

Mailing Date: June 11, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 07-1520
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

DGA MARCO'S, INC. : License No. R-8486
3019 Jacks Run Road :
White Oak, PA 15131-2523 :

Counsel for Licensee: Robert A. Goldman, Esquire
300 Mt. Lebanon Boulevard, Suite 209D
Pittsburgh, PA 15234

Counsel for Bureau: Emily Gustave, Esquire
PENNSYLVANIA STATE POLICE,
Bureau of Liquor Control Enforcement
313 Mt. Nebo Road
Pittsburgh, PA 15237

OPINION

DGA Marco's, Inc. ("Licensee") appealed from the Second Supplemental Order of Administrative Law Judge Robert F. Skwaryk ("ALJ"), wherein the ALJ revoked the license.

The citation charged that, on April 3 and May 1, 2007, Licensee, by its servants, agents or employees, violated section 437 of the Liquor Code

[47 P.S. § 4-437] by operating the licensed establishment without a valid health permit or license, which expired on October 31, 2006.

In response to the citation, on August 24, 2007, Licensee submitted an Admission, Waiver and Authorization (“waiver”) to the Office of the Administrative Law Judge (“OALJ”) in which Licensee admitted to the violation charged in the citation. (Admin. Notice). The waiver form reflects that it was filed relative to Citation No. 07-1520, and it was signed by Robert A. Goldman, Licensee’s counsel. (Admin. Notice).

The waiver provided that Licensee: (1) acknowledged receipt of the citation; (2) admitted to the violations charged in the citation; (3) waived its right to a hearing; (4) authorized the ALJ to enter an adjudication based upon a summary of facts and Licensee’s prior citation history; (5) acknowledged that the possible penalty included a fine ranging from fifty dollars (\$50.00) to one thousand dollars (\$1,000.00) and/or suspension or revocation of the license and/or permits incidental to the license and one (1) to three (3) points; and, (6) waived any right to appeal the adjudication. (Admin. Notice).

On September 25, 2007, the ALJ mailed an Adjudication and Order, sustaining the citation and imposing a one hundred fifty dollar (\$150.00)

fine. The ALJ took administrative notice that the subject license expired on May 31, 2007 and was inactive. (Admin. Notice). The ALJ's Order provided that, "[i]n the event . . . the fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked." (Admin. Notice).

On December 21, 2007, the fine having not been paid, the ALJ mailed a Supplemental Order imposing a one (1)-day suspension to continue thereafter until the fine was paid, which penalty was deferred pending reactivation of the license. (Admin. Notice). The Order further stated that, if the fine remained unpaid after sixty (60) days, the suspension would be reevaluated, and revocation of the license would be considered. (Admin. Notice).

On March 24, 2008, the ALJ mailed a Second Supplemental Opinion and Order acknowledging that the sixty (60)-day period had elapsed, and that Licensee failed to pay the fine. (Admin. Notice). Accordingly, the ALJ ordered revocation of the license effective April 21, 2008. (Admin. Notice).¹

¹ The Board takes administrative notice that the fine of one hundred fifty dollars (\$150.00) was paid on April 14, 2008.

On April 23, 2008, Mr. Goldman filed an appeal to the Board on behalf of Licensee stating that the ALJ's decision to revoke the license constitutes an abuse of discretion.

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/her discretion, or if his/her 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).

In its appeal, Licensee contends that, given the fact that the fine has been paid in full, the underlying infraction was minor, and Licensee has made ongoing efforts to renew its license wherein it believed the fine would be paid, the ALJ's revocation constitutes an abuse of discretion.

The Board's review of penalties imposed by the ALJ is limited to determining whether the penalty imposed is within the parameters set forth in

section 471 of the Liquor Code. Under section 471 of the Liquor Code, the Board has no authority to alter a penalty if it is within the statutory guidelines of the Liquor Code. [47 P.S. § 4-471]. In this case, the penalty in question issued by the ALJ in response to Licensee's failure to pay the fine within sixty (60) days from the mailing date of the Supplemental Order of the ALJ falls within the parameters of section 471 of the Liquor Code. Specifically, the ALJ is authorized to suspend or revoke a license or impose a fine ranging from fifty dollars (\$50.00) to one thousand dollars (\$1,000.00) based upon the violations alleged in this citation. Moreover, section 471 further provides that "[i]n the event the fine is not paid within twenty days of the adjudication, the administrative law judge shall suspend or revoke the license." [Id.]. The penalty imposed by the ALJ in his Second Supplemental Order Adjudication regarding Licensee's failure to pay its fine is certainly within the parameters set forth in section 471.

Under these circumstances, the Board is satisfied that the ALJ's decision to revoke the license does not constitute an abuse of discretion. As such, the decision of the ALJ is supported by the authority set forth in section 471 of the Liquor Code.

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-8486 remains revoked as of April 21, 2008.

Licensee must adhere to all conditions set forth in the ALJ's Order issued March 24, 2008.

Board Secretary