<sup>1</sup>. However, the Bureau's case fails under Count One if Licensee is exempted from these requirements under Section 431(d)(5) by naming itself primary or original supplier of its products. Rudolph Rosa, Inc., v. Latrobe Brewing, 500 A.2d 1194 (Pa. Super. 1985). As to Count Two, the Bureau's case brought under Section 492(19) fails if the parties consented in writing to the immediate termination of their territorial agreement without 90 days notice. Also, under Count Three, the Bureau's case fails if it does not show an improper conspiratorial agreement with Penn Beverage to circumvent the provisions of Section 431(b) of the Liquor Code.

COUNT ONE

Subsection 431(d)(5) provides as follows:

The provisions of this subsection shall not apply to Pennsylvania manufacturers whose principal place of business is located in Pennsylvania unless they name or constitute a distributor or importing distributor as a primary or original supplier of their products subsequent to the effective date of this act, or unless such Pennsylvania manufacturers have named or constituted a distributor or importing distributor as a primary or original supplier of their products prior to the effective date of this act, and which status is continuing when this act becomes effective.

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<sup>1</sup> Penn Beverage was cited by the Bureau as a coconspirator under Citation Number 97-0255.

On August 4, 1980, approximately two weeks prior to the effective date of the Act, Licensee issued territorial agreement letters to its wholesale distributors including Iron City Distributing, which named Licensee as the primary or original supplier and its importing distributors as secondary distributors and provided for at will termination of the agreements. This was a change from previous agreements which named its various distributors as original or primary suppliers of Licensee's malt beverage products; however, the provision for at will termination of the agreements remained.

The Bureau argues that the Liquor Code does not authorize Licensee to name itself primary or original supplier of its malt beverage products and that Shewak, Gelfo and Aliquippa Beer were constituted primary suppliers prior to the effective date of the Act, August 21, 1980; therefore, Licensee cannot escape the restrictions of Sections 431(b) of the Liquor Code.

Recently, our Superior Court held that the special definition of "manufacturer" in Section 431(b.1) of the Liquor Code, which provides for survival of all distribution franchise agreements in the sale or transfer of a manufacturer's assets, does not apply to Section 431(d) distribution agreements between manufacturer and importing distributors. Palladinetti v. Penn Distributors, Inc., 695 A.2d 855 (Pa. Super. 1997). After a close review of the record, there is insufficient competent evidence to support a finding that either Shewak, Gelfo or Aliquippa Beer held or are successors in interest to territorial agreements naming them as original or primary suppliers of Licensee's malt beverage products<sup>2</sup>. I also find that the language of Sections 431(b) and 431(d)(5) authorizes Licensee, as a Pennsylvania manufacturer, to name itself as primary supplier of its malt beverage products. I find nothing in these sections which prevent Licensee from so naming itself as primary supplier<sup>3</sup>. Rudolph Rosa, Inc., (*supra*).

Furthermore, the record in this administrative hearing is similar to the record established before the Beaver County Court of Common Pleas in a related injunction matter, Shewak Distributor, Inc. v. Keystone Brewing, No. 11720-1996. Although the parties referred to the transcript of the injunction

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<sup>2</sup> · The general rule in Pennsylvania for administrative hearings is that hearsay evidence, properly objected to, is not competent to support a finding of fact, and that hearsay ordinarily inadmissible may support a finding of fact only if there is no objection and it is corroborated by other competent evidence in the record. A finding based solely on inadmissible hearsay will not stand. Anderson v. Commonwealth Department of Public Welfare, 79 Pa. Cmwlt. 182 A.2d 1167 (1983); Walker v. Unemployment Compensation Board of Review, 27 Pa. Cmwlt. 522, 367 A.2d 366 (1976).

<sup>3</sup> · In Re: Genna, 93 Pa. Cmwlt. 76, 500 A.2d 514 (1985) holds that Section 431(b) recognizes only primary and secondary importing distributors and did not address the question as to whether a Pennsylvania manufacturer may designate itself as the primary or original supplier of its products.

hearing, the transcript was not entered into evidence in this administrative hearing. A copy of the trial court's opinion was entered as Exhibit L-24.

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In Shewak, the plaintiffs (Shewak, Gelfo, and Carl D'Atri, t/a Aliquippa Beer Distributing) sought injunctive relief against Licensee under Section 431(d)(4) of the Liquor Code for Licensee's terminating their November 15, 1994 territorial agreement with them without good cause or 90-day notice, and awarding their territories to Penn Beverage. As in this case in which the Bureau cited Licensee for violating the Liquor Code for the same alleged misconduct, the plaintiffs' underlying theory of liability is that they were constituted as the primary and original suppliers of malt or brewed products in their respective territories, notwithstanding language in their November 15, 1994 territorial agreements that they were secondary distributors. Also, as in this case, the plaintiffs argued that the Superior Court cases of Matt Lamb & Sons v. Schmidt Brewing, 336 Pa. Super 341 (1984) and Savatt v. Latrobe Brewing, 400 Pa. Super 296 (1990) are controlling and require them to be constituted primary suppliers based on their status and Licensee's conduct prior to the August 1980 amendments to the Liquor Code.

