

Mailing Date: September 5, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-2734X  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

NORTHAMPTON ALEHOUSE : License No. R-8462  
INVESTORS, INC. :  
475 East Northampton Street :  
Wilkes-Barre, PA 18702-6325 :

Counsel for Licensee: Michael McLaughlin, President

Counsel for Bureau: Craig A. Strong, Esquire  
PENNSYLVANIA STATE POLICE,  
Bureau of Liquor Control Enforcement  
8320 Schantz Road, Second Floor  
Breinigsville, PA 18031

OPINION

Northampton Alehouse Investors, Inc. ("Licensee") appealed from the Adjudication and Order of Administrative Law Judge Daniel T. Flaherty ("ALJ"), wherein the ALJ revoked the license.

The citation charged that Licensee, by its servants, agents or employees, violated section 493(26) of the Liquor Code [47 P.S. § 4-493(26)] by issuing checks or drafts dated September 15, 2006, in 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.

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, on April 11, 2007, the ALJ mailed an Adjudication and Order, sustaining the citation and imposing revocation, as the license had already been revoked for failure to pay a fine.<sup>1</sup> (Admin. Notice).

---

<sup>1</sup> By Second Supplemental Order issued on February 20, 2007 against Licensee pursuant to Citation No. 06-1096X, the subject license was revoked effective February 20, 2007. (Admin. Notice).

On May 21, 2007, Licensee submitted a money order in the amount of two hundred dollars (\$200.00) for the suggested fine that resulted from issuance of the instant citation. (Admin. Notice).

Licensee was notified by a certified letter from the Office of the Administrative Law Judge, dated May 22, 2007, that the check submitted in payment of the fine for Citation No. 06-2734X was being returned because the citation did not have a fine imposed, but rather, the adjudication for Citation No. 06-2734X revoked the license since it was previously revoked under Citation No. 06-1096X. (Admin. Notice).

On July 12, 2007, Licensee filed an appeal from the ALJ's Adjudication and Order for the instant citation, providing the reasons for the delay. According to the appeal, Licensee's sole corporate principal and shareholder, Michael McLaughlin, took a job in Houston, Texas in December of 2006. He closed the licensed premises in January of 2007. Mr. McLaughlin stated that, during the hectic process of relocating from Pennsylvania to Texas, he overlooked paying the one hundred and fifty dollar (\$150.00) fine. Licensee now wishes to sell its license. (Admin. Notice).

Section 471 of the Liquor Code 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. [47 P.S. § 4-471]. The filing deadline for this appeal from the ALJ's Adjudication and Order, pursuant to section 471, was May 11, 2007. Accordingly, Licensee's appeal was sixty-two (62) days late. (Admin. Notice).

The appellate courts in Pennsylvania have held that the 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 1130, 1131 (Pa. 1996); J.C. v. Pennsylvania Dept. of Public Welfare, 720 A.2d 193 (Pa. Cmwlth. 1998).

Licensee's sole corporate principal, Michael McLaughlin, closed the licensed business, relocated from Scranton, Pennsylvania to Houston, Texas, and inadvertently overlooked paying the fine for Citation No. 06-1096X. By the time Mr. McLaughlin responded to the instant matter, the license had already been revoked.

Licensee has not set forth circumstances surrounding the lateness of this appeal which suggest fraud or breakdown in the operation of the OALJ, nor has it alleged that the appeal was late because of non-negligent conduct by Licensee or its attorney. Rather, Licensee offers a short narrative of events taking place during the period relevant to the citation history, emphasizing that, during that period, Licensee's principal relocated his family to Texas and closed the licensed business.

Notwithstanding the explanations offered for Licensee's failure to pay the fine for Citation No. 06-1096X in a timely manner, Licensee has failed to address the primary issue regarding the lateness of this appeal to the Board. In fact, Licensee has not provided any specific reason for its failure to file the appeal of the subject citation in a timely manner. There is no need, therefore, for the Board to address the other Cook factors in determining this appeal nunc pro tunc.

Under the circumstances, the Board is without authority to entertain Licensee's appeal as it was untimely filed. Therefore, the appeal is 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. 8462 remains revoked as of February 20, 2007.

Licensee must adhere to all conditions set forth in the ALJ's Order dated April 3, 2007.

---

Board Secretary