

Mailing Date: March 5, 1998

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 97-1274
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W4-152451
	:	
v.	:	LID - 27578
	:	
MARIEWALLIS INC	:	
T/A ABC BEER CO	:	
2517 WALNUT ST	:	
MCKEESPORT PA 15132-7061	:	
	:	
	:	
ALLEGHEY COUNTY	:	
LICENSE NO. D-3846	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement
Richard G. Parker, Esquire

For Licensee
Non-appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 30, 1997, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Mariewallis, Inc., t/a ABC Beer Co., License Number D-3846 (hereinafter Licensee).

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 August 7, September 12, November 30, December 3, 1996; February 8 and 11, 1997, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The investigation which gave rise to the citation began on October 16, 1997 and was completed on May 20, 1997, and notice of the violation was sent to Licensee by Certified Mail on May 22, 1997. The notice of violation was received by Licensee on May 24, 1997.

An evidentiary hearing was held on this matter on February 4, 1998 in Pittsburgh, Pennsylvania.

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

FINDINGS OF FACT:

1. Licensee is a corporation located in Allegheny County, Pennsylvania and held Distributor Liquor License Number D-3846 during license year ending April 30, 1997. (N.T. 4)
2. On August 7, 1996, Licensee issued a check in the amount of \$1,239.40 to Galli Distributing for the purchase of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in its account. (N.T. 7)
3. On September 12, 1996, Licensee issued a check in the amount of \$3,128.75 to Wilson-McGinley for the purchase of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in its account. (N.T. 7, 11-12)
4. On November 30, 1996, Licensee issued a check in the amount of \$3,708.75 to Greensburg Beverage for the purchase of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in its account. (N.T. 8, 13-14)
5. On December 3, 1996, Licensee issued a check in the amount \$762.80 to Lutheran Distributing for the purchase of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in its account. (N.T. 8, 16)
6. On February 8, 1997, Licensee issued a check in the amount of \$1,933.45 to Greensburg Beverage for the purchase of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in its account. (N.T. 8, 14-15)
7. On February 11, 1997, Licensee issued a check in the amount of \$662.30 to Galli Beer Distributing for the purchase of malt or brewed beverages which was subsequently dishonored by Licensee's bank due to insufficient funds in its account. (N.T. 8)
8. Each of the checks was made good. (N.T. 9-10)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

Initially, Licensee submitted an incomplete Waiver immediately prior to the hearing. The Waiver was admitted into the record Exhibit L-1.

At the hearing, the Bureau's witnesses testified in detail as to the Licensee issuing checks for the purchase of malt or brewed beverages which were dishonored due to insufficient funds in its bank account. Each of the checks was made good.

Section 493(26) of the Liquor Code provides, in part, as follows:

it shall be unlawful -

WORTHLESS CHECKS. -

For any distributor to make, utter, issue, or deliver, or cause to be made, drawn, uttered, issued or delivered, any check, draft or similar order, for the payment of money in payment for any purchase of malt or brewed beverages, when such distributor has not sufficient funds in, or credit with, such bank, banking institution, trust company or other depository, for the payment of such check.

I find the testimony of the witnesses to be credible. As such, the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since November 21, 1985, and has had 12 prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 87-1129. Fine \$500.00. (Importing Distributor License No. ID-1111). Licensee appealed and court reversed Board's Order.

1. As a secondary importing distributor, Licensee sold and/or delivered malt or brewed beverages to licensees located outside the geographical areas assigned by the manufacturers of said products to the primary importing distributors.

Citation No. 88-0125. Fine \$500.00. Waiver of hearing. (Importing Distributor License No. ID-1111).

1. Sold and/or delivered malt or brewed beverages to licensees not located within the geographical area for which distributing rights have been given Licensee by the manufacturers or their primary importing distributors.

Citation No. 88-1486. Fine \$450.00. Waiver of hearing. (Importing Distributor License ID-1111)

1. As a secondary importing distributor, Licensee sold and/or delivered malt or brewed beverages to a licensee located outside the geographical areas assigned by the manufacturers of said products to the primary importing distributor.

Citation No. 90-1781. Fine \$250.00 and one day suspension. Waiver of hearing. (Importing Distributor License ID-1111)

1. Sold malt or brewed beverages on credit.
2. Purchased malt or brewed beverages on credit.
3. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

Citation No. 91-1849. Fine \$300.00 and one day suspension.

1. Delivered malt or brewed beverages in a vehicle not properly lettered. June 18, 1991.
2. Transported malt or brewed beverages in a vehicle not registered with the Pennsylvania Liquor Control Board. June 18, 1991.
3. Transported malt or brewed beverages in a vehicle for which a vehicle identification card had not been obtained. June 18, 1991.

Citation No. 93-0767. Fine \$400.00 and one day suspension. Waiver of hearing..

1. Delivered malt or brewed beverages in a vehicle not properly lettered. March 16, 1993.
2. Transported malt or brewed beverages in a vehicle not registered with the Pennsylvania Liquor Control Board. March 16, 1993.
3. Transported malt or brewed beverages in a vehicle for which a vehicle identification card has not been obtained. March 16, 1993.

Citation No. 93-2130. Fine \$500.00 and three days suspension.

1. Delivered malt or brewed beverages in a vehicle not properly lettered. October 1, 1993.

Citation No. 94-1730 and 94-2405 (Consolidated). Fine \$850.00 and suspension for three consecutive Tuesdays.

1. Failed to properly letter delivery vehicles. June 27, 1994.
2. Issued worthless checks in payment for malt or brewed beverages. On nine dates between March 2 and June 11, 1994.

Citation No. 95-0142. Fine \$300.00 and one day suspension. Waiver of hearing.

1. Issued worthless checks in payment for malt or brewed beverages. On 13 dates between August 9 and December 7, 1994.

Citation No. 95-1107. Fine \$100.00 and one day suspension. Waiver of hearing..

1. Issued worthless checks in payment for malt or brewed beverages. December 10, 1994.

Citation No. 96-0098. Fine \$200.00 and one day suspension.

1. Issued worthless checks in payment for malt or brewed beverages. May 11, 1995.

Citation No. 97-0081. Fine \$100.00 and one day suspension (deferred).

1. Sold malt or brewed beverages on credit. On 32 dates between April 19 and November 11, 1996.
2. Used sales invoices that failed to include all required information. April 1 to December 14, 1996.

Licensee shall be treated as a repeat offender.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or 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.

I take official notice that License No. D-3846 has been revoked with bond forfeiture for license year ending April 30, 1996. Therefore, the only penalty possible in this case is revocation of the license D-3846 for license year ending April 30, 1997 with bond forfeiture.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the Distributor Liquor License No. D-3846, issued to Mariewallis, Inc., t/a ABC Beer Co. be **REVOKED** effective immediately. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

IT IS FURTHER ORDERED that Licensee's bond(s) filed with its application for license year(s) ending April 30, 1997 be **FORFEITED** and collection be made upon said bond(s).

MARIEWALLIS, INC.
CITATION NO. 97-1274

Since the license is inactive, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark that this license has been **REVOKED**. The Licensee's right to renew the license is hereby CANCELLED.

Dated this 25th day of February, 1998.

Robert F. Skwaryk, J.

cbm