

Mailing Date: September 1, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 08-1372
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
	:	
v.	:	
	:	
SIAM LOTUS COMPANY	:	License No. R-8166
931 Spring Garden Street	:	
Philadelphia, PA 19123-2611	:	LID 23858
	:	

Counsel for Licensee: John J. McCreesh, IV, Esquire (appeal only)
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Counsel for Bureau: Erik Shmukler, Esquire
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Bureau of Liquor Control Enforcement
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OPINION

Siam Lotus Company (“Licensee”) filed the instant appeal challenging the decision of Administrative Law Judge David L. Shenkle (“ALJ”) in his Second Supplemental Order, wherein the ALJ revoked Restaurant Liquor License No. R-8166 for failure to pay a fine of one thousand dollars (\$1,000.00).

On June 10, 2008, Licensee was issued Citation No. 08-1372 by the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) for violating sections 491(1), 491(2) and 493(16) of the Liquor Code [47 P.S. §§ 4-491(1), 4-491(2), 4-493(16)], on May 6, 2008, by selling alcoholic beverages after its restaurant liquor license expired on October 31, 2007, and had not been renewed and/or validated. Notice of the Citation was sent by certified mail, return receipt requested, and was signed for by someone at Licensee’s address.

A hearing was scheduled for November 4, 2008, for which Licensee failed to appear. Notice was sent to Licensee by both first class mail and certified mail, return receipt requested (which was marked unclaimed). Subsequently, the hearing was held *ex parte*, and on December 31, 2008, the ALJ issued an Adjudication and Order in which he sustained the citation and imposed a fine of one thousand dollars (\$1,000.00).

When Licensee had not paid the fine within the allotted twenty (20) days, the ALJ issued a Supplemental Order on February 11, 2009, suspending the license for at least one (1) day and continuing thereafter until the fine was paid. The fine remained unpaid and the ALJ issued a Second Supplemental Order on May 22, 2009, in which he revoked the license effective July 20, 2009.

All three (3) Adjudications and Orders were mailed by the ALJ's office by both certified mail, return receipt requested, which were returned unclaimed, and by first class mail, which was not returned. The fine was ultimately paid on October 30, 2009, long after the license was revoked. The instant appeal challenging the revocation of the license was filed *nunc pro tunc* on May 21, 2010. A response to Licensee's appeal was filed by the Bureau on June 4, 2010.

Licensee's appeal states that Licensee filed the appeal timely based on its discovery of the revocation, but does not provide any explanation for why it took almost an entire year for the revocation to be "discovered" by Licensee. Further, Licensee provides no grounds whatsoever for why it was approximately ten (10) months late paying its fine or a year late filing this appeal.

The time for taking an appeal cannot be extended as a matter of grace or mere indulgence. West Penn Power Co. v. Goddard, 460 Pa. 551, 333 A.2d 909 (1975); In re: Dixon's Estate, 443 Pa. 303, 279 A.2d 39 (1971). Furthermore, the extension of the time of filing an appeal should be limited to cases where "there is fraud [or] some breakdown in the court's operation" caused by extraordinary circumstances. West Penn Power Co., 333 A.2d at 912. The negligence of an appellant, or an appellant's counsel, or an agent of appellant's

counsel, has not been considered a sufficient excuse for the failure to file a timely appeal. Bass v. Commonwealth, 485 Pa. 256, 401 A.2d 1133 (1979). The rule set forth in Bass was further clarified in Cook v. Unemployment Compensation Board of Review, 671 A.2d 1130 (Pa. 1996); specifically, the court may allow an appeal *nunc pro tunc* where (1) an appeal is not timely because of non-negligent circumstances, either as they relate to appellant or his counsel; (2) the appeal is filed within a short time after the appellant or his counsel learns of and has an opportunity to address the untimeliness; (3) the time period which elapses is of very short duration; and (4) the appellee is not prejudiced by the delay. Cook v. Unemployment Compensation Board of Review, 671 A.2d at 1131.

The question in this case, therefore, is whether the circumstances described by Licensee would allow for a *nunc pro tunc* appeal, specifically, whether the circumstances would be considered “non-negligent,” when Licensee knew or should have known of the untimeliness, the duration of time which has elapsed, and whether the Bureau is prejudiced by the delay.

The Adjudication and Order clearly stated that the fine had to be paid within twenty (20) days from the date of the Order, December 31, 2008. Licensee failed to pay the fine, so on February 11, 2009, the ALJ issued a

Supplemental Order advising Licensee that the fine must be paid within sixty (60) days of the date of the Order or the ALJ would “reevaluate the penalty . . . and consider revocation of the license.” [Supplemental Order, February 11, 2009]. Licensee still failed to pay the fine and on May 22, 2009, the ALJ issued his Second Supplemental Order, this time revoking the license, but allowing nearly two (2) more months for payment of the fine before the Order became effective. Despite this, it took Licensee until the end of October 2009, some five (5) months after the Second Supplemental Order was issued and three (3) months after the license was actually revoked, to finally pay the fine.

Section 471 of the Liquor Code authorizes the ALJ to revoke or suspend a license if a licensee does not pay a previously imposed fine within twenty (20) days of its imposition. There is no question that the fine was not paid within twenty (20) days of the imposition.

Licensee had ample notice that revocation of the license was possible if the fine was not paid in a timely manner. Licensee was aware of the citation and took no steps to ensure notice would be received. Further, Licensee does not offer any reasons whatsoever for the late payment of the fine; nor does it offer any explanation of why it took another seven (7) months to file an appeal from the Second Supplemental Order or the filing of this appeal after it

eventually paid the fine. Licensee filed the instant appeal approximately one (1) year after the date the Second Supplemental Order was issued, which is an unreasonable amount of time considering the circumstances.

Based on the foregoing, the Board concludes that Licensee was advised more than once of the potential revocation and took no action to pay the fine. Therefore, the ALJ acted properly when he revoked the license. Given the length of the delay and Licensee's failure to show non-negligent circumstances for its untimely appeal, the appeal does not meet the Cook standard and must be denied as untimely.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Restaurant Liquor License No. R-8166 remains
revoked.

Licensee must adhere to all conditions set forth in the ALJ's Orders in this
matter.

Board Secretary