On February 13, 1997, the Court of Common Pleas concluded that under the November 15, 1994 agreements, Licensee was the primary supplier of its products and the plaintiffs (Shewak, et al) were secondary and not constituted as primary by Licensee's conduct. As a result, the court dissolved its preliminary injunction effective February 28, 1997. On January 8, 1998, the Superior Court affirmed the Court of Common Pleas decision. 704 A.2d 1108 (Pa. Super. 1998).

The Common Pleas and Superior Court decisions in Shewak are contrary to several Board opinions in out of territory sales cases including BLCE v. Jack B. Stanton, t/a Stantons Beverage Company, Case No. 92-0953. Licensee objected to Stanton being considered because neither Licensee, Shewak, Gelfo nor Aliquippa Beer were parties in that case. In Stanton, the Board reversed Administrative Law Judge Thau's dismissal of a citation brought under Sections 431(b) and 431(e), and found that a territorial agreement, similar to the one in the instant case, between Licensee and Beer City for the sale of its American and American light beers was enforceable under Section 431(b) as against an importing distributor (Stanton) who purchased these brands outside the territorial agreement. The Board analyzed the Stanton case and concluded that Beer City was the "primary" distributor of Pittsburgh Brewing's products notwithstanding language in the territorial agreement that Beer City was the secondary. Stanton's appeal to the Court of Common Pleas of Montgomery County was withdrawn and the case had no appellate court review.

I am following the opinions of the Court of Common Pleas and the Superior Court set forth in

Shewak Distributor, Inc. v. Keystone Brewing (infra)<sup>4</sup>. I have no right to ignore its decision on these issues. Com. v. Ewansik, 520 A.2d 1189 (Pa. Super. 1987). As a result, Count One is dismissed.

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COUNT TWO

Section 492(19) of the Liquor Code provides, in part, that it shall be unlawful “for any manufacturer...to terminate...without good cause, any distributing rights agreement for at least 90 days after written notice...except by written consent of the parties to the agreement...” (emphasis added).

The territorial agreements entered into by Licensee with Gelfo, Shewak, Aliquippa Beer and Penn Beverage included language by which either party could terminate the agreements immediately upon written notice.

“Where parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement.” Keyser v. Margolis, 422 Pa. 553, 559, 223 A.2d 13, 17 (1966). The Court of Common Pleas of Beaver County and the Superior Court found no fraud or undue influence in the record to void these agreements. (Shewak, supra at 1111). As such, Count Two is dismissed.

COUNT THREE

The Bureau charged Licensee with violating Sections 431(b) and 471 of the Liquor Code by conspiring to circumvent the provisions of Section 431(b) of the Liquor Code. The statutory basis of the violation is the “or upon any other sufficient cause shown” language of Section 471.

Section 4-471. Revocation and suspension of licenses; fines.

Upon learning of any violation of this Act or any laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, or of any Regulations of any laws of this Commonwealth, by any licensee within the scope of this Article, his officers, servants, agents or employes, or upon any other sufficient cause shown, the Enforcement Bureau may, within one year from the date of such

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<sup>4</sup>. “Issue preclusion” is in substance that any fact, question or matter in issue and directly adjudicated or necessarily involved in determination of an action before a court of competent jurisdiction in which judgement or decree is rendered on the merits, is conclusively settled by the judgement therein and cannot be relitigated in any future action by parties or privies, either in the same court or a court of concurrent jurisdiction, while the judgement remains unreversed or unvacated by proper authority, regardless of whether the claim or cause of action, purpose or subject matter of the two suits is the same. Palma v. Powers, 295 F. Supp. 924, 933 (D.C. Ill.)

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violation or cause appearing, cite such licensee...to show cause why such license should not be suspended or revoked or a fine imposed, or both...(47 P.S. Section 471). (Emphasis added).

The Bureau did not show that Licensee improperly conspired with Penn Beverage to violate Section 431(b). Therefore, Count Three is dismissed.

ORDER:

IT IS HEREBY ORDERED that Citation Number 96-2691 is DISMISSED.

Dated this 28<sup>th</sup> day of April, 1998.

Robert F. Skwaryk, J. cbm

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