

Mailing Date: October 17, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 07-0326X
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

STONE'S FAIRMOUNT BEVERAGE : License No. ID-838
CENTER, INC. :
1701-09 Fairmount Avenue :
Philadelphia, PA 19130-2811 :

Counsel for Licensee: Edward B. McHugh, Esquire
Two Greenwood Square
3331 Street Road, Suite 450
Bensalem, PA 19020

Counsel for Bureau: James E. Dailey, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue
Philadelphia, PA 19142

OPINION

Stone's Fairmount Beverage Center, Inc. ("Licensee") appealed from the Opinion and Order of Administrative Law Judge David Shenkle ("ALJ"), wherein the ALJ issued a one (1)-day suspension of the license.

The citation charged Licensee with violation of section 493(26) of the Liquor Code [47 P.S. § 4-493(26)], in that Licensee, by its servants, agents

or employees, issued checks or drafts dated November 21, 2006, in payment for purchases of malt or brewed beverages, when there were 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 its discretion, or if the 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 its discretion, committed an error of law and/or made a decision not supported by substantial evidence in finding that the Licensee violated section 493(26) of the Liquor Code [47 P.S. § 4-493(26)] on November 21, 2006.

A review of the record in this matter reveals that, in response to the citation, Licensee submitted an Admission, Waiver and Authorization form (“waiver”) to the Office of Administrative Law Judge on May 29, 2007. (Admin. Notice). The waiver was signed by Edward B. McHugh, Licensee’s attorney. (Admin. Notice). The waiver did not contain any notations relative to mitigating factors for the ALJ to consider when imposing the penalty in this case. (Admin. Notice).

On August 2, 2007, the ALJ mailed an Adjudication and Order in which he sustained the charge in the citation and set forth a penalty of a one (1)-day suspension. On September 4, 2007, Licensee filed the subject appeal to the ALJ’s Opinion and Order.

Licensee’s appeal must be dismissed. When Licensee’s attorney signed and had notarized the Statement of Waiver, Admission and Authorization, he: (1) acknowledged receipt of the Bureau’s citation; (2) admitted to the violations charged in the citation; (3) waived Licensee’s right to a hearing; (4) authorized the ALJ to enter an adjudication based on a summary of facts and prior citation history; (5) understood the possible penalty that could be imposed by the ALJ, including a fine from fifty dollars (\$50.00) to one thousand dollars (\$1,000.00), and/or suspension or revocation of the license

and/or Sunday sales permit incidental to the license; and (6) waived any right to appeal the adjudication.

Because Licensee's representative executed the Statement of Waiver, Admission and Authorization, he waived Licensee's right to appeal the substance of the violation and the penalty imposed. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Wilner, 687 A.2d 1216 (Pa. Cmwlth. 1997); Pennsylvania Liquor Control Bd. v. Dentici, 117 Pa. Cmwlth. 70, 542 A.2d 229 (1988). Therefore, the appeal must be dismissed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is further ordered that Licensee's Importing Distributor License No. ID-838 is suspended for a period of one (1) day beginning at 7:00 a.m. on Monday, November 26, 2007 and ending at 7:00 a.m. on Tuesday, November 27, 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 as set forth in the ALJ's July 30, 2007 Opinion and Order.

Board Secretary