

Mailing Date: October 17, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 05-2197
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	:	
vs.	:	
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FALLS BENEFICIAL ASSOCIATION 460 North 2 <sup>nd</sup> Street PHILADELPHIA, PA 19123-4210	:	License No. CC-1421
	:	
	:	

Counsel for Licensee: Edward B. McHugh, Esquire  
Two Greenwood Square, Suite 450  
3331 Street Road  
Bensalem, PA 19020

Counsel for Bureau: Erik Shmukler, Esquire  
PENNSYLVANIA STATE POLICE,  
Bureau of Liquor Control Enforcement  
6901 Woodland Avenue, Third Floor  
Philadelphia, PA 19142

OPINION

Falls Beneficial Association (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Tania Wright (“ALJ”), wherein the ALJ sustained the citation, imposed a fine of five hundred dollars (\$500.00), and a one (1)-day license suspension.

The citation charged that, on May 7 and September 9, 2005, Licensee, by its servants, agents or employees, violated sections 401(b) and 406(a)(1) of the Liquor Code [47 P.S. §§ 4-401(b), 4-406(a)(1)], by selling alcoholic beverages to nonmembers.

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 her discretion, or if her 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).

Licensee contends on appeal that the ALJ abused her discretion, committed an error of law and/or made a decision not supported by substantial evidence in finding that Licensee violated sections 401(b) and 406(a)(1) of the Liquor Code. [47 P.S. §§ 4-401(b), 4-406(a)(1)].

An examination of the record reveals that Bureau Officer Collins arrived at the licensed premises at 10:30 p.m. on May 7, 2005. (N.T. 6-7). He was met by two (2) doormen, one of whom searched him and the other asked for identification. (N.T. 7, 12). He was told it was "Asian night." (N.T. 7). He was then directed to a woman to whom he paid a ten dollar (\$10.00) cover charge, and he received a blue wristband. (N.T. 7). He signed an attendance list with a fictitious name, but used his real identification. (N.T. 12-14, 16-17, 36). He proceeded to the bar and purchased a Corona beer for three dollars (\$3.00). (N.T. 7, 21). He did not see any food or other indications of a catered event. (N.T. 7-8, 22). He left at 11:00 p.m. (N.T. 9, 20-21).

On September 9, 2005 at 11:30 p.m., Officer Collins returned to the licensed premises with Bureau Officer Burns. (N.T. 9, 23). They were met by a doorman who checked their identifications and gave them purple wristbands. (N.T. 9, 25-26). After paying a fifteen dollar (\$15.00) cover fee, they were admitted, despite telling the doorman that they were not with any of the three (3) parties occurring that night. (N.T. 9-11, 23, 25-26). Officer Collins purchased a Smirnoff cooler for six dollars (\$6.00) and a Bud Light beer for (\$3.00). (N.T. 10, 23-24). Again, there was no food on

the premises, despite the presence of eighty (80) to one hundred (100) patrons. (N.T. 10). On neither occasion was Officer Collins asked by the bartender before being served if he was a member of a group. (N.T. 11). On both occasions, Officer Collins used his own Pennsylvania driver's license to gain access to the premises. (N.T. 12-13, 17, 24). The officers departed on September 9, 2005, just before midnight. (N.T. 23).

Bureau Officer Keisling went to the licensed premises on August 17, 2005 at 6:00 p.m. to conduct a routine inspection. (N.T. 29-31, 34, 42). In the course of that inspection, he reviewed the catering records and found no record of any catered event for May 7, 2005. (N.T. 30, 35, 45). He also reviewed the attendance records (sign-in sheets) for that date, and found Officer Collins fictitious name on the list of entrants. (N.T. 31-32, 41, 44-45). Officer Keisling also went to the premises on September 9, 2005, waited until Officer Collins and Burns, who were working undercover, left the premises, and then identified himself to Licensee. (N.T. 31-32). Licensee presented no testimony or evidence in its defense.

Section 401(b) of the Liquor Code [47 P.S. § 4-401(b)] provides that:

The board may issue to any club which caters to groups of non-members, either privately or for functions, a catering license, and the board shall, by its rules and regulations, define what constitutes catering under this subsection except that any club which is issued a catering license shall not be prohibited from catering on Sundays during the hours which the club may lawfully serve liquor, malt or brewed beverages.

Section 406 (a)(1) of the Liquor Code [47 P.S. § 4-406(a)(1)] provides in pertinent part that:

Every hotel, restaurant or club liquor license may sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the hotel or restaurant habitually used for the serving of food to guests or patrons. . . and in the case of hotels, to guests, and in the case of clubs, to members, in their private rooms in the hotel or club. No club licensee nor its officers, agents or employes, or other than one holding a catering license, shall sell any liquor or malt or brewed beverages to any person except a member of the club.

Based on this record, the Board agrees with the ALJ's determination that Licensee clearly sold alcoholic beverages to a nonmember of the club on May 7 and September 9, 2005. Officer Collins was not a member of the club on either occasion. He entered the club, presented his own identification, was admitted after paying a cover charge, went to the bar, and ordered, paid for, and received alcoholic beverages. On one of the dates, he

and his fellow officer even told the doorman that they were not part of any group that was using the premises on that evening. Thus, because the officers were not members or guests at a catered event, they should not have been sold alcoholic beverages under sections 401(b) and 406(a)(1) of the Liquor Code. [47 P.S. §§ 4-401(b), 406(a)(1)]. Therefore, the Board cannot say that the ALJ abused her discretion or committed an error of law; further, her decision was clearly supported by substantial evidence. Therefore, the ALJ's decision is affirmed.

## ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee pay a fine in the amount of five hundred dollars (\$500.00). Failure to pay this fine within twenty (20) days of the mailing date of this Order will result in a license suspension and for revocation.

It is further ordered that License No. CC-1421, belonging to Falls Beneficial Association, be suspended for a period of one (1) day beginning at 7:00 a.m. on Monday, November 26, 2007 and ending at 7:00 a.m. on Tuesday, November 27, 2007.

Licensee is directed on Monday, November 26, 2007 at 7:00 a.m. to place a notice of suspension placard (Form No. PLCB-1925) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside the licensed premises, and to remove the liquor license from the wall and place it in a secure location.

Licensee must adhere to all other terms and conditions of the ALJ's Order dated July 31, 2007.

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Board Secretary