

Mailing Date: August 7, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 07-2997X
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 charged that, on September 14, 2007, Licensee, by its servants, agents or employees, violated section 493(26) of the Liquor Code [47 P.S. § 4-493(26)], in that it issued checks or drafts in payment for

purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for payment of such checks.

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The record reveals that the subject license expired on July 31, 2005, and was revoked under Citation No. 05-0099¹ for aiding, abetting, or engaging in the traffic in or sale of a controlled substance on the licensed

¹ According to Licensee's appeal, Citation No. 05-0099 is on appeal to the Commonwealth Court at docket number 856 CD 2008. (Admin. Notice).

premises and possessing a controlled substance on the licensed premises on April 5, 2005.² (Admin. Notice).

Licensee failed to attend a hearing held before the ALJ on April 9, 2008. (Admin. Notice). John Henderson, Licensee's president, vice president, and stockholder, was incarcerated at the time of the hearing. (Admin. Notice). On May 19, 2008, the ALJ mailed his Adjudication and Order sustaining the citation and revoking the license. (Admin. Notice).

Mr. Henderson filed an appeal to the ALJ's Adjudication and Order on June 17, 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 another citation that is currently 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 for this offense.

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

² It was, thereafter, also revoked under Citation Nos. 07-2117 (Board Opinion issued June 24, 2008) and 07-2170X (closed by waiver). (Licensee's appeal; Admin. Notice).

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 Nos. 05-0099, 07-2127 and 07-2170X, 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 June 23, 2008.

Licensee must adhere to all conditions set forth in the ALJ's Order issued May 19, 2008.

Board Secretary