

Mailing Date: July 22, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 07-1413
ENFORCEMENT	:	
	:	
v.	:	
	:	
THE ONE WAY INN,	:	License No. R-4435
INCORPORATED	:	
T/A THE ONE WAY INN	:	LID 11432
4344 Peach Street	:	
Erie, PA 16509-1443	:	

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Erie, PA 16508

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Pennsylvania State Police,
Bureau of Liquor Control Enforcement
313 Mount Nebo Road
Pittsburgh, PA 15237-1305

OPINION

The One Way Inn, Incorporated t/a The One Way Inn (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge Robert F. Skwaryk, Jr. (“ALJ”), wherein the ALJ sustained Citation No. 07-1413,

imposed an aggregate fine in the amount of one thousand two hundred fifty dollars (\$1,250.00), and ordered that Licensee remain in compliance with the Responsible Alcoholic Management Program (“RAMP”) requirements in section 471.1 of the Liquor Code [47 P.S. § 4-471.1].

The citation in the present matter alleged that on December 19 and 20, 2006, Licensee furnished alcoholic beverages to one (1) male minor age nineteen (19), in violation of section 493(1) of the Liquor Code. [47 P.S. § 4-493(1)].

Consideration of the merits of this appeal is unnecessary because under section 17.21(b)(2) of the Board’s Regulations, appeals of ALJ adjudications must be made within thirty (30) calendar days of the mailing date of the ALJ opinion and adjudication. [40 Pa. Code § 17.21(b)(2)]. Under section 17.21(c) of the Board’s Regulations, this thirty (30)-day period is not tolled by the filing of a motion for reconsideration with the ALJ. [40 Pa. Code § 17.21(c)].

In the instant action, the ALJ Order and Adjudication was mailed to Licensee on April 14, 2010. Licensee filed a motion for reconsideration on April 28, 2010, and said motion was denied by the ALJ by a Supplemental Order with a mailing date of May 13, 2010. This subsequent appeal was not filed until June 14, 2010.

Although Licensee filed a motion for reconsideration on April 28, 2010, this motion did not stop the running of the thirty (30)-day appeal period under section 17.21 of the Board's Regulations. Therefore, Licensee's appeal filed on June 14, 2010 was filed sixty-one (61) days after the ALJ's Order and Adjudication of April 14, 2010, and is clearly outside the thirty (30)-day appeal period.

In a brief filed by Licensee on July 9, 2010,¹ Licensee argues that the appeal should be granted because Licensee did not properly understand the tolling of the appeal period and filed its appeal in good faith. Licensee further argues that the appeal should, therefore, be accepted *nunc pro tunc*.

The time for taking an appeal cannot be extended as a matter of grace or mere indulgence. West Penn Power Co. v. Goddard, 460 Pa. 551, 333 A.2d 909 (1975); In re: Dixon's Estate, 443 Pa. 303, 279 A.2d 39 (1971). Furthermore, the extension of the time of filing an appeal should be limited to cases where "there is fraud [or] some breakdown in the court's operation" caused by extraordinary circumstances. West Penn Power Co., 333 A.2d at 912. The negligence of an appellant, or an appellant's counsel, or an agent of appellant's

¹ It should be noted that, although it is discussed herein, Licensee's reply brief was also filed untimely under 40 Pa. Code § 17.21(e), which requires all reply briefs be filed within ten (10) days of the filing date of the opposing party's brief. In this case, the Bureau's brief was filed with the Board on June 21, 2010, making any reply brief due July 1, 2010. Licensee's reply brief was filed with a mailing date of July 2, 2010 and a filing date with the Board of July 9, 2010.

counsel, has not been considered a sufficient excuse for the failure to file a timely appeal. Bass v. Commonwealth, 485 Pa. 256, 401 A.2d 1133 (1979). The rule set forth in Bass was further clarified in Cook v. Unemployment Compensation Board of Review, 671 A.2d 1130 (Pa. 1996); specifically, the court may allow an appeal *nunc pro tunc* where (1) an appeal is not timely because of non-negligent circumstances, either as they relate to appellant or his counsel; (2) the appeal is filed within a short time after the appellant or his counsel learns of and has an opportunity to address the untimeliness; (3) the time period which elapses is of very short duration; and (4) the appellee is not prejudiced by the delay. Cook v. Unemployment Compensation Board of Review, 671 A.2d at 1131.

Licensee has failed to show non-negligent circumstances for its untimely filing. In Licensee's brief, Licensee expresses that it did not understand that the tolling period began at the mailing date of the Order. However, as the Board's Regulations are clearly written regarding the appeal period, this is an insufficient reason for the late-filed appeal. Not appropriately reviewing the Board's Regulations for filing deadlines is not a "non-negligent" circumstance. Therefore, a review of the other factors included in Cook is not necessary to

show that Licensee's appeal does not meet the requirements to be considered *nunc pro tunc*.

Accordingly, the instant appeal must be denied as untimely, and the decision of the ALJ is, therefore, affirmed.

ORDER

The appeal of Licensee is denied as untimely.

The decision of the ALJ is affirmed.

The fine of one thousand two hundred fifty dollars (\$1,250.00) has been paid.

Board Secretary