

Mailing Date: January 13, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 09-0552
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
461 NORTH, LLC,	:	
t/a Buckhead Saloon	:	License No. R-6029
457-461 North 3 <sup>rd</sup> Street	:	
Philadelphia, PA 19123	:	
	:	

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**OPINION**

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”), appeals the dismissal of Citation No. 09-0552 as set forth in the

Adjudication and Order of Administrative Law Judge David Shenkle (“ALJ”), dated September 30, 2009.

The citation charged Licensee with violating section 437 of the Liquor Code and section 5.41 of the Liquor Control Board Regulations, on February 5, 2009, by operating the licensed premises without a valid health permit or license. [47 P.S. § 4-437; 40 Pa. Code § 5.41].

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).

On appeal, the Bureau argues that the ALJ committed an error of law or abuse of discretion in concluding that Pennsylvania Liquor Control Board Opinion dated June 8, 1995, in Citation No. 94-0979, PSP/BLCE v. Soneez Place,

Inc. t/a Soneez, was controlling law in the present citation matter and the ALJ erred in finding that Licensee possessed a valid health permit on February 5, 2009.

The Board has reviewed the record, including the hearing transcript, the ALJ's Adjudication and Order and the brief submitted by the Bureau, with the Bureau's contention in mind, and has concluded that the ALJ properly relied on the decision in Soneez Place.

The parties stipulated to the following facts before the ALJ. [N.T. 4 – 7]. On May 2, 2008, Philadelphia Department of Licenses and Inspections (“L&I”) issued a Food Preparation License to Philadelphia 1301, LLC, for the licensed premises at 457-461 North 3<sup>rd</sup> Street. [N.T., Exh. L-1]. The permit expired on the last day of April, 2009. [N.T., Exh. L-1]. Licensee's application for a person-to-person transfer of the license from Philadelphia 1301 LLC to 461 North, LLC, was approved on December 16, 2008. [N.T., Exh. L-3]. On February 4, 2009, a liquor enforcement officer, acting on a complaint that the premises was operating without a health permit, confirmed with L&I that Licensee did not possess a current food preparing/serving license for the premises in its own name. [N.T., Exh. B-3]. The officer visited the premises on February 5, 2009,

and found two (2) bartenders attending five (5) patrons. [N.T., Exh. B-3]. The officer purchased beer and other officers entered and conducted a routine inspection. [N.T., Exh. B-3]. No current and valid health permit for the premises in Licensee's own name was produced. [N.T., Exh. B-3]. Licensee and the Bureau stipulated to the fact that Licensee took steps promptly to obtain a new health permit after the liquor license transfer was complete. [N.T. 6]. Subsequently, a valid health permit was issued to Licensee. [N.T. 6].

The Bureau asks the Board to revisit its decision in Pennsylvania Liquor Control Board Opinion dated June 8, 1995, in Citation No. 94-0979, PSP/BLCE v. Soneez Place, Inc. t/a Soneez and reverse its position. At this time, the Board declines to take such action. The facts of the two (2) cases are nearly identical. Both cases involve citations for violation of section 437 of the Liquor Code and section 5.41 of the Board's Regulations. [47 P.S. § 4-437; 40 Pa. Code § 5.41]. Each case involved a person to person transfer of the license. In both instances, the Bureau inspected the licensed premises and found that the licensee had a health permit that listed the correct location, but listed the preceding owner rather than the current licensee. The Bureau does not cite to any new statute, regulation or case law that would cause the Board to alter its

previous opinion.<sup>1</sup> As the facts and issues are nearly identical in the two (2) cases and no changes have occurred in the governing law, the ALJ properly relied on Soneez Place as the controlling Board decision.

Based upon the foregoing, the Board finds that the ALJ did not commit an error of law or abuse his discretion when deciding to rely on the decision in Soneez Place as the basis for the dismissal of the citation. Furthermore, there is substantial evidence in the record that Licensee took immediate action to acquire a health permit in its own name. Therefore, the decision of the ALJ is affirmed.

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<sup>1</sup> The Bureau argues that the Board should apply the holding enunciated in Pennsylvania Liquor Control Board Opinion dated March 21, 2007, in Citation No. 06-0624, PSP/BLCE v. L.F.C. Incorporated to the instant case. The issue in L.F.C. Incorporated was whether the Bureau was required to prove that the licensee received due process before the health permit was revoked by the municipality. As that is clearly not the issue in this case, the Board finds that the holding in L.F.C., Incorporated is not relevant.

**ORDER**

The decision of the ALJ is affirmed.

The appeal of the Bureau is dismissed.

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Board Secretary