

Mailing Date: January 11, 2012

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 08-1926
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
TRAILSIDE INN, LLC	:	License No. R-13406
RR 3 Box 3249A	:	
Factoryville, PA 18419	:	(LID 58487)
	:	
(Appeal of Lazy Raven, Inc.)	:	

Representative for Licensee (before ALJ): Joseph Watkins, Pro Se

Counsel for Lazy Raven, Inc. (on appeal): Nogi, Appleton, Weinberger & Wren, P.C.
Ann Lavelle Powell, Esquire
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Scranton, PA 18503

Counsel for Bureau: Craig A. Strong, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
7448 Industrial Park Way
Macungie, PA 18062

OPINION

Lazy Raven, Inc. (“Appellant”), prior owner of Restaurant Liquor License No. R-13406, which was transferred to Trailside Inn, LLC (“Licensee”) in

September, 2007, appealed from the Supplemental Order of Administrative Law Judge Daniel H. Flaherty, Jr. (“ALJ”), wherein the ALJ revoked the license because the license was previously revoked in Citation No. 09-2891. The license was revoked in Citation No. 09-2891 because Licensee failed to post notice of suspension and failed to attend the evidentiary hearing or respond in any manner.

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/her discretion, or if his/her decision was not based upon substantial evidence. [Id.]. 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 first count of the citation charged that on July 8, 2008, Licensee, by its servants, agents or employees, used or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard

outside, in violation of section 5.32(a) of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 5.32(a)].

The second count of the citation charged that on July 8, 2008, Licensee, by its servants, agents or employees, engaged in unlawful discrimination in providing alcoholic beverages to female patrons at a reduced price while charging full price to male patrons, in violation of section 471 of the Liquor Code [47 P.S. § 4-471] and section 955 of the Pennsylvania Human Relations Act [43 P.S. § 955].

In response to the citation, Licensee attended a hearing held before the ALJ on March 19, 2009, during which time a properly executed Waiver, Admission and Authorization Form was submitted by Mr. Joseph Watkins, Licensee's sole partner. (N.T. 4, 17-18; Ex. J-1; Admin. Notice).

On June 10, 2009, the ALJ mailed an Adjudication and Order sustaining both counts of the citation and imposing a five hundred dollar (\$500.00) fine, to be paid within twenty (20) days of the above date.

On July 17, 2009, the fine having not been paid, the ALJ mailed a Supplemental Order imposing a one (1) day suspension to continue thereafter until the fine was paid. The Order further stated that if the fine remained

unpaid after sixty (60) days from July 17, 2009, the suspension would be reevaluated, and revocation of the license would be considered.

On October 6, 2009, the ALJ mailed a Second Supplemental Order acknowledging that the sixty (60) day period had elapsed and that Licensee failed to pay the fine. Accordingly, the ALJ ordered revocation of the license effective October 6, 2009.

On April 10, 2010, Ann Lavelle Powell, Esquire, counsel for Appellant, filed an appeal *nunc pro tunc* to the Board in the name of Lazy Raven, Inc., the prior owner of Licensee and successful bidder at the April 6, 2010 sheriff's sale of the interest in Licensee.

The Board denied Appellant Lazy Raven's appeal on September 1, 2010, and Appellant timely filed an appeal of that order in the Court of Common Pleas of Wyoming County, No. 2010-1242. By Court Order dated January 4, 2011, Judge Shurtleff granted the Appellant's Petition for Review, and by Order dated June 27, 2011, remanded the matter to the ALJ.

On August 24, 2011, the ALJ entered a Third Supplemental Order requiring that the fine of five hundred dollars (\$500.00) be paid within sixty (60) days and that the Bureau of Licensing ("Licensing") notify the ALJ of the reactivation of the license so that an Order may be entered fixing the date for

the suspension of the license. Appellant paid the fine in full by September 12, 2011, and wrote to Licensing to determine how to reactivate the license. Over two (2) months later, on November 16, 2011, the ALJ issued a Supplemental Order. In said Supplemental Order, the ALJ took administrative notice that the license has been revoked at Citation No. 09-2891.¹ Therefore, the ALJ ordered that the restaurant license be revoked in the instant citation upon mailing of the Supplemental Order and that Licensing mark its records that the license has been revoked.

Appellant timely appealed the decision of the ALJ on the grounds that Appellant never received notice of or had an opportunity to appeal Citation No. 09-2891. Appellant notes that both the Board and the ALJ had notice of the No. 09-2891 citation, yet never provided Appellant notice of the citation.

In addressing this matter, the Board has reviewed the full certified record provided by the Office of the Administrative Law Judge (“OALJ”), including but not limited to the ALJ’s Adjudication and Order mailed November 17, 2011, Appellant’s Appeal, the Notes of Testimony and Exhibits from the hearing held on March 19, 2009, and the record of Citation No. 09-2891. The Board has

¹ Citation No. 09-2891 charged Licensee with violations of Section 15.62(a) of the Board Regulations [40 Pa. Code § 15.62(a)] in that on August 17-19, September 14-18, 20-23, and 28, 2009, Licensee, by its servants, agents or employees, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension. Licensee failed to appear at the noticed evidentiary hearing, and the license was revoked.

concluded that the ALJ's ruling was not in error and that the ALJ did not abuse his discretion in entering the November 16, 2011 Supplemental Order revoking the license sua sponte.

The ALJ's Third Supplemental Order imposed a suspension (that was deferred until reactivation of the license) until the previously imposed fine of five hundred dollars (\$500.00) was paid by Appellant. While appellant duly paid the fine within the time dictated by the Third Supplemental Order, the license had not been reactivated due to the revocation in Citation No. 09-2891. Therefore, the ALJ's authority to revoke the license after the fine was paid remained, and the ALJ did not abuse his discretion in entering said Supplemental Order. [47 P.S. § 4-471]. Accordingly, the ALJ's Supplemental Order of November 16, 2011 revoking License No. R-13406 is affirmed.²

² The Board will not reach the merits of Appellant's argument that the Adjudication in Citation No. 09-2891 is invalid because Appellant did not receive requisite notice. Appellant is seeking to revisit a citation that is not presently before the Board.

ORDER

The appeal of Appellant Lazy Raven, Inc. is denied.

The decision of the ALJ in regard to Citation 08-1926 is affirmed.

The fine of five hundred dollars (\$500.00) has been paid by Licensee.

License No. R-13406 remains revoked.

Board Secretary