

MAILING DATE: November 13, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-2421X  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :  
ENFORCEMENT :

vs. :

SGHETTI'S, INC. :

t/a Sghetti's :

& Lounge :

106 East North Street :

New Castle, PA 16101-3736 :

License No. R-14407

Counsel for Appellant:

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Bureau of Liquor Control Enforcement  
313 Mount Nebo Road  
Pittsburgh, PA 15237-1305

OPINION

Sghetti's, Inc. ("Licensee") appealed from an Order of Administrative Law Judge Robert F. Skwaryk ("ALJ"), wherein the ALJ revoked Licensee's liquor license for failure to pay a fine.

The citation charged Licensee with violation of section 493(26) of the Liquor Code [47 P.S. § 4-493(26)] on July 11 and August 18, 2006, in that Licensee, by its servants, agents or employees, made payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

A review of the record in this matter reveals that the subject license was submitted to the Board for safekeeping on January 23, 2007. (Admin. Notice). On February 8, 2007, Licensee submitted an Admission, Waiver and Authorization form ("waiver") to the Office of Administrative Law Judge. (Admin. Notice). The waiver was signed by Eugene D. Razzano, Licensee's President, and authorized the ALJ to impose a penalty against Licensee. (Admin. Notice). The waiver did not contain any mitigating factors for the ALJ to consider when imposing the penalty in this case. (Admin. Notice).

On March 5, 2007, the ALJ mailed an Adjudication and Order sustaining the citation, and imposing a four hundred dollar (\$400.00) fine.

(Admin. Notice). The ALJ's 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). The Adjudication and Order was mailed to Licensee's place of business. (Admin. Notice).

On May 10, 2007, the fine having not been paid, the ALJ mailed a Supplemental Order imposing a one (1)-day license suspension to continue thereafter until Licensee paid the fine.<sup>1</sup> (Admin. Notice). The Order further stated that, in the event the fine was not paid within sixty (60) days from the mailing date of May 10, 2007, the suspension would be reevaluated, and revocation of the license would be considered. (Admin. Notice). The Supplemental Order was mailed to Licensee's place of business. (Admin. Notice).

On August 31, 2007, the ALJ mailed a Second Supplemental Order acknowledging that the sixty (60)-day period had elapsed, and that Licensee had failed to pay the four hundred dollar (\$400.00) fine. (Admin. Notice). Accordingly, the ALJ ordered revocation of the license, effective October 1, 2007. (Admin. Notice). The Second Supplemental Order was mailed to Licensee's place of business. (Admin. Notice).

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<sup>1</sup> The suspension period imposed by the May 10, 2007 Order was deferred pending reactivation of Licensee's license, which was placed in safekeeping with the Board on January 23, 2007. (Admin. Notice).

On October 1, 2007, Licensee filed an appeal with the Pennsylvania Liquor Control Board (“Board”). Licensee argues that there was a lack of substantial evidence that Licensee was aware of the existence of the fine and/or its failure to pay the fine. Licensee contends that notice of the fine and Licensee’s failure to pay the fine was transmitted to Licensee’s accountant, but not to Licensee.

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 the decision was not based upon substantial evidence. The Commonwealth Court has 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 fails to specify the particular Order from which he is appealing. Therefore, we shall address his appeal with reference to the Adjudication and Order, the Supplemental Order, and the Second Supplemental Order.

An appeal of the Adjudication and Order, dated March 5, 2007, must fail. When Licensee's President signed and had notarized the waiver, he: 1) acknowledged receipt of the Bureau's citation; 2) admitted to the violations charged in the citation; 3) waived Licensee's right to a hearing; 4) authorized the ALJ to enter an adjudication based on a summary of facts and prior citation history; 5) understood the possible penalty that could be imposed by the ALJ, including a fine from fifty dollars (\$50.00) to one thousand dollars (\$1,000.00), and/or suspension or revocation of the license and/or Sunday sales permit incidental to the license; and 6) waived any right to appeal the adjudication.

