

Mailing Date: May 12, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 09-0835
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
HOLLYWOOD PETDR, INC.	:	License No. R-4317
T/A CHECKER'S PIZZA	:	
1181 N. Church St.	:	
Hazleton, PA 18202	:	
	:	

Counsel for Licensee: David T. Echon, Treasurer
Pro Se

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

OPINION

Hollywood PETDR, Inc. t/a Checker's Pizza ("Licensee"), filed the instant appeal challenging the decision of the Administrative Law Judge Daniel T. Flaherty, Jr. ("ALJ") in his Second Supplemental Order, wherein the ALJ revoked the license for failure to pay a fine of five hundred dollars (\$500.00).

On April 15, 2009, Licensee was issued a citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) for violating section 491(10) of the Liquor Code in that, from January 1 through March 22, 2009, Licensee, by its servants, agents or employees, refilled liquor bottles. [47 P.S. § 491(10)].

Licensee submitted a Statement of Waiver, Admission and Authorization on June 19, 2009, in which it admitted to all of the violations, acknowledged that the Bureau complied with the applicable notice requirements, authorized the ALJ to enter an adjudication without a hearing, and waived its appeal rights. Subsequently, on August 4, 2009, the ALJ issued an Adjudication and Order in which he sustained the single count in the citation and imposed a fine of five hundred dollars (\$500.00).

When Licensee had not paid the fine within the allotted twenty (20) days, the ALJ issued a Supplemental Order on September 23, 2009, suspending the license for at least one (1) day and continuing thereafter until the fine was paid. The fine remained unpaid and the ALJ issued a Second Supplemental Order on December 9, 2009, in which he revoked the license effective on the

mailing date of the order.¹ The instant appeal challenging the revocation of the license was filed on January 7, 2010.²

Licensee argues that it was his understanding that payment of the fine was not required until the license was removed from safekeeping. Nothing in the record supports this conclusion. The Waiver form does not contain any note regarding the payment of the fine. Furthermore, there is nothing in the ALJ's Adjudication and Order of August 4, 2009 or its Supplemental Order of September 23, 2009 to indicate that payment of the fine was deferred until the license was removed from safekeeping.

Licensee had ample notice that revocation of the license was possible if the fine was not paid in a timely manner. The Adjudication and Order clearly stated that the fine must be paid within twenty (20) days from the date of the Order. [Adjudication and Order, Aug. 4, 2009]. The Supplemental Order advised Licensee that the fine must be paid within sixty (60) days of the date of the Order or the ALJ shall "reevaluate the penalty . . . and consider revocation of the license." [Supplemental Order, Sept. 23,

¹ Section 421(b) of the Liquor Code states that suspensions and evocations of licenses shall not go into effect until thirty (30) days have elapsed since the adjudication. [47 P.S. § 471(b)]. In the instant case, the revocation went into effect immediately. While this is error, it is harmless since the business had already closed.

² As noted earlier, Licensee filed a waiver in this matter, expressly waiving the rights to appeal this adjudication. While the Board believes that such waiver precludes the filing of an appeal to the extent that what has been appealed is not the adjudication itself but the Second Supplemental Order, the Board, out of an abundance of caution, has addressed the appeal itself.

2009, pg. 2, emphasis added]. Neither the Adjudication nor the Supplemental Order state that payment of the fine could be deferred until the license was removed from safekeeping.³ To date, Licensee has not paid the fine.

Section 471 of the Liquor Code authorizes the ALJ to revoke or suspend a license if a licensee does not pay a previously imposed fine within twenty (20) days of its imposition. There is no question that the fine was not paid within twenty (20) days of the imposition.

Based on the foregoing, the Board concludes that Licensee was advised of the potential revocation and took no action to pay the fine. Therefore, the ALJ acted properly when he revoked the license.

³ The Supplemental Order included a suspension of the license. The suspension period, not the payment of the fine, was deferred until the license was reactivated.

ORDER

The decision of the ALJ is affirmed as to Citation No. 09-0835.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee's Restaurant Liquor License No. R-4317 remains revoked.

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

Board Secretary