

Mailing Date: January 16, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-2987  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

RAM FOOD & BEVERAGE, INC. : License No. R-15522  
t/a TD's Restaurant & :  
Club House :  
Oliver Plaza :  
6 Oliver Road :  
Uniontown, PA 15401-2378

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

OPINION

RAM Food & Beverage, Inc., t/a TD's Restaurant & Club House  
("Licensee") appealed from the Second Supplemental Order of  
Administrative Law Judge Roderick Frisk ("ALJ"), wherein the ALJ revoked  
Licensee's license.

The first count of the citation charged that, on November 27, 28 and 30, 2006, Licensee, by its servants, agents or employees, violated section 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §§ 4-491(1), 4-492(2), 4-493(16)] by selling, furnishing and/or giving alcoholic beverages during a time when its restaurant liquor license was suspended relative to Citation No. 06-1099.

The second count of the citation charged that, on November 27, 28 and 30, 2006, Licensee, by its servants, agents or employees, violated section 15.62(a) of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 15.62(a)] by failing to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

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 reveals that Licensee submitted an Admission, Waiver and Authorization, which was received by the Office of the Administrative Law Judge (“OALJ”) on June 1, 2007. (Admin. Notice). On June 26, 2007, the ALJ mailed an Adjudication and Order, sustaining the citation and imposing a one thousand two hundred fifty dollar (\$1,250.00) fine to be paid within twenty (20) days, and a three (3)-day suspension to begin on Monday, July 9, 2007 and ending on Thursday, July 12, 2007. (Admin. Notice).

On July 27, 2007, the fine having not been paid, the ALJ mailed a Supplemental Order imposing a one (1)-day license suspension (in addition to the three (3)-day suspension imposed in the July 26, 2007 Order). (Admin. Notice). Licensee’s license expired, however, on June 30, 2007, and had not been renewed. (Admin. Notice). The total period of suspension was, therefore, deferred pending reactivation of Licensee’s license. (Admin. Notice). The Order further stated that, in the event the fine was not paid within sixty (60) days from the mailing date of July 27, 2007, the

suspension would be reevaluated and revocation of the license would be considered. (Admin. Notice).

On October 12, 2007, the ALJ mailed a Second Supplemental Order acknowledging that Licensee had again failed to pay the one thousand two hundred fifty dollar (\$1,250.00) fine. (Admin. Notice). Accordingly, the ALJ ordered revocation of the licensee effective December 10, 2007.<sup>1</sup> (Admin. Notice).

On November 15, 2007, Licensee paid the fine in the amount of one thousand two hundred fifty dollars (\$1,250.00) and filed this appeal from the ALJ's Second Supplemental Order. (Admin. Notice). Licensee's appeal is solely limited to the Second Supplemental Order which revises the penalty for the citation. (Admin. Notice).

On appeal, Licensee avers that a money order was submitted to the "PLCB-Office of Administrative Law Judge on or about July 13, 2007." By letter dated November 27, 2007, Licensee's counsel enclosed a copy of a check purportedly issued by National City Bank on July 12, 2007 in the amount of one thousand two hundred fifty dollars (\$1,250.00).

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<sup>1</sup> By Order mailed November 10, 2007, the Board granted Licensee's request for supersedeas and stayed the December 10, 2007 revocation of the subject license until the Board rendered its decision on the merits of Licensee's appeal. (Admin. Notice).

The Board takes administrative notice of the ALJ docket which confirms that it received payment of the fine on November 15, 2007, six (6) days after Licensee's appeal was filed. Licensee offers no further explanation for the circumstances involving issuance of the July 12, 2007 money order, why it did not reach the OALJ, or why Licensee failed to respond to the ALJ's Orders or take any steps to contact the OALJ prior to filing its appeal on November 9, 2007. There is also no evidence of record or allegations by Licensee which support a lack of notice of either the July 27, 2007 Supplemental Opinion and Adjudication or the October 12, 2007 Second Supplemental Opinion and Adjudication.

With respect to the penalty imposed by the ALJ in his Second Supplemental Order, section 471(b) of the Liquor Code requires that the ALJ impose a license suspension or revocation should a licensee fail to pay the imposed fine. [47 P.S. § 4-471(b)]. As license revocation is within the statutory parameters, the Board has no authority to reverse the penalty imposed by the ALJ in this matter.

Accordingly, there is sufficient evidence to support the decision of the ALJ to revoke the license as set forth in the Second Supplemental Order mailed October 12, 2007.

**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-15522 is REVOKED effective at 7:00 a.m. on March 1, 2008. Any Wholesale Liquor Purchase Permit card or discount card issued in connection with the subject license is hereby CANCELLED.

Licensee must adhere to all conditions set forth in the ALJ's Second Supplemental Order dated October 9, 2007.

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Board Secretary