

Mailing Date: April 18, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-1583C  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

MOONLIGHT CORPORATION : License No. R-1843  
4528-30-32 Lancaster Avenue :  
Philadelphia, PA 19131 :

Counsel for Edward A. Taraskus, Esquire  
Licensee: 1315 Walnut Street, Suite 1002  
Philadelphia, PA 19107-4721

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

OPINION

Moonlight Corporation (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ sustained the citation, imposed a one thousand dollar (\$1,000.00) fine, ordered compliance with the Pennsylvania Liquor Control Board’s (Board)

Responsible Alcohol Management Program (“RAMP”), and assessed five (5) points against the record of Licensee.

The citation charged that, on March 9, 2006, Licensee, by its servants, agents or employees, violated section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

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 decision of the ALJ was not based upon substantial evidence. Specifically, Licensee contends that the

Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) failed to send Licensee a Notice of Violation Letter as required by section 471(b) of the Liquor Code [47 P.S. § 4-471(b)]. Licensee further contends that the point system, as enacted by Act 239 of 2004 and amended by Act 39 of 2005 [47 P.S. § 4-479] is unconstitutional because it violates the due process and equal protection provisions of the United States Constitution.

The record reveals that on March 9, 2006, a nineteen (19)-year-old male minor, whose date of birth is January 31, 1987, visited the licensed premises at approximately 10:00 p.m. (N.T. 9-13, 50-51). The minor was present in conjunction with the Bureau’s Age Compliance Check Program. (N.T. 15-17). He was accompanied by Bureau Officers Frank Spera and Larry Redmond. (N.T. 18-20, 24). After entering the premises, the male minor went to the counter and requested a forty (40)-ounce bottle of Colt 45 beer to go. (N.T. 13). A male clerk gave the minor the requested beer and completed the sales transaction without asking the minor for any identification. (N.T. 13-15). The minor was carrying his Pennsylvania driver’s license at the time. (N.T. 20).

The minor departed the premises with the beer purchased from Licensee’s premises, and gave it to Officer Spera. (N.T. 14-15). After

securing the beer purchased by the male minor, Officer Spera went inside the licensed premises and spoke to the store clerk, identified as Yusang Pak, advising him that Licensee was found to be non-compliant during the Age Compliance Check, and that Licensee would be receiving a written notification of the non-compliance within ten (10) days. (N.T. 24-25).

The record reveals that the Bureau sent a Notification of Non-Compliance to Licensee at the licensed premises, by certified mail-return receipt requested, on March 10, 2006. (N.T. 25, 35-36, 38-51; Ex. B-1). The Notice alleged the same violation as that charged in the citation. (N.T. 51; Ex. B-1).

The testimony of Licensee's president, Kyung Moon, was not clear, but it appears that he did not see the Notification of Non-Compliance. (N.T. 61-63; Ex. B-1). He did, however, receive the citation. (N.T. 62-63; Ex. B-2). Mr. Moon stated that Licensee never allows sales to underage patrons. (N.T. 63, 65). Mr. Moon attended RAMP four (4) years ago. (N.T. 64). Mr. Pak attended RAMP on January 10, 2006. (N.T. 64-65; Admin. Notice). Licensee has Declaration of Age cards, and it is researching the best identification scanning device to purchase. (N.T. 66-67).

Licensee's appeal to the Board contends that the Bureau failed to send Licensee proper notice of violation as set forth in section 471(b) of the Liquor Code. Inasmuch as the notice requirement associated with Age Compliance Checks is specified in section 6310(c) of the Pennsylvania Crimes Code [18 Pa. C.S.A. § 6310(c)], Licensee's contention is without merit. Crimes Code section 6310(c)(3) provides that, "[t]he Pennsylvania State Police shall promulgate regulations prescribing the manner in which compliance checks are to be performed. Compliance checks under this subsection shall be conducted in a manner consistent with the regulations." [18 Pa. C.S.A. § 6310(c)(3)].

In accordance with the guidelines set forth in section 6310(c)(3) of the Crimes Code, the Bureau's regulations require that a Bureau officer will be responsible for insuring notification is made of the results of the age compliance check to the Board-approved manager or person in charge of the licensed premises. [Id.]. If a licensed premises is not in compliance, immediate verbal notification will be provided, followed by written notification within ten (10) working days. [37 Pa. Code § 23.23(1)].

The Bureau has sufficiently established that the requirements of 37 Pa. Code § 23.23 were met through the testimony of Officer Spera and the admission of its Exhibit B-1. Officer Spera gave Licensee's clerk verbal notice of Licensee's non-compliance on March 9, 2006, and Exhibit B-1 establishes that the Notification of Non-Compliance was sent to Licensee on March 10, 2006 by the Bureau. The Bureau's actions not only met the requirements of the Bureau's regulations pertaining to compliance checks but, by all accounts, would also meet the criteria for issuance of a Notice of Violation letter, as required by section 471(a) of the Liquor Code [47 P.S. § 4-471(a)].

In its appeal, Licensee also contends the unconstitutionality of the point system set forth in section 479 of the Liquor Code [47 P.S. § 4-479]. The Board is unable to address these assertions with respect to the constitutional issue raised by Licensee, as an administrative agency has no jurisdiction to consider a challenge to the validity of the statutes or regulations which enable it. Smolow v. Cmwlth., Dept. of Revenue, 419 Pa. Cmwlth. 327, 547 A.2d 478, 481 (1988); Feingold v. Cmwlth., State Board of Chiropractic, 130 Pa. Cmwlth. 602, 568 A.2d 1365 (1990).

Based upon the foregoing, the ALJ's decision in the matter is affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid the fine in the amount of one thousand dollars (\$1,000.00).

It is hereby ordered that Licensee shall comply with the requirements set forth in section 471.1 of the Liquor Code [47 P.S. § 4-471.1] pertaining to Responsible Alcohol Management and receive certification of same within ninety (90) days of the mailing date of this Order. Licensee is further ordered to remain in compliance for one (1) year from the date such certification is issued.

It is further ordered that five (5) points are assessed against the record of Licensee's Restaurant Liquor License No. R-1843, as required by section 479(b)(1) of the Liquor Code [47 P.S. § 4-479(b)(1)].

Licensee must adhere to all conditions set forth in the ALJ's Order dated January 10, 2007.

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Board Secretary