

Mailing Date:

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 00-0313  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs.

M.A O'Donnell Assoc. Inc. : License No. R-AP-SS-20912  
T/a Boawmansville Tavern :  
1255 Reading Rd., :  
Bowmansville, PA 17507-0801 :

Counsel for Licensee: John L. Lachall, Esquire  
144 West Market Street  
West Chester, PA 19382

Counsel for Bureau: John H. Pietrazak, Esquire  
PENNSYLVANIA STATE POLICE  
3655 Vartan Way  
Harrisburg, PA 17110

**OPINION**

Pennsylvania State Police, Bureau of Liquor Control Enforcement  
("Bureau") appeals from the Adjudication and Order of Administrative Law  
Judge Felix Thau ("ALJ"), wherein the ALJ dismissed the citation.

The citation charged M.A. O'Donnell Associates, Inc. ("Licensee") with a violation of sections 404 and 471 of the Liquor Code [47 P.S. 4-404 and 4-471], in that on July 12, 1999, at No. 3561-1998, in the County Court of Lancaster County, your stockholder, Michael O'Donnell, pled nolo contendere to indecent assault, Title 18 PA Section 3126(a)(1, 2, 3, 4, 5), and was sentenced to two (2) years probation and a fine of \$100.00, with no contact with the victim.

Pursuant to section 471 of the Liquor Code [47 P.S. §4-471], the appeal in this case must be based solely on the record before the ALJ. Where the decision of the ALJ is based upon substantial evidence, the Board must affirm the decision.

The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion requiring something more than a scintilla creating mere suspicion of the fact to be established. **Johnson vs. Pennsylvania Board of Probation and Parole**, 706 A.2d 903 (Pa. Cmwlth. 1998); **Chapman vs. Pennsylvania Board of Probation and Parole**, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) contends that the ALJ failed to base his adjudication on the substantial evidence of record as well as the case law. The ALJ dismissed the citation because of the statute of limitations, finding that the citation was issued in excess of one year from the date of the conduct giving rise to the nolo contendere plea. In response, the Bureau set forth the argument that the citation was not issued untimely since the status of a licensee as a misdemeanor constitutes a distinct basis for an administrative charge as “other sufficient cause” under the Liquor Code. [47 P.S. 4-471]. The corporate stockholder esteemed it is nolo contendere on July 12, 1999, the Licensee was cited on April 4, 2000.

The Board has reviewed the adjudication and the Bureau’s arguments and concludes that the ALJ’s Adjudication and Order must be reversed.

There is no disagreement as to the facts. The stockholder of the Licensee engaged in conduct on May 16, 1998 that resulted in him entering a plea agreement with the Lancaster County District Attorneys Office. As part of the agreement he entered a plea of nolo contendere/Alford to the charge of indecent assault on July 12, 1999.

On April 4, 2000 the Bureau cited the Licensee as a result of this conviction.

The ALJ argues that the case law bars the Bureau from citing the licensee, that the one-year statute of limitations contained in section 471 has run. [47 P.S. 4-471] The ALJ further argues that the trilogy of Price, Primos Bar, and Pollock<sup>1</sup> prevents imposition of a penalty where there exists an innocent party with equal rights in the license. The first prong is fashioned from **Mallios v. Pennsylvania State Police**, 663 A.2d 1163 (Pa. 1993). In Mallios the Supreme Court found that the phrase “when any other cause appears” means that precisely that. The ALJ argues that only criminal acts themselves, not the plea that arises from the acts is “sufficient cause.”<sup>2</sup>

Clearly the Liquor Code contemplates the proposition that the criminal convictions of a stockholder of a Licensee can constitute a valid basis upon which the license may be cited. Specifically, section 471 makes several references to convictions in the context of enhanced penalties where it reads, “...if the owner or operator of a licensed premise or any

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<sup>1</sup> **Commonwealth v. Price Bar, Inc.**, 201 A.2d 221 (Pa Super. 1964); **Primo’s Bar Inc. v. Commonwealth, Pa. Liquor Control Board**, 409 A.2d 1369 (Pa. Cmwlth. 1979); and **Commonwealth, Pa. Liquor Control Board V. Pollock**, 484 A.2d 206 (Pa. Cmwlth. 1984).

<sup>2</sup> If the Board were to accept that argument then only in instances where the crime was uncovered and adjudicated within one year would the license be subject to citation. Licensees could then manipulate the system by merely postponing sentencing until the one-year had transpired from the date of the unlawful conduct with which they were charged and found guilty of, or plead guilty to avoid a citation.

authorized agent of the owner or operator had been convicted of any violation of the Act of April 14, 1972 (P.L. 233, No. 64), known as the Controlled Substance, Drug, Device and Cosmetic Act, or of 18 Pa.C.S. ss 5902 (relating to prostitution and related offenses) or ss 6301 (relating to corruption of minors), at or relating to the licensed premises, the administrative law judge shall immediately suspend or revoke the license or impose a fine of not less than \$1,000 nor more than \$5,000, or both.” [47 P.S. ss4-471].

The second portion of the ALJ’s argument hinges on the “innocent party defense” as found in the Price, Primo’s Bar, Pollock trilogy. In those cases the innocent parties suffered from the revocation of the license. In the instant case no penalty has been assessed as the citation has been dismissed. Had the penalty in Price, Primo’s Bar, Pollock been a fine or suspension the court may not have felt the need to dismiss the citations. Should the ALJ revoke the license then the Licensee would have cause for taking an appeal.

Based on the foregoing, the decision of the ALJ, which is not supported by substantial evidence, is remanded to the Office of the Administrative Law Judge in order to conduct a hearing on the merits of this case. The appeal of the Bureau, therefore, is granted.

ORDER

The appeal of the Bureau is granted

The decision of the ALJ is reversed

This matter is remanded to the Office of the Administrative Law Judge for hearing on the merits of this case.

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Board Secretary