

Mailing Date: February 26, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-1721  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

LA TIERRA DE CARIBE, INC. : License No. R-7472  
119 East Tioga Street :  
Philadelphia, PA 19134-1040 :

Counsel for Licensee: John J. McCreesh, III, ESQUIRE  
McCREESH, McCREESH, McCREESH &  
CANNON  
7053 Terminal Square  
Upper Darby, PA 19082

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

OPINION

La Tierra De Caribe, Inc. ("Licensee") appealed from the Adjudication and Order of Administrative Law Judge Tania E. Wright ("ALJ"), wherein the ALJ sustained the citation and revoked the license.

The citation charged that, on June 5 and 6, 2006, Licensee, by its servants, agents or employees, violated section 15.62(a) of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 15.62(a)], by failing to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

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/her discretion, or if his/her 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 avers on appeal that the ALJ's findings of fact were not supported by substantial evidence.

The parties stipulated to the facts presented in the pre-hearing memorandum of the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"). (N.T. 5; Ex. B-3). As a result of the ALJ sustaining a charge relative to Citation No. 05-1425, the subject license was suspended beginning on June 5, 2006, and ending at such time as Licensee paid the fine. (Admin. Notice).

On June 5, 2006 at approximately 3:15 p.m., Bureau Officer J. Bernesky arrived at the licensed premises to perform a suspension check. (Ex. B-3). The premises was closed; however, there was no Notice of Suspension placard posted anywhere on the premises. (Ex. B-3). Officer Bernesky departed the area at approximately 3:30 p.m. (Ex. B-3).

On June 6, 2006 at approximately 3:15 p.m., Officer Bernesky again visited the premises in order to perform a suspension check. (Ex. B-3). Again, he found the premises closed with no Notice of Suspension placard posted anywhere on the premises. (Ex. B-3). Officer Bernesky departed the area at approximately 3:30 p.m. (Ex. B-3).

The Board takes administrative notice of its files which reveal that the license in question was subsequently revoked pursuant to an Adjudication and Order issued for Citation No. 05-1425. (Admin. Notice).

Section 15.62(a) provides that

[i]n the case of a suspension of a license, the Order of the Administrative Law Judge shall direct the licensee to post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises, a notice of the suspension in the form and size and containing the provisions the Office of Administrative Law Judge may require. The notice shall remain posted during the entire period of suspension.

[40 Pa. Code § 15.62(a)]. There is undisputed evidence that on June 5 and June 6, 2006, during a time that it was mandated to do so, Licensee failed to post a Notice of Suspension in a conspicuous place on the outside of its premises.

Based upon the foregoing, 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 Restaurant Liquor License No. R-7472 remains revoked as of December 21, 2007.

Licensee must adhere to all conditions set forth in the ALJ's Order issued December 21, 2007.

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Board Secretary