

Mailing Date: July 22, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 09-0657
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
	:	
v.	:	License No. R-13088
	:	
B & G V REALTY, INC.	:	
T/A VENTO'S	:	
608 East Third Street	:	LID 57503
Weatherly, PA 18255-1500	:	

Counsel for Licensee: Florence Vento, President, Pro Se

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

OPINION

B & G V Realty Inc. t/a Vento's ("Licensee") appealed from the (Second) Supplemental Order of Administrative Law Judge Felix Thau ("ALJ"), wherein the ALJ revoked Licensee's liquor license.

Citation No. 09-0657 contained two (2) counts. The first count of the citation charged that on January 3, 4, and February 1 and 28, 2009,

Licensee, by its servants, agents or employees violated section 471 of the Liquor Code [47 P.S. § 4-471] and section 637.6(a)(2) of the Clean Indoor Air Act (“CIAA”) [35 P.S. § 637.6(a)(2)] by permitting smoking in a public place where smoking is prohibited.

The second count of the citation charged that on February 1 and 28, 2009, Licensee, by its servants, agents, or employees violated section 471 of the Liquor Code [47 P.S. § 4-471] and section 637.6(a)(1) of the CIAA [35 P.S. § 637(a)(1)], by failing to post signage as required by the CIAA.

In response to the citation, Licensee submitted a waiver on July 27, 2009, admitting the charges and authorizing the ALJ to issue a penalty.¹ (Admin. Notice). On August 11, 2009, the ALJ mailed an Adjudication and Order, sustaining the citation and imposing a two hundred dollar (\$200.00) fine, to be paid within twenty (20) days. (Admin. Notice).

On September 21, 2009, the fine having not been paid, the ALJ mailed an Opinion and Order Upon Licensee’s Failure to Pay a Fine, imposing a one (1)-day suspension to continue thereafter until the fine was paid. (Admin. Notice). The Order further stated that, if the fine remained

¹ Because Licensee appeals from a subsequent Order and not the initial Order and Adjudication of the ALJ, its waiver is not at issue herein.

unpaid after sixty (60) days, the suspension would be reevaluated and revocation of the license would be considered. (Admin. Notice).

On December 7, 2009, the ALJ mailed a (Second) Supplemental Opinion and Order acknowledging that the sixty (60)-day period had elapsed, and that Licensee failed to pay the fine. (Admin. Notice). Accordingly, the ALJ vacated his previous Order and ordered revocation of the license effective January 25, 2010. (Admin. Notice).²

On February 19, 2010, Filomena Vento, Licensee's corporate president, filed an untimely appeal to the Pennsylvania Liquor Control Board ("Board"), stating that the ALJ's decision to revoke the license was too harsh a penalty and that Licensee's failure to pay the fine was inadvertent and unintentional. Licensee further stated that it has, since that time, paid the fine and the license has remained in safekeeping throughout the relevant time period. In addition, it is Licensee's intention to continue to actively seek a buyer for the subject liquor license.

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

² The Board takes administrative notice that the fine of two hundred dollars (\$200.00) was paid on February 19, 2010.

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, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

Consideration of the merits of Licensee's appeal is unnecessary because the appeal was untimely. Section 17.21(c) of the Board's Regulations [40 Pa. Code § 17.21(c)] sets forth that appeals from decisions of the ALJ shall be filed or postmarked within thirty (30) calendar days of the mailing date of the adjudication of the ALJ. The December 7, 2009 Supplemental Opinion and Order of the ALJ sets forth the final adjudication as automatic revocation, Licensee had up to thirty (30) days after the December 7, 2009 date to file a timely appeal with the Board.

The thirty (30)-day filing deadline for an appeal from the ALJ's Supplemental Opinion and Order, pursuant to section 471 of the Liquor

Code [47 P.S. § 4-471], was January 6, 2010. Accordingly, Licensee's appeal was forty-five (45) days late and must be dismissed.³

³ Even if the Board were able to consider this appeal, it would not find an abuse of discretion in the penalty set by the ALJ. 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. [47 P.S. § 4-471]. Under section 471 of the Liquor Code, the Board has no authority to alter a penalty if it is within the statutory guidelines of the Liquor Code. In this case, the penalty in question, issued by the ALJ in response to Licensee's failure to pay the fine within sixty (60) days from the mailing date of the Supplemental Order of the ALJ, falls within the parameters of section 471 of the Liquor Code. Specifically, the ALJ is authorized to suspend or revoke a license or impose a fine ranging from fifty dollars (\$50.00) to one thousand dollars (\$1,000.00) based upon the violations alleged in this citation. Moreover, section 471 further provides that "[i]n the event the fine is not paid within twenty days of the adjudication, the administrative law judge shall suspend or revoke the license." [Id.]. The penalty imposed by the ALJ in his Second Supplemental Order regarding Licensee's failure to pay its fine is certainly within the parameters set forth in section 471.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

The fine of two hundred dollars (\$200.00) has been paid.

It is hereby ordered that Licensee's Restaurant Liquor License No. R-13088 remains revoked as of January 25, 2010.

Licensee must adhere to the conditions set forth in the ALJ's Order dated December 7, 2009.

Board Secretary