

Mailing Date: January 9, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation Nos. 07-0800X
BUREAU OF LIQUOR CONTROL : and 07-0903X
ENFORCEMENT : (consolidated for adjudication)
:

vs. :

LAXBOYS, LLC : License No. H-197
t/a Baggataway Tavern :
31-33 Front Street :
West Conshohocken, PA 19428 :

Counsel for Licensee: William J. O'Brien, II, Esquire
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P.O. Box 4603
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OPINION

Laxboys, LLC t/a Baggataway Tavern (“Licensee”) appealed from the Supplemental Order of Administrative Law Judge David L. Shenkle (“ALJ”), wherein the ALJ suspended the subject license beginning October 22, 2007.

Citation No. 07-0800X charged that Licensee, by its servants, agents or employees, violated section 493(26) of the Liquor Code [47 P.S. § 493(26)] by

issuing checks or drafts dated November 27, 2006, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

Citation No. 07-0903X charged that Licensee, by its servants, agents or employees, violated section 493(26) of the Liquor Code [47 P.S. § 493(26)] by issuing checks or drafts dated March 9, 2007, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The citations, which were issued on April 20, 2007 and May 4, 2007, respectively, were consolidated for adjudication.

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 in this matter reveals that, in response to the citations, Licensee submitted two (2) Admission, Waiver and Authorization forms (“waiver”) to the Office of Administrative Law Judge on May 24, 2007. (Admin. Notice). The waivers were signed by J. P. Boles, who is the managing partner of Licensee. (Admin. Notice). The waivers did not contain any notations relative to mitigating factors for the ALJ to consider when imposing the penalties for these citations.

On August 7, 2007, the ALJ mailed its Adjudication and Order, which sustained the citations, and imposed a total fine of two hundred dollars (\$200.00). (Admin. Notice). The Order provided that, “[i]n the event the fine is not paid within 20 days, Licensee’s license will be suspended or revoked.” (Admin. Notice). The Order was mailed via certified, first class mail, to Licensee’s address of record, 31-33 Front Street, West Conshohocken, Pennsylvania. (Admin. Notice). The certified return receipt indicates that the Order was received at Licensee’s premises on August 9, 2007 by S. Keener, who, according to the Licensee, is its assistant manager. (Admin. Notice).

On September 27, 2007, the fine having not been paid, the ALJ mailed a Supplemental Order imposing a two (2)-day license suspension, beginning on October 22, 2007, and continuing thereafter until further order. (Admin. Notice). The Supplemental Order was mailed to Licensee’s address of record, 31-33 Front

Street, West Conshohocken, Pennsylvania, in the same manner as the Order had been. (Admin. Notice).

Licensee's counsel filed an appeal of the Supplemental Order with the Board on October 16, 2007, on the grounds that its license should not be suspended because it did not have knowledge of the issuance and delivery of the August 7, 2007 Order. Licensee contends on appeal that Mr. Keener, who admittedly is Licensee's assistant manager, could not have signed the receipt for the Order because he was not on duty on August 9, 2007, the day the Order arrived and was signed for. Thus, Licensee denies actual knowledge of the Order, which is why it did not timely pay the fine.

Inasmuch as section 17.21(b)(2) of the Board's Regulations [40 Pa. Code § 17.21(b)(2)] sets forth that appeals from decisions of the ALJ shall be filed or postmarked within thirty (30) calendar days of the mailing date of the adjudication, Licensee's appeal must be considered untimely as it relates to the ALJ's Adjudication and Order issued on October 26, 2006.¹ However, Licensee's appeal is from the Supplemental Order. As the ALJ's Supplemental Order suspending the license was mailed on September 27, 2007, Licensee's appeal dated October 15, 2007 is deemed timely.

¹ Further, when Licensee executed the waivers, it waived its right to appeal the substance of the violations and the penalties imposed. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Wilner, 687 A.2d 1216 (Pa. Cmwlth. 1997); Pennsylvania Liquor Control Board v. Dentici, 117 Pa. Cmwlth. 70, 542 A.2d 229 (1988).

The circumstances set forth in Licensee's appeal fail to in any way substantiate an error of law or abuse of discretion by the ALJ in suspending the subject license. Licensee's reason for not paying the fine within the time frame set forth in the Order, an alleged failure to receive the Order despite the return receipt indicating its arrival at the licensed premises on August 9, 2007 and being signed for by Licensee's assistant manager, Mr. Keener, is not persuasive. The Order was sent to Licensee's address of record by certified mail. It arrived and was signed for two (2) days later by "S. Keener," who Licensee admits is its assistant manager. Licensee would like the Board to believe that another employee signed Mr. Keener's name and then apparently hid the Order. Assuming, arguendo, that this actually happened, it is immaterial to the validity of the notice of the Order. The Order was properly mailed to the proper address, and, thus, Licensee is deemed to have received it.² See Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Can, Inc., 651 A.2d 1160 (Pa. Cmwlth. 1994), appeal denied, 541 Pa. 655, 664 A.2d 544 (1995).

The imposition of penalties for violations of the Liquor Code and the Regulations promulgated thereunder are specifically prescribed in section 471 of the Liquor Code [47 P.S. § 4-471] is the exclusive prerogative of the ALJ. Section 471(b)

² It should be noted that the Supplemental Order was addressed to the same address and mailed in the same manner and was apparently received, precipitating this appeal.

provides that, upon a finding of a violation of the type found in this case, the ALJ shall suspend or revoke a license or impose a fine of not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000.00), or both. [47 P.S. § 4-471(b)]. “In the event the fine is not paid within twenty days of the adjudication, the administrative law judge shall suspend or revoke the license, notifying the licensee by registered mail addressed to the licensed premises.” [47 P.S. § 4-471(b)].

In the instant case, the ALJ imposed a fine of two hundred dollars (\$200.00). Licensee filed waivers admitting the charges in the citations. Licensee failed to pay the fine imposed by the ALJ within the time specified. Therefore, as the ALJ indicated in its Order, it issued a Supplemental Order imposing a two (2)-day suspension for failure to pay the fine within twenty (20) days. This penalty falls within the requirements of section 471 of the Liquor Code. Because the Board has no authority to disturb penalties that are within the parameters set forth in the Liquor Code, the decision of the ALJ is affirmed.

AMENDED ORDER

The decision of the ALJ is affirmed.

The appeals of Licensee are dismissed.

Licensee has paid the fine of two hundred dollars (\$200.00).

Licensee has served the suspension.

Licensee must adhere to all conditions set forth in the ALJ's Supplemental Order dated September 27, 2007.

Board Secretary