

Mailing Date: September 5, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-2904
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

HARRISBURG FUDD, LLC : License No. R-10194
t/a Fuddruckers :
421 Friendship Road :
Harrisburg, PA 17111-1204 :

Counsel for Licensee: Collin Spencer, Pro Se
Member/Steward

Counsel for Bureau: Andrew J. Lovette, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
3655 Vartan Way
Harrisburg, PA 17110

OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) appealed from the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ dismissed the citation.

The citation charged that, on November 11, 2006, Licensee, by its servants, agents or employees violated section 13.102(a) of the Pennsylvania Liquor Control Board’s (“Board”) Regulations [40 Pa. Code § 13.102(a)]

by discounting the price of alcoholic beverages for a period or periods other than a consecutive period of time not to exceed two (2) hours in a business day.

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).

It is the Bureau's contention on appeal that the ALJ committed an error of law by interpreting section 13.102(a) of the Board's Regulations to allow Licensee's pricing scheme to be a lawful one. At the hearing before the ALJ, the Bureau and Licensee stipulated to a summary of the facts. (N.T. 5). The record reveals that, on November 11, 2006, Licensee had a business practice of selling twelve (12)-ounce bottles of domestic beer for three dollars and

twenty-five cents (\$3.25). (N.T. 7-8). At the same time, Licensee offered the same domestic bottle of beer for one dollar (\$1.00) if purchased with an entrée from Licensee's menu. (N.T. 8-10). This pricing of the beer was offered at all times during the operation of the business. (N.T. 9).

On appeal, the Bureau argues that the pricing scheme implemented by Licensee constitutes a price discount that was offered for a period of time exceeding two (2) hours in violation of Board Regulation section 13.102(a).

Section 13.102(a) of the Board's Regulations provides, in pertinent part, that "[r]etail licensees may discount the price of alcoholic beverages for a consecutive period of time not to exceed 2 hours in a business day" [40 Pa. Code § 13.102(a)].

In the instant case, the fact that Licensee is selling the same twelve (12)-ounce bottle of domestic beer at two (2) distinct prices continuously during its operation is in direct conflict with the permissible two (2)-hour only discount pricing criteria set forth in section 13.102(a) of the Board's Regulations. In order for Licensee's pricing scheme to meet the permissible criteria, the domestic beer price would have to remain three dollars and twenty five cents (\$3.25) as part of the meal package offered, except for a two (2)-hour period when Licensee would lower the beer price to one dollar

(\$1.00) for individual purchases, as well as its meal package. Since the discounted alcoholic beverage in this case does not differ in the slightest way from its undiscounted form, Licensee cannot be permitted to offer varying prices for such alcoholic beverages. The Bureau contends that the discount pricing scheme implemented by Licensee clearly violates the letter and spirit of section 13.102(a) of the Board's Regulations. The Board agrees.

The Board finds the decision of the ALJ is not supported by substantial evidence and is, therefore, reversed.

ORDER

The decision of the ALJ is reversed.

The appeal of the Bureau is granted.

It is hereby ordered that this matter is remanded to the ALJ in order to impose an appropriate penalty consistent with this Order and Opinion.

Board Secretary