

Mailing Date: May 20, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 08-0167
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

vs. :

WILLOW GROVE VETERANS HOME : License No. CC-4580
ASSN., INC. :
301-305 W. MORELAND ROAD :
UPPER MORELAND TWP. :
WILLOW GROVE, PA 19090-3107

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OPINION

Willow Grove Veterans Home Association, Inc. (“Licensee”) appealed from the Order of Administrative Law Judge Tania E. Wright (“ALJ”), with a mailing date of February 25, 2009, wherein the ALJ denied Licensee’s request for reconsideration by her January 11, 2009 Adjudication and Order and instead

affirmed her earlier decision to sustain the citation and imposed a five hundred dollar (\$500.00) fine.

The first count of the citation charged that, on December 22, 2007, Licensee, by its servants, agents or employees violated section 499(a) of the Liquor Code [47 P.S. § 4-499(a)] by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages no later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The second count of the citation charged that, on December 22, 2007, Licensee, by its servants, agents or employees violated section 499(a) of the Liquor Code [47 P.S. § 4-499(a)] by permitting patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m.

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 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).

It is Licensee's contention on appeal that the decision of the ALJ is not based upon substantial evidence. Licensee also alleges certain discrepancies in the ALJ's findings of fact. Specifically, Licensee alleges (1) that there is no evidence to support the finding that the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") officers were at the location in response to a complaint from the Upper Moreland Township Police Department regarding service of alcohol to visibly intoxicated patrons after hours, (2) that the officers provided inconsistent testimony as to whether the front door to the premises was locked, (3) that there is no evidence to support the finding that there are several bars within the premises, that the finding that the officers asked the bartender, Mr. Baumber, whether he realized it was after 3:30 a.m. is consistent with the officer's testimony that they entered the premises after 3:45 a.m. and (4) that the officer's testimony that V.F.W. Manager Royer Myers stated that last call is at 3:15 a.m. cannot be accurate because if it were then the officers would have informed Mr. Myers that such a practice is a violation of the Liquor Code.

A review of the record reveals that on December 22, 2007, at 2:00 a.m., Brian Farrow, an officer with the Bureau conducted an undercover investigation of Licensee's premises. (N.T. 7-8). Officer Farrow was accompanied by Officer Pirozzi, also a Bureau officer. (N.T. 8).

At approximately 2:10 a.m., Officer Farrow went to the front door of the licensed premises in an attempt to gain entry as a non-member. (N.T. 9). After being questioned by the doorman and after informing him that he did not have a membership, Officer Farrow was denied access to the premises. (N.T. 9) Officers Farrow and Pirozzi again took up surveillance from their vehicle. (N.T. 9). At one point during the surveillance, Officer Pirozzi also attempted and was denied entry to the premises. (N.T. 10).

At 3:15 a.m., both Officer Farrow and Pirozzi observed several patrons exit the premises through a side door. Officer Farrow used his Nextel Communications cell phone clock to determine the accurate time of the events he observed. (N.T. 9). At 3:45 a.m., both officers went to the front door of the premises and observed several patrons departing. (N.T. 10). At that time Officer Farrow identified himself and Officer Pirozzi to the doorman. (N.T. 10). Officer Farrow explained their purpose was to conduct an after-hours raid and to check for visibly intoxicated patrons. (N.T. 10). Officer Farrow spoke to a

bartender, Joseph Baumher, who stated that he was also the manager in charge on the evening in question. (N.T. 11).

As Officer Farrow approached Mr. Baumher, he observed two (2) patrons with Miller Light 12-ounce cans or bottles in their hands. (N.T. 11). Upon questioning, neither patron was able to tell Officer Farrell at what time they had purchased their beers. (N.T. 11).

Officer Farrow then questioned Mr. Baumher as to the time. In response to the question, Mr. Baumher replied that he knew it was past 3:30 a.m. and that the patrons were just slow in leaving. (N.T. 12). The officers then cleared the bar of the remaining twenty-three (23) patrons. (N.T. 12). After the patrons were let go, Mr. Baumher called Roger Myers, the V.F.W. manager, to come down to the bar area. (N.T. 12). Officer Farrow informed Mr. Myers that a notice of violation would be issued; according to Officer Farrow, Mr. Myers responded by saying that the club would try to do a better job at getting patrons out by 3:30 a.m. (N.T. 12). Mr. Farrow informed Mr. Myers that he and Officer Pirozzi counted twenty-three (23) patrons inside the premises at the time they entered the premises. (N.T. 12). Officer Pirozzi corroborated the testimony provided by Officer Farrow. (N.T. 29-33).

