

Mailing Date: February 24, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 09-0195
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
BONNIE L. WEIL	:	
T/A THE WAGON WHEEL	:	License No. R-16462
17-19 E. Main St.	:	
Ringtown, PA 17967	:	
	:	

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7448 Industrial Parkway
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OPINION

Bonnie L. Weil, t/a the Wagon Wheel (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge David L. Shenkle (“ALJ”), wherein the ALJ sustained the citation and imposed a fine in the amount of six hundred fifty dollars (\$650.00).

The citation charged Licensee with violating section 5.32(a) of the Liquor Control Board Regulations in that on December 20, 2008, and January 2, 2009, Licensee permitted the use of a loudspeaker or a similar device on the licensed premises whereby the sound of music or other entertainment or the advertisement thereof 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 his/her discretion, or if his/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, 484 A.2d 413 (Pa. Cmwlth. 1984).

In her appeal, Licensee argues that the decision of the ALJ was not based on substantial evidence because the testimony of the enforcement officer was not credible and that Licensee's testimony was more credible. Licensee also argues that the ALJ "erred in accepting enforcement officer's other testimony because of the exact wording of the questions asked of him." As the exact

meaning of the second argument is unclear, the Board will treat this argument as a challenge to the sufficiency of the evidence.

The Board has reviewed the record, including the ALJ's Adjudication and Order, with Licensee's contentions in mind, and has concluded that the ALJ's decision is supported by substantial evidence.

The record reveals that on December 20, 2008, and January 2, 2009, Officer Howard Seibert of the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") visited the licensed premises. [N.T. 6, 9]. He testified that on December 20, 2008, he entered the licensed premises and heard music coming from a jukebox. The jukebox was attached to two (2) speakers approximately one (1) foot by eighteen (18) inches that were mounted near the ceiling above a dance floor. [N.T. 7]. The officer left the premises while the music was still playing. He walked approximately one hundred (100) feet into a residential neighborhood where he could hear the song that was playing when he left the bar. [N.T. 7]. Officer Seibert then proceeded to walk an additional one hundred (100) feet and he could still hear music coming from inside the bar. [N.T. 8].

Officer Seibert conducted a second visit to the licensed premises on January 2, 2009. At that time, he entered the licensed establishment and no music was playing. [N.T. 10]. Within minutes of his arrival, however, a person

approached the jukebox and music began to play from the same loudspeakers he observed on the visit in December. [N.T. 10]. Officer Seibert left the bar and walked approximately one hundred (100) feet. While standing outside, he could hear music coming from inside the licensed premises. [N.T. 10]. Based on the foregoing, the evidence is more than sufficient to prove the violations alleged in the citation.

The Board now turns its attention to the argument in Licensee's appeal. Licensee maintains that the testimony of Licensee was more credible than the testimony elicited from Officer Seibert. Essentially, this is a challenge that amounts to nothing more than dissatisfaction with how the ALJ accorded evidentiary weight. Licensee invites the Board to engage in a reevaluation of witness credibility on a cold record. Such an invitation has been previously rejected by the Commonwealth Court, and is similarly rejected by the Board in regard to this case. See Thorpe v. Pub. Sch. Employee's Ret. Bd., 879 A.2d 341 (Pa. Cmwlth. 2005). It is well-settled that matters of witness credibility are the sole prerogative of the ALJ, and the ALJ's findings on credibility will not be disturbed absent a showing of insufficient evidence. Borough of Ridgway v. Pennsylvania Public Utility Comm'n, 480 A.2d 1253 (Pa. Cmwlth. 1984).

In the instant case, the ALJ found the testimony of Officer Seibert to be more credible and adequate to support the charge in the citation. The Board

will not overturn the ALJ's well-reasoned opinion on nothing more than a suggestion that Licensee, who was not even present on December 20, 2008, was more credible than the officer. Therefore, this argument must fail.

Based on the foregoing, the Board concludes that the evidence submitted by the Bureau was sufficient to support a violation of section 5.32(a) and affirms the decision of the ALJ to sustain the citation.

ORDER

The decision of the ALJ in regard to Citation No. 09-0195 is affirmed.

The appeal of the Licensee is denied.

The fine has been paid in full.

Board Secretary