

Mailing Date: August 18, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 08-1401
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
PLEASURE ENTERPRISES, LLC	:	License No. R-15595
t/a Pleasures	:	
6216 Woodland Avenue	:	LID 54268
Philadelphia, PA 19142-2308	:	
	:	

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OPINION

Pleasure Enterprises, LLC t/a Pleasures (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge David L. Shenkle (“ALJ”), wherein the ALJ sustained Citation No. 08-1401 and revoked the license, effective January 26, 2009.

The citation in the present matter alleged that on May 2, 12, 13 and 16, 2008, Licensee operated the licensed establishment without a valid health permit or license, which expired on April 30, 2008, in violation of section 437 of the Liquor Code [47 P.S. § 4-437] and section 5.41 of the Liquor Control Board Regulations [40 Pa. Code § 5.41].

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/her discretion, or if his/her decision was not based upon substantial evidence. The Commonwealth Court has 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).

Consideration of the merits of this appeal is unnecessary because under section 17.21(b)(2) of the Board’s Regulations, appeals of ALJ adjudications must be made within thirty (30) calendar days of the mailing date of the ALJ opinion and adjudication. [40 Pa. Code § 17.21(b)(2)].

In the instant action, the ALJ's Order and Adjudication was mailed to Licensee on January 9, 2009. Licensee filed a Petition for Leave to Appeal *Nunc Pro Tunc* on May 21, 2010, nearly fifteen (15) months after the adjudication.

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.

In its Petition for Leave to Appeal *Nunc Pro Tunc*, Licensee contends that it was unaware of this and another citation¹, it thought it had complied with the Order in Citation No. 06-2984, and that the revocation of the license was too severe of a penalty. Licensee alleges that it is filing this appeal timely after learning of the revocation of the license.

The record reflects that a copy of the Citation was mailed via certified mail to the licensed premises on June 17, 2008, and a signed receipt was returned to sender, indicating that it was received at the licensed premises. [N.T. 14; Exhibit B-2]. A Notice of Hearing was mailed to the licensed establishment by certified mail on September 25, 2008. Furthermore, a Supplemental Order for Citation No. 06-2984, setting forth the suspension and a Notice of Violation Letter, dated May 28, 2008, were sent by certified mail to Licensee. Finally the ALJ's Adjudication and Order were mailed to Licensee on January 9, 2009 by certified mail. Despite all these notices, neither Licensee nor a representative for Licensee appeared for the November 13, 2008 hearing. Nor did Licensee file an appeal from the ALJ's decision until approximately

fifteen (15) months had passed. Although Licensee now argues that the appeal *nunc pro tunc* was filed “timely after learning of the revocation of the license,” the Board finds this bare allegation inadequate to meet the Cook standard above, especially given the long delay in filing.

Accordingly, the instant appeal must be denied as untimely, and the decision of the ALJ is, therefore, affirmed.

¹ Citation No. 08-1677

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-15595 remains revoked.

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

Board Secretary