In defense of the charges, Licensee presented the testimony of Mr. Roger Myers, Mr. Baumher and Mr. Daniel Boyer, the head doorman at the premises on December 22, 2007. (N.T. 51). Mr. Myers confirmed that he received a call at his home at 3:25 a.m. Mr. Myers arrived the licensed premises at approximately 3:35 a.m., with 3:40 being the latest he would have arrived. (N.T. 41-42). Mr. Myers also testified that the club's policy is the last call is given at 2:50 a.m. and again at 3:15 a.m. At that time, the lights come up and everyone is asked to leave. Of the three (3) doormen on duty, one (1) is stationed at the front door, one (1) is stationed at the back door and one (1) is responsible for clearing off tables. (N.T. 42-43). Mr. Baumher placed the officers entering the licensed premises at a little after 3:20 a.m. on December 22, 2007. (N.T. 48). Mr. Boyer placed the officers entering the licensed premises at 3:25 a.m. on December 22, 2007. (N.T. 52).

As to the first issue raised by Licensee that there is no evidence to support the finding that the Bureau officers were at the location in response to a complaint from the Upper Moreland Township Police Department regarding service of alcohol to visibly intoxicated patrons after hours, the Bureau officers established the allegation based upon their own observations during their visit to the licensed premises on December 22, 2007. Therefore, because the

citation is based upon the officer's observations any facts pertaining to a complaint by the Upper Moreland Township Police Department is not relevant to the Liquor Code violation in question.

As to the second issued raised by Licensee concerning finding of fact number four (4), the testimony of the officers that at 3:45 a.m., when they walked up to the front door, several patrons were coming out, is not necessarily inconsistent with their earlier testimony that they were denied entry to the premises. (N.T. 9-10). The officers inability to gain entry to the premises does not preclude the fact that those on the inside had the ability to open the door in order to exit the premises.

As to Licensee's third and fourth issues on appeal, that the ALJ adjudication alleges that there were three (3) bartenders behind the various bars, whereas License has only one (1) bar, and the allegation of inconsistent statements between Mr. Baumher and the Bureau agents as to what time they agents entered the premises; as the trier of fact, the ALJ determines the credibility of witnesses and their testimony. Based upon review of the evidence presented, the ALJ determined the testimony of the Bureau officers Brian Farrow and Rocco Pirozzi to be credible.

It is well-established law that matter of witness credibility are the sole prerogative of the ALJ and the ALJ's findings on credibility will not be disturbed absent a showing of insufficient evidence. Borough of Ridgway v. Pennsylvania Public Utility Comm'n, 83 Pa. Cmwlth. 379, A.2d 1253 (1984).

The ALJ also found credible the testimony of the Bureau officers that by using Officer Farrow's Nextel telephone they kept accurate time and they did not enter the premises until approximately 3:45 a.m. The ALJ found this testimony sufficient to sustain the citation.

Licensee also raises a fifth issue on appeal; the testimony of the Bureau officer that V.F.W. Manager Royer Myers stated last call was at 3:15 a.m. cannot be accurate because if it were then the officers would have informed Mr. Myers that such a practice is a violation of the Liquor Code. A review of the record reveals Officer Farrow spoke to Mr. Myers when he arrived at the premises and Mr. Myers stated to the officer that the club would try to do a better job of getting patrons out by 3:30 a.m. (N.T. 12). Again, the ALJ found the testimony of the Bureau officers to be credible. Therefore, the ALJ found this testimony sufficient to sustain the citation.

Based upon the foregoing, the decision of the ALJ is affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee pay the fine of five hundred (\$500.00) dollars within twenty (20) days of the mailing date of this Order. Failure to do so will result in license suspension and/or revocation.

Licensee must adhere to all conditions set forth in the ALJ's Order dated January 15, 2009.

Board Secretary