By executing the waiver, Licensee's President waived Licensee's right to appeal the substance of the violation and the penalty imposed. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Wilner, 687 A.2d 1216 (Pa. Cmwlth. 1997); Pennsylvania Liquor Control Bd. v. Dentici, 117 Pa. Cmwlth. 70, 542 A.2d 229 (1988).

Furthermore, section 471 of the Liquor Code [47 P.S. § 4-471] expressly provides that appeals to the Board from a decision of the ALJ must be filed within thirty (30) days of the mailing date of the ALJ's decision. The filing deadline for an appeal from the ALJ's Adjudication and Order was

April 4, 2007. However, Licensee's appeal was not filed until October 1, 2007. Therefore, because Licensee waived his right to appeal, and because Licensee's appeal was untimely, an appeal of the Adjudication and Order must fail.

An appeal of the Supplemental Order, dated May 10, 2007, must also fail. The filing deadline for an appeal from the ALJ's Supplemental Order was June 9, 2007. Again, because Licensee's appeal was not filed until October 1, 2007, an appeal of the Supplemental Order must fail.

An appeal of the Second Supplemental Order, dated August 31, 2007, must fail as well. The filing deadline for an appeal from the ALJ's Second Supplemental Order was September 30, 2007. Again, Licensee's appeal was not filed until October 1, 2007. Therefore, an appeal of the Second Supplemental Order must also fail.

The appellate courts in Pennsylvania have held that delay in filing an appeal is excusable if: 1) it was caused by extraordinary circumstances involving fraud or breakdown in the court's operation or non-negligent conduct of the appellant, appellant's attorney or his/her staff; 2) the appeal is filed within a short time after appellant or his counsel learns of and has the opportunity to address the untimeliness; 3) the time period which elapses is

of very short duration; and 4) appellee is not prejudiced by the delay. Cook v. Unemployment Compensation Bd. of Review, 671 A.2d at ~~1130~~, 1131 (Pa. 1996); J.C. v. Pennsylvania Department of Public Welfare, 720 A.2d 193 (Pa. Cmwlt. 1998).

Licensee's appeal was filed only one (1) day after the deadline to file an appeal from the ALJ's Second Supplemental Order. In considering applying the standards set forth in the Cook case, the Board finds that Licensee ~~did not~~ adequately satisfies the second and third factors of the Cook criteria.

However, Licensee has not offered any extraordinary circumstances involving fraud or breakdown of the court's operation or non-negligent conduct of Licensee, Licensee's attorney, or Licensee's staff. Therefore, ~~which caused a non-negligent failure on the part of Licensee, Appellant or their representatives to file a timely appeal.~~ he circumstances set forth by Licensee as to the late filing of his appeal are not ~~fail to sufficiently to~~ meet the first factor of the Cook criteria.

Even if Licensee were entitled to an appeal nunc pro tunc, Licensee's appeal issue is without merit. The ALJ was acting within his authority when he imposed a four hundred dollar (\$400.00) fine, imposed a one (1)-day suspension for failure to pay the fine, and revoked Licensee's license for

failure to pay the fine. As noted above, the Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if the decision was not based upon substantial evidence.

Licensee contends there was a lack of substantial evidence that Licensee had notice of the fine and/or Licensee's failure to pay the fine. However, Citation No. 06-2421X, to which Licensee responded by filing a waiver, the Adjudication and Order, Supplemental Order, and Second Supplemental Order, were all mailed to Licensee's place of business at 106 East North Street, New Castle, Pennsylvania 16101-3736. Moreover, the instant appeal, filed by Licensee, indicates that Licensee's place of business is located at 106 East North Street, New Castle, Pennsylvania 16101-3736. Substantial evidence existed for the ALJ to find that Licensee received notice of the Adjudication and Order and Supplemental Order, and yet failed to pay the fine. Therefore, Licensee's appeal was not only untimely, but also without merit. Accordingly, the appeal must be dismissed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee's Restaurant Liquor License No. R-14407 remains revoked as of October 1, 2007.

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Board Secretary