

Mailing Date: October 17, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 07-0064
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

FISHMOUTH, INC. : License No. R-6875
54-56 South Second Street :
Philadelphia, PA 19106-2810 :

Counsel for Licensee: Edward A. Taraskus, Esquire
1315 Walnut Street, Suite 1002
Philadelphia, PA 19107

Counsel for Bureau: Erik S. Shmukler, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue, Third Floor
Philadelphia, PA 19142

OPINION

Fishmouth, Inc. (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ sustained the citation, imposed a one thousand dollar (\$1,000.00) fine, and ordered a five (5)-day license suspension.

The citation charged that, on October 22 and December 10, 2006, Licensee, by its servants, agents or employees, violated section 13.102(a)(3) of the Board's Regulations [40 Pa. Code § 13.102(a)(3)] by selling and/or serving an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited beer and well liquor were served for the set price of ten dollars (\$10.00).

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 Pennsylvania Liquor Control Board ("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).

On appeal, Licensee contends that the ALJ abused his discretion by imposing an excessive penalty relative to the citation that was sustained.

Board has reviewed the record with Licensee's objections in mind.¹

Relative to Licensee's contention that the ALJ abused his discretion by imposing an excessive penalty relative to the citation that was sustained, it must be pointed out that the imposition of penalties is the exclusive prerogative of the ALJ. Section 471 of the Liquor Code [47 P.S. § 4-471] prescribes the penalty for violations of the Board's Regulations and the Liquor Code set forth in the subject citation, as license suspension or revocation and/or a fine of not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000.00). The ALJ in the instant case imposed a one thousand dollar (\$1,000.00) fine and a five (5)-day suspension. Since the penalty is clearly within the statutory ranges set forth in Liquor Code, and the Board has no authority to alter the penalty imposed by the ALJ, the decision of the ALJ as to the penalty is affirmed.

Based upon the foregoing, the ALJ's decision in the matter is affirmed.

¹ Licensee, although represented by counsel, failed to attend the hearing before the ALJ. (N.T. 4-5). The parties, however, stipulated that, on the two (2) dates in question, Licensee permitted patrons to obtain unlimited beer and well drinks for ten dollars (\$10.00). (N.T. 6). Therefore, the only point of contention is the penalties issued by the ALJ.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee pay the fine in the amount of one thousand dollars (\$1,000.00). Failure to pay the fine within twenty (20) days of the mailing date of this Order will result in license suspension and/or revocation.

It is further ordered that Licensee's Restaurant License No. R-6875 is suspended for a period of five (5) days beginning at 7:00 a.m. on Monday, November 26, 2007 and ending at 7:00 a.m. on Friday, November 30, 2007. Licensee is directed to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and printed with red and black ink) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from outside of the licensed premises, and to remove the license from the wall and place it in a secure location on the effective date of said suspension.

Licensee must adhere to all conditions set forth in the ALJ's Order dated July 31, 2007.

Board Secretary