

Mailing Date: November 20, 2006

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-0298X  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

6108 CARLISLE PIKE : License No. R-17150  
RESTAURANT, LLC :  
6108 Carlisle Pike, Suite 108-112 :  
Mechanicsburg, PA 17050-5243 :

Counsel for Ex-Parte (before ALJ)  
Licensee: David J. Thomas, Pro Se (on appeal)  
Licensee's Sole Corporate Officer/Manager

Counsel for Bureau: Thomas M. Ballaron, Esquire  
PENNSYLVANIA STATE POLICE,  
Bureau of Liquor Control Enforcement  
3655 Vartan Way  
Harrisburg, PA 17110

OPINION

The subject licensee, 6108 Carlisle Pike Restaurant, LLC. ("Licensee"),  
appealed from the Adjudication and Order of Administrative Law Judge Felix  
Thau ("ALJ"), wherein the ALJ sustained the citation and imposed a seven  
hundred dollar (\$700.00) fine.

The citation charged that Licensee violated section 493(26) of the Liquor Code [47 P.S. § 4-493(26)], in that Licensee, by its servants, agents or employees, issued checks or drafts dated November 22, 2005, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

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).

Licensee's sole corporate officer contends on appeal that based upon information he received from counsel for the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"), Tom Ballaron, he thought

the August 1, 2006 hearing was to be continued and that the ALJ would advise him of a new hearing date. Therefore, Licensee did not appear for the hearing. In essence, Licensee's sole corporate officer contends that he was denied an opportunity to offer a defense to the charge and/or evidence in mitigation because he was not advised of the fact that the Bureau's Motion for Continuance was denied.

A hearing was scheduled in this matter before the ALJ on August 1, 2006. Proper notice of the hearing was given. (N.T. 7). A review of the record from the hearing revealed that the Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on December 14, 2005. (Exhibits C-1, C-2; N.T. 12). According to the docket, Attorney Ballaron filed a Motion for Continuance dated July 25, 2006 for the August 1<sup>st</sup> hearing with the Office of Administrative Law Judge on July 26, 2006. (Admin. Notice). The Motion was denied by the ALJ on July 26, 2006. (Admin. Notice). The e-mail offered into evidence at the hearing regarding the disposition of the Motion states as follows:

07-26-06 – Judge Thau denied the Bureau's request for continuance of the hearing scheduled for August 1, 2006 at 1:00 p.m., in Harrisburg. Atty. Ballaron

notified of same. Licensee not represented by counsel.

(Ex. C-7). The hearing was then held on August 1, 2006.

Licensee alleges that Attorney Ballaron informed him<sup>1</sup> by phone on or about July 29, 2006 that he was going to apply for a continuance since the Bureau's Enforcement officer was unable to attend the hearing. Licensee further states that Mr. Ballaron told him that the ALJ would notify him of the new hearing date. Licensee claims that the next notice it received from the ALJ was the adjudication.

The Bureau, in its response to the appeal, agrees that Licensee's assertions regarding these pre-trial matters are correct but argues that it is the responsibility of the ALJ, and not the Bureau, to notify Licensee of the dispositions of motions.

The Board agrees with the Bureau. Section 33.31 of the Rules of Administrative Practice and Procedure provides, in relevant part, that:

Orders, notices and other documents originating with an agency, including forms of agency action...shall be served by the office of the agency by mail...by mailing a copy thereof to the person to be served....

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<sup>1</sup> While it is unclear from the appeal, it appears that Licensee's principal corporate officer, Dave Thomas, was the recipient of Mr. Ballaron's phone call.

[1 Pa. Code § 33.31]. There is nothing in the General Rules of Administrative Practice and Procedure or the regulations governing practice and procedure before the Office of Administrative Law Judge that requires a party to notify another party of the ALJ's decision or ruling on a motion.

While a reasonable person, especially one learned in the law, would assume that a hearing was not continued if it received no further notice or ruling following a motion for continuance, this case is exacerbated by the alleged representations made by the Bureau's counsel to Licensee. Further complicating this matter is the apparent lack of written or verbal notice to Licensee of the ALJ's ruling refusing the Bureau's Motion for Continuance. However, these are merely assumptions on the part of the Board and not supported by evidence. Therefore, in the interest of justice, the Board remands this matter back to the ALJ to hold a hearing and create a record as to whether an administrative breakdown occurred such as to warrant granting Licensee another hearing on the merits.

ORDER

This matter is remanded back to the ALJ in order to hold a hearing as to whether an administrative breakdown occurred such as to warrant granting Licensee another hearing on the merits of this case.

Jurisdiction is relinquished.

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Board Secretary