

Mailing Date: May 6, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

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| PENNSYLVANIA STATE POLICE, | : | Citation No. 06-2984C |
| BUREAU OF LIQUOR CONTROL | : | |
| ENFORCEMENT | : | |
| | : | |
| vs. | : | |
| | : | |
| PLEASURE ENTERPRISES, LLC, t/a | : | License No. R-15595 |
| PLEASURE'S | : | |
| 6216 WOODLAND AVE. | : | |
| PHILADELPHIA, PA 19142-2308 | : | |

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Pennsylvania State Police,
Bureau of Liquor Control Enforcement
6901 Woodland Ave.
Philadelphia, PA 17142-2308

OPINION

Pleasure Enterprises, LLC, t/a Pleasures (“Licensee”), presently seeks permission to appeal *nunc pro tunc* from the Second Supplemental Order of Administrative Law Judge Tania E. Wright (“ALJ”), having a mailing date of

September 12, 2008, wherein the ALJ determined that Licensee had failed to pay the fine imposed at Citation 06-2984C within twenty (20) days of the ALJ's Adjudication and Order with a mailing date of April 24, 2008. Based on Licensee's failure to pay the one thousand four hundred dollar (\$1,400.00) fine, the ALJ ordered Licensee's restaurant liquor license be revoked.

The citation in the present matter contained one (1) count charging Licensee with violating section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] in that, on November 30, 2006, Licensee by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages to one (1) male minor, nineteen (19) years of age.

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). Additionally, the filing of a timely appeal is a jurisdictional requirement that must be met before any appeal may be considered, and appellate bodies do not have the authority to simply enlarge the time for filing an appeal. Criss v. Wise, 566 Pa. 437, 781 A.2d 1156 (Pa. 2001); Morrisons Cove Home v. Blair County Bd. of Assessment Appeals, 764 A.2d 90 (Pa.Cmwlth. 2000).

A *nunc pro tunc* appeal may be granted only where the moving party can demonstrate that the delay in filing its appeal was caused by *extraordinary circumstances* involving fraud, some breakdown in the administrative process or non-negligent circumstances related to the party or its counsel. Cook v. Unemployment Compensation Board of Review, 543 Pa. 381, 671 A.2d 1130 (1996); J.C. v. Department of Public Welfare, 720 A.2d 193 (Pa.Cmwlth. 1998); Marconi v. Insurance Department, 641 A.2d 1240 (Pa.Cmwlth. 1994). In order to fully address the issue, it is necessary to review the procedural history of this matter.

An evidentiary hearing regarding Licensee's citation was held before the ALJ on July 18, 2007. Subsequent to the hearing, the ALJ issued an Adjudication and Order with a mailing date of April 24, 2008 (hereinafter April

24th Order). This April 24th Order sustained the Citation and imposed a fine of one thousand four hundred dollars (\$1,400.00) to be paid within twenty (20) days of the mailing date of the Order. The Order further required mandatory Responsible Alcohol Management Program (“RAMP”) compliance within ninety (90) days of the mailing date of the adjudication. The ALJ specifically advised Licensee, as communicated in the Order, that failure to comply with the terms of the Order would be grounds for modification of the penalty and potential grounds for issuance of a new citation.

Licensee failed to pay the fine within twenty (20) days of the mailing date of the April 24th Order and on or about June 4, 2008, the ALJ mailed a Supplemental Order (hereinafter June 4th Order). The June 4th Order imposed a one (1) day suspension beginning on June 23, 2008, and continuing thereafter until the fine was paid. The Order further provided that if the fine remained unpaid, after sixty (60) days from the mailing date, the matter would be reviewed for possible revocation of the license.

On or about September 12, 2008, the ALJ issued its Second Supplemental Order (hereinafter September 12th Order). The September 12th Order revoked Licensee’s license effective October 6, 2008.

On or about December 18, 2008, Licensee submitted a check through their attorney in the amount of one thousand four hundred dollars (\$1,400.00) to pay the outstanding fine. On or about January 12, 2009, Licensee filed the present *nunc pro tunc* appeal.

Section 471 of the Liquor Code clearly establishes a thirty (30)-day filing deadline for appeals from an ALJ decision. [47 P.S. § 4-471]. Licensee filed the present request for appeal on January 12, 2009, two hundred sixty-three (263) days after entry of the April 24th Order. There is no question that the Licensee's appeal is untimely.

It is well established that failure to file a timely appeal is a jurisdictional defect; as a result, "the time for taking an appeal cannot be extended as a matter of grace or mere indulgence." H.D. v. Pennsylvania Dept. of Public Welfare, 751 A.2d 1216 (Pa.Cmwlt. 2000); Sofronski v. Civil Service Commission, City of Philadelphia, 695 A.2d 921 (Pa.Cmwlt.1997). The heavy burden of establishing the right to have an untimely appeal rests with the moving party. Hessou v. Unemployment Compensation Board of Review, 942 A.2d 194 (Pa.Cmwlt.2008). Here, Licensee has failed to meet that heavy burden. Licensee argues that it filed an appeal *nunc pro tunc* because the manager was

under the “mistaken belief that they had to comply with RAMP or pay the fine.” (*Emphasis added*). As a result of this misunderstanding, Licensee contends that they chose to comply with RAMP rather than pay the fine. Licensee fails to set forth any circumstances suggesting fraud, a breakdown in the administrative process, or non-negligent circumstances. Indeed, a review of the record indicates that the sole reason that the present appeal was not filed in a timely manner was due to Licensee’s own negligence; the extensive review of the record outlined above suggests that Licensee was put on notice of the requirement to pay the fine on three (3) separate occasions. Despite assertions to the contrary, Licensee did not file their appeal timely after revocation of the license.

As no extraordinary circumstances existed to cause Licensee's untimely filing of this appeal, the Board cannot permit an appeal *nunc pro tunc*. Accordingly, Licensee’s appeal is dismissed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid the fine in the amount of one thousand four hundred dollars (\$1,400.00).

It is hereby ordered that Licensee's Restaurant Liquor License No. R-15595 remains revoked as of October 6, 2008.

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

Board Secretary