

Mailing Date: May 24, 2006

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-1310
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

MARIO, INC. : License No. R-1267
267 South 19th Street :
Philadelphia, PA 19103-6250 :

Counsel for Licensee: Edward A. Taraskus, Esquire
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1530 Chestnut Street
Philadelphia, PA 19102

Counsel for Bureau: James E. Dailey, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue
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OPINION

Mario, Inc. ("Licensee") appealed from the Adjudication and Order of Administrative Law Judge David L. Shenkle ("ALJ"), wherein the ALJ sustained the citation and imposed a one hundred dollar (\$100.00) fine and assessed two (2) points against the record of Licensee.

The citation charged Licensee with violation of section 437 of the Liquor Code [47 P.S. § 4-437] and section 5.41 of the Liquor Control Board ("Board") Regulations [40 Pa. Code § 5.41], in that on May 12, 2005, Licensee operated the licensed premises without a valid health permit or license, which was revoked on March 10, 2005.

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).

The record reveals that on March 13, 2006, the ALJ mailed his Adjudication and Order sustaining the citation.

On March 24, 2006, Licensee filed a Request for Reconsideration with the Office of the Administrative Law Judge. (Admin. Notice).

On April 6, 2006, the ALJ issued an Order Upon Reconsideration in which the ALJ denied Licensee's Request for Reconsideration. (Admin. Notice).

On April 11, 2006, Licensee filed a timely appeal from the March 13, 2006 Adjudication and Order of the ALJ. In its appeal, Licensee does not raise any issues, substantive or procedural, with the Order Upon Reconsideration. Accordingly, the Board shall consider the only appealable issue to be whether or not the ALJ committed an error of law or abused his discretion, or if his decision, as set forth in the March 13, 2006 adjudication, was based upon substantial evidence.

On appeal, Licensee contends that there was a lack of substantial evidence to support the citation charge. The Board disagrees.

The Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") and Licensee stipulated to the facts set forth in the Bureau's pre-hearing memorandum. (N.T. 5). Officer T. Cook, a Bureau enforcement officer, conducted a routine inspection of the licensed premises on May 12, 2005. [Ex. B-5]. Officer Cook inspected the licensed areas and found the premises to be operating without a current health permit. [Ex. B-3]. Counsel for Licensee further stipulated to the submission of a Certification

from the City of Philadelphia, Department of Licenses and Inspections which verifies that Licensee's Preparing/Serving Food License expired on April 30, 2005 and the renewal fee was not paid until June 15, 2005. [Exs. B-4, B-5].

Licensee's exhibits further support the fact that the health permit in question expired the last day of April 2005 and was not renewed until June 15, 2005. [Exs. L-1, L-2].

Liquor Code section 437 provides that the licensed premises must meet reasonable sanitary regulations as proscribed by the Board. [47 P.S. § 4-437(a)]. Section 5.41 of the Board's Regulations provides that a licensed premises must "meet all the sanitary requirements for a public eating place in the municipality where the place to be licensed is operated, as provided by statute, ordinance or regulation and that documentary evidence thereof is, and shall at all times be, displayed on the licensed premises." [40 Pa. Code § 5.41(a)].

Licensee clearly violated section 437 of the Liquor Code and section 5.41 of the Board's Regulations by operating the licensed premises on May 12, 2005 without a valid and timely renewed health permit that was displayed.

In its defense, Licensee argues that the City of Philadelphia failed to promptly file and send out renewal forms to Philadelphia licensees. However, Licensee failed to offer any evidence in support of its defense, and without any evidence to refute the certification from the Department of Licenses and Inspections, there is substantial evidence to support the ALJ's decision.

The decision of the ALJ is, therefore, affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee pay the fine in the amount of one hundred dollars (\$100.00) within twenty (20) days of the mailing date of this Order. Failure to do so shall result in license suspension and/or revocation.

It is further hereby ordered that two (2) points are assessed against the record of Licensee, holder of Restaurant Liquor License No. R-1267, as required by section 479(d)(9) of the Liquor Code. [47 P.S. § 4-479(d)(9)].

Licensee must adhere to all other conditions set forth in the ALJ's Orders dated March 13, 2006 and April 6, 2006.

Board Secretary