

Mailing Date: May 9, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-1070
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

MCW, INC. : License No. H-894
t/a Allegheny House :
253-255 Allegheny Street :
Jersey Shore, PA 17740-1422 :

Counsel for Licensee: Robert Gahr, Esquire
270 West Third Street
Williamsport, PA 17701

Counsel for Bureau: Andrew J. Lovette, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
150 Choate Circle
Montoursville, PA 17754

OPINION

MCW, Inc. t/a Allegheny House (“Licensee”) appealed from the Second Supplemental Order of Administrative Law Judge Daniel T. Flaherty (“ALJ”), wherein the ALJ revoked the subject license effective February 20, 2007.

The citation charged that, on March 26, 2006, Licensee, by its servants, agents or employees, violated section 5.32(a) of the Liquor Control Board's ("Board") Regulations [40 Pa. Code § 5.32(a)] by using, or permitting to be used on the inside (or outside) of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

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).

A review of the record in this matter reveals that a Notice of Violation letter dated April 14, 2006 was sent certified mail to Licensee's address of record, 253-255 Allegheny Street, Jersey Shore, Pennsylvania, but was

returned May 5, 2006 as “unclaimed.” (N.T. 4-6; Exs. C-1, C-2). The citation, however, was issued to Licensee on May 11, 2006 at its address of record, 253-255 Allegheny Street, Jersey Shore, Pennsylvania. (Admin. Notice). The citation was received at that address, was signed for by Licensee’s president, Daren Weaver, and the certified mailing return receipt card was returned May 18, 2006. (N.T. 4-6; Exs. C-3, C-4). The citation hearing notice dated July 7, 2006 was also sent to Licensee’s address of record, 253-255 Allegheny Street, Jersey Shore, Pennsylvania, via certified and first class mail. (N.T. 4-5; Admin. Notice). The hearing notice was not returned, yet Licensee failed to appear at the hearing before the ALJ. (Admin. Notice).

On October 26, 2006, the ALJ mailed its Adjudication and Order to Licensee’s address of record, 253-255 Allegheny Street, Jersey Shore, Pennsylvania, wherein the ALJ imposed a fine of five hundred dollars (\$500.00). (Admin. Notice). The Order provided that, “[i]n the event the . . . fine is not paid within 20 days from the mailing date of this Order, Licensee’s license shall be suspended or revoked.” (Admin. Notice).

On December 8, 2006, the fine having not been paid, the ALJ mailed a Supplemental Order imposing a one (1)-day license suspension, beginning

on February 2, 2006 and continuing thereafter until the fine was paid. (Admin. Notice). The Supplemental Order was mailed to Licensee's address of record, 253-255 Allegheny Street, Jersey Shore, Pennsylvania. (Admin. Notice). The Supplemental Order provided that if "the fine of \$500.00 has not been paid within 60 days of the mailing date of this Order," the penalty would be reevaluated and revocation of the license considered. (Admin. Notice).

On February 20, 2007, the ALJ mailed a Second Supplemental Order to Licensee's address of record, 253-255 Allegheny Street, Jersey Shore, Pennsylvania. (Admin. Notice). The Second Supplemental Order acknowledged that the sixty (60) days had elapsed, and that the fine had not yet been paid. (Admin. Notice). The ALJ, therefore, ordered that the license be revoked effective February 20, 2007, the mailing date of the Supplemental Order. (Admin. Notice).

Licensee's counsel filed an appeal with the Board on March 16, 2007, stating that Licensee's business is not operating as a licensed establishment, and that a Notice of Suspension has been posted. Licensee stated that a transfer of the license is pending, having been filed on February 14, 2007, prior to the Second Supplemental Order being mailed. Finally, Licensee

acknowledged that it is willing and able to pay the fine of five hundred (\$500.00) dollars within five (5) business days.

In as much as section 17.21(b)(2) of the Board's Regulations [40 Pa. Code § 17.21(b)(2)] sets forth that appeals from decisions of the ALJ shall be filed or postmarked within thirty (30) calendar days of the mailing date of the adjudication, Licensee's appeal must be considered untimely as an appeal of the ALJ's Adjudication and Order issued on October 26, 2006. However, Licensee appears to have fashioned its appeal as an appeal from the Second Supplemental Order. As the ALJ's Second Supplemental Order revoking the license was mailed on February 20, 2007, Licensee's appeal dated March 16, 2007 is deemed timely.

The circumstances set forth in Licensee's appeal fail to in any way substantiate an error of law or abuse of discretion by the ALJ in revoking the subject license. Notwithstanding the fact that Licensee provides no reasons for its failure to pay the fine within the timeframes set forth in the ALJ's initial Order and Supplemental Order, the imposition of penalties for violations of the Liquor Code and the Regulations promulgated thereunder specifically prescribed in section 471 of the Liquor Code [47 P.S. § 4-471] is the exclusive prerogative of the ALJ. Section 471(b) provides that, upon a

finding of a violation of the type found in this case, the ALJ shall suspend or revoke a license or impose a fine of not less than fifty (\$50.00) or more than one thousand dollars (\$1,000.00), or both. [47 P.S. § 4-471(b)]. “In the event the fine is not paid within twenty days of the adjudication, the administrative law judge shall suspend or revoke the license, notifying the licensee by registered mail addressed to the licensed premises.” [47 P.S. § 4-471(b)].

In the instant case, the ALJ imposed a fine of five hundred dollars (\$500.00) after a hearing at which Licensee failed to appear. Licensee failed to pay the fine imposed despite two (2) subsequent orders from the ALJ to do so. The ALJ ultimately revoked Licensee’s license for failure to pay the fine more than one hundred twenty (120) days after the fine was imposed. This penalty falls within the requirements of Liquor Code section 471. Because the Board has no authority to disturb penalties that are within the parameters set forth in the Liquor Code, the decision of the ALJ is affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee's Hotel License No. H-894 be REVOKED effective at 7:00 a.m. on Monday, June 18, 2007. Any Wholesale Liquor Purchase Permit card or discount card issued in connection with the subject license is hereby CANCELLED.

Licensee must adhere to all conditions set forth in the ALJ's Second Supplemental Order dated February 12, 2007.

Board Secretary