

Mailing Date: June 24, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 07-2127
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
BERNIE’S, INC.	:	License No. R-13068
2 Willow Street	:	
Oil City, PA 16301-2229	:	

Counsel for Licensee: Ex Parte/Pro Se

Counsel for Bureau: Nadia Vargo, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
313 Mount Nebo Road
Pittsburgh, PA 15237

OPINION

Bernie’s, Inc. (“Licensee”) appealed from the Opinion and Order of Administrative Law Judge Robert F. Skwaryk (“ALJ”), wherein the ALJ sustained the citation and revoked the license.

The citation charges that, on March 18, April 24 and July 3, 2007, Licensee, by its servants, agents or employees, violated section 5.32(a) of the Pennsylvania Liquor Control Board’s (“Board”) Regulations [40 Pa. Code §

5.32(a)] by using on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

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).

The record reveals that the subject license expired on July 31, 2005, and was revoked under Citation No. 05-0099 for aiding, abetting, or engaging in the traffic in or sale of a controlled substance on the licensed premises and possessing a controlled substance on the licensed premises on April 5, 2005. (Admin. Notice).

Licensee failed to attend a hearing held before the ALJ on January 30, 2008. (Admin. Notice). John Henderson, Licensee's president, vice president, and stockholder, was incarcerated at the time of the hearing. (Admin. Notice). On March 25, 2008, the ALJ mailed his Adjudication and Order sustaining the citation and revoking the license. (Admin. Notice).

Licensee filed an appeal to the ALJ's Adjudication and Order on April 25, 2008, stating that he was not provided a full and fair opportunity to attend the hearing before the ALJ, that the ALJ's decision was based upon a decision on appeal, that the ALJ abused his discretion by imposing an excessive and unreasonable penalty, that the record does not support revocation of the license, and that counsel for the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") abused her discretion by seeking license revocation.

The thirty (30)-day filing deadline for an appeal from the ALJ's March 25, 2008 Adjudication was April 24, 2008. (Admin. Notice). Accordingly, Licensee's appeal was one (1) day late. (Admin. Notice). However, the Pennsylvania Supreme Court has explained that "for prisoners proceeding pro se, a notice is deemed filed as of the date it is deposited in the prison mail system." Commonwealth v. Jones, 549 Pa. 58, 700 A.2d 423

(1997). This rule is known as the prisoner mailbox rule. The United States Supreme Court rejected the argument that the rule depends on whether the appeal is criminal or civil. Houston v. Lack, 487 U.S. 266, 272-76 (1988). The Pennsylvania Supreme Court relied on this rationale in adopting the prisoner mailbox rule, and, therefore, the rule applies to all appeals filed by prisoners proceeding pro se. Commonwealth v. Cooper, 710 A.2d 76, 78 (1998). Because Licensee is both incarcerated and proceeding pro se, the prisoner mailbox rule applies, and Licensee's appeal is considered timely because the appeal was deposited with the prison mail on April 23, 2008.

Licensee's appeal centers primarily upon the fact that the ALJ imposed revocation as the penalty for this citation. The imposition of penalties is the exclusive prerogative of the ALJ. The Board may not dispute penalties which are within the parameters set forth in section 471 of the Liquor Code. [47 P.S. § 4-471]. For violations of the type sustained by the ALJ in this matter, penalties may include license suspension or revocation and/or fines ranging from fifty (\$50.00) to one thousand dollars (\$1,000.00). [47 P.S. § 4-471(b)].

The subject license was expired as of July 31, 2005 and, based upon Citation No. 05-0099, the subject license was revoked. In the instant case,

the penalties are within the range prescribed in the Liquor Code and Board's Regulations. Licensee's appeal in this matter is, therefore, dismissed.

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-13068 remains revoked as of April 28, 2008.

Licensee must adhere to all conditions set forth in the ALJ's Order issued March 25, 2008.

Board Secretary