

Mailing Date: September 5, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-0897
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

8919 RIDGE, INC. : License No. R-9151
8919 Ridge Avenue :
Philadelphia, PA 19128-2028 :

Counsel for Licensee: John J. McCreesh, III, Esquire
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Upper Darby, PA 19082

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PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue, 3rd Floor
Philadelphia, PA 19142

OPINION

8919 Ridge, Inc. ("Licensee") appeals the Supplemental Order Upon Remand of Administrative Law Judge David L. Shenkle ("ALJ"), wherein the ALJ reinstated the fine against Licensee.

The citation in this case charged that, on March 9, 2006, Licensee, by its servants, agents or employees, violated section 407 of the Liquor Code [47 P.S. § 4-407], by selling malt or brewed beverages for consumption off-premises.

On March 1, 2007, the ALJ ordered the citation dismissed on the basis that the statute upon which it is based has been determined to be unconstitutional. The Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") appealed the Opinion and Order of the ALJ to the Board. By Opinion and Order mailed on May 23, 2007, the Board reversed and remanded the case to the ALJ for imposition of an appropriate penalty. The ALJ reinstated the citation, imposed a fine in the amount of fifty dollars (\$50.00), and assessed one (1) point against the license. Licensee now appeals the Supplemental Order Upon Remand.

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 penalty is improper and the Supplemental Order of the ALJ is void because of the controlling legal authority of USA Deli, Inc., which states that Act 39 adjudications violate due process of law under the Pennsylvania Constitution and Fourteenth Amendment of the United States Constitution.

The sole issue on appeal, however, is the ALJ's imposition of the penalty in this case. The imposition of penalties is the exclusive prerogative of the ALJ. The Board may not dispute penalties which are within the parameters set forth in section 471 of the Liquor Code. [47 P.S. § 4-471]. For violations sustained by the ALJ, penalties may include license suspension or revocation and/or fines ranging from fifty (\$50.00) to one thousand dollars (\$1,000.00). [47 P.S. § 4-471(b)]. In addition, under section 479(c)(1) of the Liquor Code, the Board shall, by regulation, assign points ranging on a scale of one to five for violations set forth in this act and its

regulations.¹ [47 P.S. § 4-479(c)(1)]. In the instant case, the penalties are within the range prescribed in the Liquor Code and Board regulations.

Based upon the foregoing, ALJ's Supplemental Order Upon Remand is affirmed.

¹ Pursuant to 47 P.S. § 483 the point system expired on June 30, 2007. However, in the instant case, the citation occurred before the point system expired and therefore, the issuance of a point is proper.

ORDER

The ALJ's Supplemental Order Upon Remand is affirmed.

Licensee's appeal of the ALJ's Supplemental Order Upon Remand is dismissed.

It is hereby ordered that Licensee pay the fine of fifty dollars (\$50.00). Failure to pay the fine within twenty (20) days of the mailing date of this Order will result in license suspension and/or revocation.

It is further ordered that one (1) point is hereby assessed against the record of Licensee pursuant to 40 Pa. Code § 3.122(d).

Licensee must adhere to all other conditions set forth in the ALJ's Supplemental Order Upon Remand dated June 18, 2007.

Board Secretary