

Mailing Date: April 23, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-2179
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

DNJ ENTERPRISES, INC. : License No. R-10214
t/a Eddie's Café :
1100 Morton Avenue :
Chester, PA 19013-6331 :

Counsel for Licensee: Hae Yeon Baik, Esquire
2333 Fairmount Avenue
Philadelphia, PA 19130

Counsel for Bureau: James E. Dailey, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
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OPINION

DNJ Enterprises, Inc. t/a Eddie's Cafe ("Licensee") appealed from the Third Supplemental Order of Administrative Law Judge Tania E. Wright ("ALJ"), wherein the ALJ revoked the license.

The first count of the citation charged that, on March 9, 2006, Licensee, by its servants, agents or employees, violated sections 471 and

493(31) of the Liquor Code [47 P.S. §§ 4-471, 4-493(13)] and section 780-101, et seq., of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act [35 P.S. § 780-101 et seq.], by aiding, abetting or engaging in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitting the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

The second count of the citation charged that, on January 14, 2006, Licensee, by its servants, agents or employees, violated sections 471 and 493(31) of the Liquor Code [47 P.S. §§ 4-471, 4-493(13)] and section 780-101, et seq., of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act [35 P.S. § 780-101 et seq.], by possessing a controlled substance on the licensed premises.

The third count of the citation charged that, on May 6, 2006, Licensee, by its servants, agents or employees, violated section 493(14) of the Liquor [47 P.S. § 4-493(14)], by permitting five (5) male minors and four (4) female minors, eighteen (18) to twenty (20) years of age, to frequent the licensed premises.

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).

The record reveals that an administrative hearing was held on March 27, 2007. On July 3, 2007, the ALJ issued an Adjudication and Order sustaining the citation and imposing a fine in the amount of four thousand dollars (\$4,000.00), compliance with the Board's Responsible Alcohol Management Program ("RAMP"), and a sixty (60) day suspension of the license. (Admin. Notice). The ALJ's Order stated that, if the fine was not paid within twenty (20) days from the mailing date of the Order, the license shall be suspended or revoked. (Admin. Notice).

On August 28, 2007, since the fine had not been paid, the ALJ issued a Supplemental Order imposing an additional one (1)-day license suspension to continue thereafter until the fine was paid. (Admin. Notice). The Order

further stated that, if the fine was not paid within sixty (60) days from the mailing date of the Order (i.e., October 29, 2007), the suspension would be reevaluated and revocation of the license would be considered.¹ (Admin. Notice).

On October 31, 2007, the ALJ issued a Second Supplemental Order stating that the RAMP compliance requirement was deferred pending renewal of the license. (Admin. Notice). The Order further stated that, if the fine was not paid within sixty (60) days of the mailing date of the Order, (i.e., December 31, 2007), revocation of the license would be considered. (Admin. Notice).

On February 11, 2008, the ALJ issued a Third Supplemental Order acknowledging the license expired on November 30, 2006 and was not renewed, and that the fine remained unpaid. (Admin. Notice). Accordingly, the ALJ ordered revocation of the license effective February 25, 2008. (Admin. Notice).

On February 26, 2008, an appeal from the Third Supplemental Order was filed on behalf of Licensee. In its appeal, Licensee states that it now has a prospective buyer for the license, Ko Kwang Han, of Elkins Park,

¹ In its Supplemental Order, the ALJ took administrative notice that the license expired on November 30, 2006 and had not been renewed as of August 27, 2007.

Pennsylvania, who will pay the fine if he purchases the license. According to Licensee, Mr. Han is the former owner of a corporate license which held its license in good standing for many years. Licensee requests that the revocation of the license be cancelled pending the possible purchase of the license by Mr. Han, and the payment of the delinquent fine.

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 within the exclusive prerogative of the ALJ. Section 471(b) provides that, upon a finding of violations of the type found in this case, the ALJ shall suspend or revoke a license or impose a fine of not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000.00), or both as to the first and second counts of the citation, and impose a fine of not less than one thousand dollars (\$1,000.00) or more than five thousand dollars (\$5,000.00), or both as to the third count. [47 P.S. § 4-471(b)]. Liquor Code section 471(b) further provides that, “[i]n 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.” [Id.]

In the instant case, the ALJ imposed a fine of four thousand dollars (\$4,000.00). Licensee failed to pay the fine imposed despite two (2) subsequent orders from the ALJ. The ALJ's Supplemental Order issued August 28, 2007 and the Second Supplemental Order issued October 31, 2007 clearly stated the possibility for license revocation for failure to pay the fine within the time prescribed. The Orders clearly set forth what would occur should the fine remain unpaid beyond sixty (60) days from their issuance dates. By virtue of the issuance of the Second Supplemental Order, the time within which the fine was due was extended from October 29, 2007 to December 31, 2007, thereby giving Licensee additional time in which to pay it. Licensee does not claim that it did not receive adequate notice of the possibility of losing its license. The ALJ ultimately revoked Licensee's license for failure to pay the fine more than seven (7) months after the fine was imposed. This penalty falls within the requirements of 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 Restaurant Liquor License No. R-10214 be revoked effective at 7:00 a.m. on February 25, 2008.

Licensee must adhere to all conditions set forth in the ALJ's Orders in this matter.

Board Secretary