

Mailing Date: May 20, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 08-0930
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
KENRICH ATHLETIC CLUB	:	License No. C-1927
121 S. 19 TH STREET	:	
PHILADELPHIA, PA 19103- 4905	:	
PHILADELPHIA COUNTY	:	

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OPINION

Kenrich Athletic Club (“Licensee”) appeals¹ from the Second Supplemental Order of Administrative Law Judge Tania Wright (“ALJ”), wherein the ALJ modified her supplemental order of March 20, 2009, by rescheduling ten (10) days of suspension, which had been unserved from her March 20, 2009 order.

Pursuant to section 471 of the Liquor Code, the appeal in this case must be based solely on the record before the ALJ. [47 P.S. § 4-471]. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused her 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).

The record reveals that on December 17, 2008, the ALJ conducted an administrative hearing to address the violations set forth in Citation No. 08-

¹ Licensee’s appeal stayed the order in question by virtue of section 471(b) of the Liquor Code [471.5 § 4-471(b)]. On April 16, 2009, the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) filed an application to vacate the automatic Supercedeas. The Board’s decision on the merits of the appeal has rendered that application moot.

0930. Count 1 of the citation alleged that on March 8, 2008, Licensee violated Section 5.32(a) of the Liquor Control Board Regulations when it used a loudspeaker or other sound device inside the licensed premises in such a way that the sound of music could be heard outside the licensed premises. [40 Pa.Code § 5.32]. Count 2 of the citation charged that Licensee violated Section 4710f of the Liquor Code and Section 5101 of the Crimes Code when its employees interfered with a Liquor Code Enforcement Officer in the performance of his duties. [47 P.S. § 4-471; 18 Pa.C.S.A. § 5101]. All evidence was submitted by stipulation and the parties also submitted a joint recommendation regarding the penalty. [N.T. 12-17]. The parties asked the judge to impose a one thousand dollar (\$1,000.00) fine and a fourteen (14) day license suspension. [N.T. 17]. The record is silent regarding any discussion or recommendation about when the suspension would become effective.

The ALJ found the Licensee committed both violations and imposed an aggregate fine of \$1,000.00 and imposed a fourteen (14) day license suspension. [Adjudication & Order, Feb. 19, 2009]. Execution of the suspension was deferred pending the renewal of Licensee's license. [Adjudication & Order, Feb. 19, 2009]. On March 20, 2009, the ALJ issued a Supplemental Order directing that Licensee's license was suspended for

fourteen (14) days beginning on March 30, 2009, and ending on April 13, 2009². Licensee's counsel submitted a letter to the ALJ, requesting that the suspension be rescheduled because Licensee had a major event planned for April 4, 2009, and it would cause tremendous hardship if the event were cancelled³. [Second Supplemental Order, April 1, 2009]. The ALJ granted the request. The first four (4) days of the suspension had already been served from March 30, 2009, through April 2, 2009. [Second Supplemental Order, April 1, 2009]. The ALJ rescheduled the remaining ten (10) days of the suspension so that they were to begin on April 17, 2009, and end on April 27, 2009. [Second Supplemental Order, April 1, 2009]. The instant appeal followed.

The sole issue raised by the Licensee is whether the ALJ properly set the effective date of the suspension. Licensee contends there was an agreement negotiated before the ALJ that the license suspension would become effective during the summer months and the ALJ would set an effective date at least forty-five (45) days from the date the order was mailed. [Appeal Application, Paragraphs 1, 8]. The record is completely silent on any such recommendation.

² The one thousand dollar (\$1,000.00) fine was paid on March 13, 2009.

³ The March 31, 2009 letter referenced in the Second Supplemental Order is not included in the file; therefore, it is not part of the record.

Furthermore, Licensee fails to cite to any legal authority requiring the ALJ to impose a suspension in the manner suggested.

Section 471(b) states that a suspension will not go into effect until thirty (30) days after the adjudication and order are mailed. [47 P.S. § 4-471]. The suspension for the remaining ten (10) days was imposed on April 1, 2009, thirty-nine (39) days after the original adjudication was mailed. Clearly, the ALJ did not abuse its discretion or commit an error of law when it imposed the current suspension.

Therefore, since the ALJ's decision is not an error of law or abuse of discretion the Board must affirm the decision of the ALJ.⁴

⁴ The Board is cognizant of the fact that as a result of the filing of the appeal, Licensee has achieved the rescheduling of the suspension it sought by virtue of the automatic stay provisions of section 471 of the Liquor Code. Now that this matter is being remanded to the ALJ for the imposition of new suspension dates, any subsequent appeals of these dates will likely result in the removal by the Board of the automatic stay.

ORDER

The decision of the ALJ in regard to Citation 08-0930 is affirmed.

The appeal of Licensee is denied.

The fine has been paid.

The case is hereby remanded for imposition of the remaining ten (10) day suspension.

Date

Board Secretary