

Mailing Date: March 16, 2011

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 09-1094
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
	:	
v.	:	
	:	
	:	
KENRICH ATHLETIC CLUB	:	
121 South 19 th Street	:	License No. C-1927
Philadelphia, PA 19103-4905	:	

Counsel for Licensee: Francis W. Twardy, Steward (on appeal)

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Philadelphia, PA 19142

OPINION

Kenrich Athletic Club (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge Tania Wright (“ALJ”), mailed January 14, 2011, wherein the ALJ sustained Citation No. 09-1094 (“the Citation”) issued by

the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”), and imposed an aggregate fine of five hundred dollars (\$500.00).

The first count of the Citation charged Licensee with violating section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code § 15.62(a)] on March 30, 31, April 1 and 2, 2009, by failing to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premise, a Notice of Suspension.

The second count of the Citation charged Licensee with violating section 15.62(b) of the Liquor Control Board Regulations [40 Pa. Code § 15.62(b)] on April 1 and 2, 2009, by posting notices on the licensed premises which stated or indicated that the licensed establishment was closed for a reason other than the suspension of the 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 error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court has 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 the ALJ committed an error of law and abused her discretion by improperly imposing the suspension on Citation No. 08-0930, which ultimately led to this Citation.

A hearing was held on Citation No. 08-0930 on December 17, 2008. At the hearing for Citation No. 08-0930, Licensee was represented by counsel. By Order mailed February 19, 2009, the ALJ imposed a one thousand dollar (\$1000.00) fine and a fourteen (14)-day suspension. The fine was paid on March 13, 2009. However, at the time the Adjudication was issued, the license was not active. Thus, the ALJ deferred the suspension pending reactivation of the License. No appeal was taken from the Adjudication and Order.

Immediately upon receipt of information that the license had been reactivated, the ALJ issued a Supplemental Order dated March 20, 2009, ordering the suspension to begin on March 30, 2009, and end on April 13, 2009. On March 31, 2009, Licensee asked for reconsideration of the dates imposed for the suspension due to hardship caused by the short notice. On April 1, 2009, the ALJ issued a Second Supplemental Order modifying the

suspension to allow Licensee to reopen on April 3, 2009 and serve the remaining ten (10) days of the suspension from April 17 to April 27, 2009.

On April 8, 2009, Licensee filed an appeal to the Board. On May 20, 2009, the Board issued an Opinion affirming the April 1, 2009 decision of the ALJ, and remanding the case to the ALJ for imposition of the remaining ten (10) days of suspension. On June 5, 2009, the ALJ issued an Order upon Remand resetting the remaining ten (10) days of suspension from June 19 to June 29, 2009.

On June 15, 2009, Licensee appealed to the Court of Common Pleas of Philadelphia County, thus staying the service of the suspension. On March 23, 2010, an Order was issued by that Court remanding the case to the ALJ for imposition of a penalty equal to the number of unserved days in the original fourteen (14) day suspension. On April 7, 2010, the ALJ reset the ten (10) days of suspension for April 30 to May 10, 2010. Licensee appealed that Order to the Board and on May 12, 2010, the Board issued an Opinion and Order granting Licensee's appeal only as to the dates of suspension because the ALJ had not allowed a thirty (30)-day period to pass between its April 7 Order and the April 30 start of the suspension. The case was remanded to the ALJ for reimposition of penalty.

On May 24, 2010, the ALJ issued an Order Upon Remand from the Board. She reimposed the ten (10) day remaining suspension for the period of July 2 to 12, 2010. On May 27, 2010, the Bureau filed an application for reconsideration of the Board's May 12 Opinion and Order, followed by an appeal of that decision on June 1, 2010 in the Court of Common Pleas of Philadelphia County. On June 23, 2010, the Board issued an Opinion and Order denying the Bureau's application for reconsideration.

On March 10, 2010 and July 21, 2010, a bifurcated hearing was held on Citation No. 09-1094. At the July 21, 2010 hearing, