

Mailing Date: March 21, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-0624
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

L.F.C., INCORPORATED : License No. R-12516
4043 Lancaster Avenue :
Philadelphia, PA 19104-1753 :

Counsel for Licensee: Edward A. Taraskus, Esquire
1315 Walnut Street, Suite 1002
Philadelphia, PA 19107

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

OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) appealed from the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ dismissed the citation.

The citation charged that, on December 28, 2005, L.F.C., Incorporated (“Licensee”), by its servants, agents or employees, violated

section 437 of the Liquor Code [47 P.S. § 4-437] and section 5.41 of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 5.41] by operating its licensed establishment without a valid health permit or license, which was revoked on November 21, 2005.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).

On appeal, the Bureau contends that the ALJ committed an error of law by placing an enormous and additional burden on the Bureau to prove that Licensee was afforded due process when the Philadelphia Department of Licenses and Inspections (L&I) revoked Licensee's health permit. Further,

the Bureau argues that there is no authority in then Liquor Code or case law requiring the Bureau to re-litigate the revocation of Licensee's health permit.

A review of the record reveals that Bureau Officer Christopher Keisling conducted an investigation of the premises pursuant to a complaint received from L&I that Licensee was operating, although its food preparation permit had been revoked. (N.T. 6, 9-10). Officer Keisling visited the licensed premises, along with Bureau Officer David Collins, on December 28, 2005 at approximately 2:15 p.m. (N.T. 6, 21). During his visit to the licensed premises on December 28, 2005, Officer Collins observed Licensee to be open and in operation selling alcoholic beverages. (N.T. 6-7). Officer Collins purchased a twelve (12)-ounce bottle of Corona beer before departing the premises on December 28, 2005. (N.T. 5-7).

Officer Keisling then entered the premises, conducted a routine inspection, and observed a valid health permit posted at the premises. (N.T. 20-21, 25). Officer Keisling, as a follow-up to the open inspection, requested verification from L&I concerning the status of Licensee's health permit for the date of December 28, 2005. (N.T. 22-23). Officer Keisling received a Certification/Attestation from L&I verifying that "there was no

valid Preparing/Serving Food License issued to the establishment on December 28, 2005.” (N.T. 23-24; Ex. B-4).

The Bureau introduced a letter dated November 21, 2005 from L&I to Licensee stating Licensee’s Food Preparing/Serving Licenses “are revoked for failure to file and/or pay delinquent City Business Taxes.” (N.T. 16-17, 33-34; Ex. B-3).

Licensee contended that it held a valid Preparing/Serving Food License on December 28, 2005. (N.T. 31). Licensee’s secretary, Florence Furman, stated that Licensee was not aware of any actions by the City of Philadelphia to revoke its license or otherwise to have it cease its operations. (N.T. 31-34, 41). Ms. Furman stated that she did not recall receiving the revocation notice letter dated November 21, 2005, which was properly addressed to Licensee and copied to the Bureau. (N.T. 41, 43; Ex. B-3). She stated that the Preparing/Serving Food License is now current, due to a payment plan for Licensee’s business taxes. (N.T. 37, 39).

The Board has reviewed the record with the Bureau’s objections in mind.

Licensee was charged with violating section 437 of the Liquor Code [47 P.S. § 4-437] and section 5.41 of the Board’s Regulations [40 Pa.

Code § 5.41]. Section 437 of the Liquor Code [47 P.S. § 4-437] provides that the licensed premises must meet the reasonable sanitary regulations prescribed by the Board. Section 5.41 of the Board's Regulations [40 Pa. Code § 5.41] provides that 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."

The Bureau satisfied the elements of the charges set forth in the citation. The Bureau proved that Licensee was open and in operation selling alcoholic beverages on December 28, 2005, that its Preparing/Serving Food License (which was hanging on the wall and appeared to be valid) had been revoked by L&I on November 21, 2005 and, by admission of a Certification and Attestation from L&I, that Licensee's health permit was not valid on December 28, 2005.

In his Adjudication, the ALJ dismissed the citation, finding that the Bureau failed to establish the fundamental principles of due process associated with the L&I's revocation of Licensee's health permit. Specifically, the ALJ

dismissed the citation because the Bureau could not prove that the November 21, 2005 notice was, in fact, mailed to Licensee.

The Board finds that there is no requirement set forth in the Liquor Code or case law that requires the Bureau to prove, as an element of the offense to a violation of section 437 of the Liquor Code and section 5.41 of the Board's Regulations, that Licensee was afforded due process in the underlying municipal action revoking Licensee's health permit. The only due process that needs to be demonstrated to the ALJ, if raised by Licensee, was whether the Bureau in the ALJ's administrative proceedings provided sufficient notice to Licensee of its charges. The Commonwealth is given wide latitude in the generality of its charges and, as long as the Bureau references the proper statutory and regulatory provision, and puts the Licensee on notice that a particular activity is being challenged as illegal, due process will be satisfied and a violation will be sustained if there is a sufficient factual basis to support the charge. BLCE v. Grimouldo Castrechini and Roas Castrechini, t/a Aldo's Place, Case No. 87-2864.

The Bureau should not be required to re-litigate the revocation of Licensee's health permit before the ALJ. There is a separate administrative process for Licensee to challenge L&I regarding the health permit. This

separate process is outside the preview of the Bureau's citation process. The Bureau has proved its case that Licensee did not possess a valid health license on the date in question and Licensee produced no evidence to the contrary.

Based on the foregoing, the decision of the ALJ is reversed and remanded to the Office of the Administrative Law Judge for further proceedings in accordance with the Board's determination. The appeal of the Bureau is, therefore, granted.

ORDER

The decision of the ALJ is reversed.

The appeal of the Bureau is sustained.

It is hereby ordered that this matter be remanded to the Office of Administrative Law Judge to determine a penalty consistent with this Opinion.

Board Secretary