

Mailing Date: February 15, 2006

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-1960
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

UNIVERSITY ENTERPRISES, INC. : License No. R-15936
t/a Penn Ave. :
407 Penn Avenue :
Cresson, PA 16630 :

Representative for Licensee: Jessica Hoover, Manager
407 Penn Avenue
Cresson, PA 16630

Counsel for Bureau: Richard G. Parker, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
313 Mount Nebo Road
Pittsburgh, PA 15237-1305

OPINION

University Enterprises, Inc. t/a Penn Ave. ("Licensee") appealed from the Opinion and Order Upon Licensee's Application for Reconsideration of Administrative Law Judge Felix Thau ("ALJ"), wherein the ALJ granted the application in part, issued a one hundred ten (110)-day suspension of the

Sunday sales permit, and reduced the total fine to nine hundred seventy-five dollars (\$975.00).

The citation upon which this appeal originated contained two (2) counts. The first count of the citation charged Licensee with violation of section 493(12) of the Liquor Code [47 P.S. § 4-493(12)], in that Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding May 12, 2005.

The second count of the citation charged Licensee with violation of section 406(a)(3) of the Liquor Code [47 P.S. § 4-406(a)(3)] and sections 11.172 and 11.176 of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code §§ 11.172, 11.176] in that, on November 21, 2004, Licensee, by its servants, agents or employees, furnished false information regarding sales of food and beverages when applying for a Sunday sales permit.

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 ALJ made false statements and incorrect calculations relative to the penalty imposed.

A review of the record in this matter reveals that in response to the citation, Licensee submitted an Admission, Waiver and Authorization form ("waiver") to the Office of Administrative Law Judge on October 14, 2005. (Admin. Notice). The waiver was signed by Jessica Hoover, Licensee's manager. (Admin. Notice). The waiver did not contain any notations relative to mitigating factors for the ALJ to consider when imposing his penalty in this case. (Admin. Notice).

On November 22, 2005, the ALJ mailed an Adjudication and Order in which he sustained the charges in the citation and setting forth a penalty of a five hundred dollar (\$500.00) fine for the first count, and a five hundred dollar (\$500.00) fine, revocation of Licensee's Sunday sales permit effective

January 9, 2006 and suspension of Licensee's right to apply for a new Sunday sales permit for a period of nine (9) months effective January 9, 2006 for the second count.

On December 7, 2005, the Office of Administrative Law Judge received Licensee's Motion for Reconsideration seeking disqualification of the ALJ and reconsideration of the imposed penalties. On December 23, 2005, the ALJ issued an Opinion and Order Upon Licensee's Application for Reconsideration, wherein the ALJ granted the application in part, reducing the fine to nine hundred and seventy-five dollars (\$975.00), and ordering only suspension of Licensee's Sunday sales permit for a period of one hundred ten (110) days.

On January 10, 2006, Licensee filed the subject appeal to the ALJ's Opinion and Order Upon Licensee's Application for Reconsideration.

Licensee's appeal must be dismissed. When Licensee's manager signed and had notarized the Statement of Waiver, Admission and Authorization, she (1) acknowledged receipt of the Bureau's citation, (2) admitted to the violations charged in the citation; (3) waived Licensee's right to a hearing; (4) authorized the ALJ to enter an adjudication based on a summary of facts and prior citation history; (5) understood the possible penalty that could be

imposed by the ALJ, including a fine from fifty dollars (\$50.00) to one thousand dollars (\$1,000.00), and/or suspension or revocation of the license and/or Sunday sales permit incidental to the license; and (6) waived any right to appeal the adjudication.

Because Licensee's representative executed the Statement of Waiver, Admission and Authorization, she waived Licensee's right to appeal the substance of the violation and the penalties imposed. See Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Wilner, 687 A.2d 1216 (Pa. Cmwlth. 1997); Pennsylvania Liquor Control Bd. v. Dentici, 117 Pa. Cmwlth. 70, 542 A.2d 229 (1988).

Because Licensee waived its right to appeal, the appeal must be dismissed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid the fine in the amount of nine hundred and seventy-five dollars (\$975.00).

It is further ordered that Licensee's Sunday Sales Permit No. SS-15936 be suspended for a period of one hundred ten (110) days beginning at 7:00 a.m. on Monday, March 6, 2006 and ending at 7:00 a.m. on Saturday, June 24, 2006. Licensee is directed to place the enclosed label over the Sunday sales portion of its license on or before the effective date of said suspension.

Licensee must adhere to all conditions as set forth in the ALJ's December 22, 2005 Opinion and Order Upon Licensee's Application for Reconsideration.

Board Secretary