

Mailing Date: January 21, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 07-2499  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

SAVICH ENTERPRISES, INC. : License No. R -18549  
t/a End Zone Tavern :  
12 E. Main Street :  
Richland, PA 17087-0602 :

Counsel for Licensee: George R. Savich  
PRO SE

Counsel for Bureau: Thomas M. Ballaron, Esquire  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
3655 Vartan Way  
Harrisburg, PA 17110

OPINION

Savich Enterprises, Inc., t/a End Zone Tavern (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Daniel T. Flaherty (“ALJ”), wherein the ALJ sustained the citation and imposed a two hundred fifty dollar (\$250.00) fine.

The citation charged that, on May 17, 2007, Licensee violated section 493(28) of the Liquor Code [47 P.S. § 4-493(28)] in that George R.

Savich, Sr., Sole Corporate Officer, consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

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).

On appeal, Licensee disputes the findings of fact made by the ALJ and thus it appears that its appeal is based upon a claim that the ALJ failed to base his decision upon substantial evidence.<sup>1</sup>

The Board has reviewed the record with Licensee's objections in mind. A review of the record reveals that at the time of the incidents in question,

---

<sup>1</sup> Licensee also notes that it failed to introduce photographs at the hearing which, it claims, would have supported its position that the Bureau's witnesses' testimony was flawed. Of course, since the photos were not admitted at the hearing before the ALJ, they can not be considered by the Board.

George Savich, Sr., was president and owner of the licensed premises and his son, George Savich, III, was the Board approved manager. (N.T. 13).

On May 17, 2007, at 10:10 p.m., Pennsylvania State Police, Bureau Enforcement Officer Hackenberg entered licensee's premises in an undercover capacity and observed approximately fifty (50) patrons present and George Savich, Sr. tending bar. (N.T. 12-14). After taking a seat at the bar, Officer Hackenberg ordered and was served a beer by Mr. Savich, Sr. (N.T. 14). Officer Hackenberg observed Mr. Savich, III, training two (2) females while his father, Mr. Savich, Sr., stood behind the bar where he consumed beer from a bottle of Michelob Ultra. (N.T. 15). Officer Hackenberg also observed Mr. Savich, Sr. come around to the patron side of the bar where he again consumed from the same bottle of Michelob Ultra. (N.T. 15-16). After finishing the Michelob beer, Mr. Savich, Sr. proceeded around the bar and took a Keystone Light Draft beer which he consumed upon returning to his seat on the patron side of the bar. (N.T. 16).

At 10:30 p.m., Mr. Savich, Sr. again proceeded to the service side of the bar and waited on some customers who had been waiting for service. (N.T. 16). Officer Hackenberg later observed Mr. Savich, Sr. return to the patron side of the bar, finish his Keystone beer and ask one of the new

trainees to pour him another beer. (N.T. 17). Mr. Savich, Sr. consumed his second Keystone Light beer while seated at the bar. (N.T. 17). At one point, Officer Hackenberg observed a patron attempting to get beer for take-out. When Mr. Savich, Sr. did not see anyone come to assist the patron, he asked the person what they wanted, walked behind the bar to the beer cooler, gave the patron a quart of beer and instructed his son to ring up the sale. (N.T. 18).

Mr. Savich, Sr. stated that he was at the premises to assist his son on May 17, 2007. (N.T. 32). Mr. Savich, Sr. further admits that at some point on the evening in question, he decided to have a beer, but does not remember whether or not he drank any of the beer before his son began training the two (2) new employees. (N.T. 33). Mr. Savich, Sr. further admits that he may also have provided a patron a quart of beer after he consumed beer on the premises and if he did so, it was simply as a convenience to the patron. (N.T. 33-34). However, Mr. Savich, Sr. also stated that he had a hard time remembering the events of May 17, 2007. (N.T. 33, 35, 37).

Licensee's defense to the allegations consists primarily of its belief that Mr. Savich, Sr. would not have acted in the manner described by Officer

Hackenberg notwithstanding the fact that Mr. Savich, Sr. has little or no specific recollection of the events of May 17, 2007. While Licensee challenges the credibility of the officer's testimony, as the sole trier of facts, the ALJ is charged with determining the weight and sufficiency of all testimonial evidence. Specifically, matters of witness credibility are the sole prerogative of the ALJ as fact finder. Borough of Ridgway v. Pennsylvania Public Utility Comm'n, 83 Pa. Cmwlth. 739, 480 A.2d 1253 (1984). Because the ALJ deemed the testimony of the Bureau's witness sufficient to support a violation of section 493(28) of the Liquor Code [47 P.S. § 4-493(28)], that decision shall not be disturbed.

In the absence of evidence to refute the charge set forth in the citation, the Board must find that the ALJ's findings are based upon substantial evidence. Therefore, the decision of the ALJ is affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee is hereby ordered to pay the fine of two hundred fifty dollars (\$250.00) within twenty (20) days of the mailing date of this Order. Failure to do so will result in a suspension and/or revocation of the license.

Licensee must adhere to all conditions set forth in the ALJ's Order dated October 9, 2008.

---

Board Secretary