

Mailing Date: May 24, 2006

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-1365  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

45 RJF, INC. : License No. R-15508  
45 South Third Street :  
Philadelphia, PA 19106-2814 :

Counsel for Licensee: Edward A. Taraskus, Esquire  
Suite 603  
1530 Chestnut Street  
Philadelphia, PA 19102

Counsel for Bureau: James E. Dailey, Esquire  
PENNSYLVANIA STATE POLICE,  
Bureau of Liquor Control Enforcement  
6901 Woodland Avenue  
Philadelphia, PA 19142

OPINION

45 RJF, 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 two hundred dollar (\$200.00) 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 June 1, 2005, Licensee operated the licensed premises without a valid health permit or license.

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 contends that the decision of the ALJ was not based upon substantial evidence. Specifically, Licensee argues in its appeal that there was a lack of substantial evidence to find that Licensee operated the licensed premises without a valid health license and that the ALJ committed

an error of law in concluding that the law requires that the health license be issued in the name of the current owner of the liquor license.

The record reveals that on June 1, 2005, Dave Collins, an officer with the Pennsylvania State Police, Bureau of Liquor Control Enforcement, (“Bureau”) conducted a routine inspection at the licensed premises. (N.T. 6). During that investigation, Officer Collins found that the licensee did not maintain on the licensed premises a current health certificate in the form of a food prep license issued by the City of Philadelphia. (N.T. 6). Upon determining that a current health certificate was not posted, Officer Collins questioned Licensee’s manager, Mr. McMackin, who stated that, “He did not realize that he did not have a health permit.” (N.T. 7). Officer Collins noted the lack of a current health certificate on his routine inspection sheet and had Mr. McMackin sign off on the report.<sup>1</sup> (N.T. 8; Ex. B-3).

On June 21, 2005, Officer Collins sent a memo to Paul C. Danella, Chief of Licensing and Inspection for the City of Philadelphia, seeking to obtain a certification to verify that Licensee did not possess a valid health

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<sup>1</sup> The Department of Licenses and Inspections for the City of Philadelphia notified the Bureau’s enforcement office that it extended the date for filing for extensions of the food prep licenses from June 1, 2005 to June 15, 2005 and the Bureau, according to Officer Collins, was not citing licensees for expired licenses. However, Licensee was cited because it did not possess a food prep license altogether. (N.T. 11-14).

permit on June 1, 2005. (N.T. 9-10; Ex. B-4). Officer Collins never received the certification he had requested. (N.T. 10).

In defense of the averments set forth in the citation, Licensee offered the testimony of Timothy McMackin, assistant manager of the licensed establishment. (N.T. 16-17). Mr. McMackin was present on the day Officer Collins conducted the routine inspection and signed off on the inspection report which noted that Licensee did not have a current health certificate. (N.T. 17, 22-23; Ex. B-3). Mr. McMackin admitted to having problems obtaining a renewal of the health permit which was issued to the previous owner of the business at the location of the licensed premises. (N.T. 18). Mr. McMackin believes that there is a possibility that the health permit for the previous owner, Older Than Dirt Inc., was stuck in with some other documents on the date of the inspection. (N.T. 23). Mr. McMackin did admit that he failed to present a health license of any kind to Officer Collins during his inspection, and also failed to bring a health license issued to Older Than Dirt Inc. which expired April 15, 2005 to the hearing before the ALJ. (N.T. 22-23). Licensee did produce a Food Prep Certificate which was issued on June 2, 2005 in the name of Older Than Dirt Inc. showing the same address as Licensee's premises. [Ex. L-1].

Section 437 of the Liquor Code provides under section (a):

The board shall refuse to grant any licenses unless the application therefor contains the information required by this act, and the premises meet such reasonable sanitary requirements as the board, by regulation, shall prescribe.

[47 P.S. § 4-437(a)].

Section 5.41(a) of the Board's Regulations provides in pertinent part:

- (a) A restaurant, hotel or club catering liquor license or retail dispenser eating place or hotel malt beverage license authorized under the Liquor Code will not be issued, renewed or transferred by the Liquor Control Board for any premises unless the application for the license, renewal or transfer avers that the proper municipal or State authorities have found that the premises to be licensed, or for which an application is filed for a new license or the renewal or transfer of a license, 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 therefore is, and shall at all times be, displayed on the licensed premises.

[40 Pa. Code § 5.41(a)].

Licensee failed to produce documentary evidence, in this matter, that Licensee possessed a current food prep license on June 1, 2005. Licensee's signature on the routine inspection report is a clear admission by Licensee, that on June 1, 2005, there was no current health permit on the premises.

In addition, the fact that the only food prep license produced by Licensee was dated June 2, 2005 is further evidence that Licensee did not take the necessary steps to obtain a renewed food prep license until after Officer Collins' visit on June 1, 2005.

Accordingly, the Board finds that substantial evidence existed to support the ALJ's finding that Licensee operated the licensed premises without a valid health permit or license on June 1, 2005.

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 two hundred dollars (\$200.00) 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-15508, 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 Order dated March 28, 2006.

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Board Secretary