

Mailing Date: June 1, 2006

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-1225
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

MOY 4, INC. : License No. R-14518
t/a Moy's Cove :
4341 Northern Pike :
Monroeville, PA 15146-1410 :

Counsel for Licensee: James J. Gillespie, Jr., Esquire
1040 Fifth Avenue
Pittsburgh, PA 15219

Counsel for Bureau: Nadia L. Vargo, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
313 Mt. Nebo Road
Pittsburgh, PA 15237-1305

OPINION

Moy 4, Inc. t/a Moy's Cove ("Licensee") appealed from Second Supplemental Order of Administrative Law Judge Roderick Frisk ("ALJ"), wherein the ALJ imposed a penalty of a suspension of the license for one (1) day for failure to pay the fine imposed in the ALJ's original Adjudication and Order.

The citation contained two (2) counts. Count One charged Licensee with violation of section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] in that on March 22 and May 17, 2005, and upon divers other occasions within the past year, Licensee, by its servants, agents, or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age. Count Two alleged that on March 22 and May 17, 2005, and upon divers other occasions within the past year, Licensee, by its servants, agents or employees, permitted one (1) male minor, twenty (20) years of age, to frequent the licensed premises, in violation of section 493(14) of the Liquor Code [47 P.S. § 4-493(14)].

Licensee submitted an Admission, Waiver and Authorization (Form PLCB-1947) (“waiver”) admitting to the violations alleged in the citation, authorizing the ALJ to enter an adjudication and waiving the right to a hearing and the right to appeal the adjudication. Based upon Licensee’s waiver, the ALJ sustained both counts of the citation and, upon concurrence of counsel for the Bureau and counsel for Licensee, imposed a fine in the amount of one thousand six hundred dollars (\$1,600.00), to be paid within

twenty (20) days of the mailing date of the Adjudication and Order, to wit, on or before March 7, 2006, since the mailing date was February 15, 2006.

On April 4, 2006, the ALJ issued a Supplemental Order due to Licensee's failure to pay the fine by March 7, 2006. The ALJ's Supplemental Order assessed a penalty of license suspension for one (1) day beginning at 7:00 a.m. on June 5, 2006 and ending at 7:00 a.m. on June 6, 2006 and continuing thereafter until the fine had been paid.

On April 17, 2006, Licensee paid the fine. On April 21, 2006, the ALJ issued a Second Supplemental Order vacating the previously imposed continuing suspension of the license and limiting the suspension to one (1) day, beginning at 7:00 a.m. on Monday, June 5, 2006 and ending at 7:00 a.m. on Tuesday, June 6, 2006.

On May 19, 2006, Licensee filed timely an appeal to the Pennsylvania Liquor Control Board ("Board") of the ALJ's Second Supplemental Order. 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. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be

such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, Licensee requests that the suspension be reversed. Licensee alleges that its failure to pay the fine in a timely fashion was inadvertent and that its attorney was not given notice of its failure to pay until a suspension had been imposed by the ALJ. Licensee also claims it was not given notice that failure to pay the fine within twenty (20) days could subject it to further penalties, including license suspension.

The Adjudication and Order of the ALJ was clear in its requirement that the fine be paid within twenty (20) days of the mailing date of the adjudication. Licensee does not allege a failure to receive notice of the original adjudication. Section 471(b) of the Liquor Code provides that “[i]n the event the fine is not paid within twenty (20) days of the adjudication, the administrative law judge shall suspend or revoke the license....” [47 P.S. § 4-471(b)]. When Licensee failed to pay the fine imposed within twenty (20) days of the mailing date of the Adjudication and Order, the ALJ complied with the statutory mandate of section 471(b) and imposed a suspension of

Licensee's license. The imposition of an additional penalty of license suspension for failure to pay the fine within the time required does not constitute an error of law or abuse of discretion by the ALJ.¹

Accordingly, the Board finds that substantial evidence exists to support the ALJ's imposition of a penalty of license suspension.²

¹ By submitting the waiver in this matter, Licensee arguably has no right to appeal the ALJ's Second Supplemental Order. Nonetheless, Licensee's issues on appeal have been addressed herein.

² The Board also finds that Licensee's application for a Supersedeas is moot, in that this Opinion and Order is issued before the dates on which Licensee is to serve its suspension.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee's Restaurant Liquor License No. R-14518 be suspended for a period of one (1) day beginning at 7:00 a.m. on Monday, June 5, 2006 and ending at 7:00 a.m. on Tuesday, June 6, 2006.

Licensee is directed on Monday, June 5, 2006 at 7:00 a.m. to place the Notice of Suspension Placard (Form PLCB-1925) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee may remove the Notice of Suspension placard at 7:00 a.m. on Tuesday, June 6, 2006 and return its license to its original location.

Licensee must adhere to all other conditions set forth in the ALJ's Order, Supplemental Order and Second Supplemental Order. Failure to do so shall result in license suspension and/or revocation.

Board Secretary