

Mailing Date: May 20, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 08-1752X
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
PUJA ENTERPRISES INC.	:	License No. D-1707
T/A MOON POP & BEER	:	
5990 UNIVERSITY BOULEVARD	:	
MOON TWP., PA 15108-1149	:	
ALLEGHENY COUNTY	:	

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OPINION

Puja Enterprises, Inc., t/a Moon Pop & Beer (“Licensee”) filed the instant appeal challenging the imposition of a one (1) day license suspension for failure

to pay a fine in a timely fashion¹. Licensee contends that the Administrative Law Judge (“ALJ”) improperly imposed a license suspension because the Licensee made a good faith effort to pay the fine in a timely fashion.

Pursuant to section 471 of the Liquor Code, an appeal 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 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).

In addressing this matter, the Pennsylvania Liquor Control Board (“Board”) has reviewed the certified record provided by the Office of the Administrative Law Judge, including the ALJ’s Adjudication and Order, Supplemental Order dated March 9, 2009, and Second Supplemental Order

¹ Licensee also filed an Application for Supersedeas. This application was unnecessary because Licensee was not charged with a violation that was subject to an enhanced penalty. The filing of the appeal acts as a Supersedeas or Stay of the Administrative Law Judge’s order, without the need to file an Application for Supersedeas. [47 P.S. §4-471(b)]. Therefore, the license will not be suspended unless and until the Pennsylvania Liquor Control Board (“Board”) orders otherwise.

dated March 27, 2009, with the Licensee's contention in mind, and has concluded that the ALJ correctly imposed a suspension for failure to pay a fine in a timely matter. Accordingly, we affirm.

The record reveals that on July 28, 2008, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") issued Citation No. 08-1752X to Licensee for a violation of Section 493(26) of the Liquor Code, Worthless Checks. [47 P.S. § 4-493(26)]. On October 13, 2008, Licensee completed a Statement of Admission, Waiver and Authorization form and submitted it to the ALJ for appropriate action. The ALJ sustained the citation, reviewed Licensee's prior citation history, and imposed a fine of \$250.00. The Adjudication and Order, mailed October 28, 2008, clearly states that the fine must be paid within 20 days or a suspension would be imposed.

Licensee's first attempt at payment occurred on December 3, 2008, when the Office of the Administrative Law Judge received Licensee's personal check, dated November 28, 2008, in the amount of two hundred fifty dollars (\$250.00). The check was returned with instructions to submit a Treasurer's, Cashier's or Certified Check or a Money Order. [Exh. A, Licensee's Petition for Reconsideration, March 19, 2009]. On March 9, 2009, the ALJ issued a Supplemental Order in which he imposed a one (1) day license suspension for

failure to pay the fine within 20 days. Said suspension was to begin on March 30, 2009, and continue thereafter until the fine was paid. Licensee filed a Petition for Reconsideration on March 19, 2009, wherein he asked the ALJ to vacate the Supplemental Order and reconsider the imposition of a suspension. Licensee also simultaneously submitted a Giant-Eagle Money Order No. 6838479193, in the amount of two hundred fifty dollars (\$250.00), to pay the fine. In a Second Supplemental Order dated March 27, 2009, the ALJ denied the Petition for Reconsideration, acknowledged receipt of payment for the fine, and removed the “continuing thereafter” language from the term of the suspension. Thus, the suspension was reduced to one (1) day. The instant appeal followed.

Section 471(b) states that “[i]n the event the fine is not paid within twenty days of the adjudication, the administrative law judge *shall* suspend or revoke the license.” [47 P.S. § 4-471(b)] [emphasis added]. The deadline for paying the fine was November 17, 2008. [Supplemental Order, March 9, 2009]. On December 3, 2008, the ALJ received Licensee’s personal check dated November 28, 2008. Consequently, the first attempt at payment occurred sixteen (16) days after payment was due. Section 471 mandates that the ALJ

suspend or revoke the license for non-payment. Therefore, the ALJ had no choice but to suspend Licensee's license for at least one (1) day.

Licensee argues that the suspension was unwarranted because he made a good faith effort to pay the fine, but mistakenly used a personal check. This argument completely ignores the fact that the personal check was written eleven (11) days after it was due and received sixteen (16) days after it was due. A good faith effort must at least be timely. Licensee fails to provide any explanation for why the initial payment was not sent in a timely manner².

In conclusion, the Board rejects Licensee's good faith argument and affirms the ALJ's imposition of a one (1) day license suspension for failure to pay the fine imposed on October 28, 2008, in a timely manner.

² Licensee alleges in its appeal that it sent a money order in the amount of \$250.00 on December 29, 2008. [Application for Appeal, Exh. A, Paragraph 8]. Licensee did not provide the money order number or any other evidence proving that the money order was mailed to the ALJ. The ALJ has no record of receiving said money order. The Board declines to consider Licensee's subsequent attempts at payment since the initial payment was untimely.

ORDER

The decision of the ALJ in regard to Citation 08-1752X is affirmed.

The appeal of Licensee is denied.

The fine has been paid.

It is hereby ordered that this case is remanded to the ALJ for imposition of new dates for the one (1) day license suspension.

Licensee must adhere to all other conditions set forth in the ALJ's Order issued October 28, 2008.

Date

Board Secretary