

Mailing Date: May 26, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 08-3062
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
KENRICH ATHLETIC CLUB	:	License No. C-1927
121 S. 19 th Street	:	
Philadelphia, PA 19103-4905	:	

Counsel for Licensee: Donald M. Moser, Esquire
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OPINION

Kenrich Athletic Club (“Licensee”) appeals the Order of Administrative Law Judge Tania Wright (“ALJ”) dated December 30, 2009, wherein the ALJ sustained the citation and imposed an aggregate fine of one thousand seven hundred, fifty dollars (\$1,750.00).

Count 1 of the citation charged Licensee with violating section 4-406(a)(1) of the Liquor Code in that on November 8 and 22, 2008, Licensee, by its servants, agents or employees, sold alcohol to non-members. [47 P.S. § 4-406(a)(1)]. Count 2 of the citation charged Licensee with violating section 5.32(a) of the Pennsylvania Liquor Control Board (“Board”) Regulations, in that on November 8 and 22, 2008, Licensee, by its servants, agents or employees, used or permitted to be used on the inside of the licensed premises, a loudspeaker or other similar device such that the sound of music could be heard outside. [40 Pa. Code § 5.32(a)].

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).

On appeal, Licensee does not challenge the sustaining of the citation but rather asserts that the ALJ committed an error of law and abused her discretion when she imposed an unduly harsh penalty.

The Board has reviewed the record, including the ALJ's Adjudication and Order and the hearing transcript, and has concluded that the ALJ acted properly when she imposed an aggregate penalty of one thousand seven hundred, fifty dollars (\$1,750.00).

Relative to Licensee's contention that the ALJ abused her discretion by imposing an excessive fine, it must be pointed out that the imposition of penalties is the exclusive prerogative of the ALJ. Section 471 of the Liquor Code prescribes the penalty for violations of the Board's Regulations and the Liquor Code set forth in the subject citation, as license suspension or revocation and/or a fine of not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000.00). [47 P.S. § 4-471]. The ALJ in the instant case imposed a fine of one thousand dollars (\$1,000.00) for Count 1 and a fine of seven-hundred fifty dollars (\$750.00) for Count 2. Since the penalty is clearly within the statutory ranges set forth in the Liquor Code, and the Board has no authority to alter the penalty imposed by the ALJ, the decision of the ALJ as to the penalty is affirmed.

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

ORDER

The decision of the ALJ to impose an aggregate fine of one thousand seven hundred, fifty dollars (\$1,750.00) in Citation No. 08-3062 is affirmed.

The appeal of Licensee is dismissed.

Licensee is directed to pay the properly imposed fine within twenty (20) days of the mailing of this order.

Board Secretary