

Mailing Date: October 7, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 09-0290
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
PLEASURE ENTERPRISES, LLC	:	License No. R-15595
t/a PLEASURES	:	
6216 WOODLAND AVENUE	:	
PHILADELPHIA, PA 19142-2308	:	

Counsel for Licensee: John J. McCreesh, IV
McCreesh, McCreesh, McCreesh & Cannon
7053 Terminal Square
Upper Darby, PA 19082

Counsel for Bureau: Erik Shmukler, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue
Philadelphia, PA 19142

OPINION

Pleasures Enterprises, LLC, t/a Pleasures (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge David L. Shenkle (“ALJ”), wherein the ALJ sustained the citation and revoked the license.

The citation charged that, on January 28, 2009, Licensee, by its servants, agents or employees violated section 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. § § 4-491(1), 492(2) and 4-493(16)] by selling, furnishing and/or giving alcoholic beverages during a time when its Restaurant Liquor License was revoked at Citation Nos. 06-2984, 08-1401 and 08-1677.

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 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).

On appeal, Licensee contends that ALJ's Order of Revocation is too severe a penalty under the facts of the case.

At the administrative hearing held on June 4, 2009, the parties stipulated to the facts as set forth in the Bureau's pre-hearing memorandum. Specifically, the parties agreed that on January 28, 2009, at 4:53 p.m., a liquor enforcement

officer of the Bureau of Liquor Control Enforcement entered the licensed premises and purchased a twelve (12)-ounce can of Budweiser Beer. The parties further agreed that Licensee's liquor license had been revoked as of October 6, 2008 pursuant to the Adjudication for Citation No. 06-2984. The liquor license had further been revoked as of January 26, 2009 in the Adjudication for Citation No. 08-1401 and Citation No. 08-1677. Licensee did file a *nunc pro tunc* appeal of the revocation order in reference to Citation No. 06-2984 on or about January 12, 2009. However, there was no temporary authority to operate on the date in question since the filing of a *nunc pro tunc* appeal does not act as a supersedeas of the underlying citation and because two of the citations were never appealed.

Relative to the Licensee's contention that the penalty of revocation imposed by the ALJ was too severe, the Board's review of penalties imposed by the ALJ is limited to determining whether the penalty imposed is within the parameters set forth in section 471 of the Liquor Code. Section 471 of the Liquor Code [47 P.S. § 4-471] allows the ALJ to impose a fine of fifty dollars (\$50.00) to one thousand dollars (\$1,000), a suspension of license, a revocation of the license, or a combination of fine, suspension, and/or revocation if the ALJ sustains the citation. Further, section 471 of the Liquor Code also permits

finer in the range of one thousand dollars (\$1,000.00) to five thousand dollars (\$5,000.00) for violations of section 493(16) of the Liquor Code.

In this case, the penalty imposed by the ALJ is within the parameters set forth in section 471 and will not be disturbed by the Board.

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 as of July 29, 2009.

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

Board Secretary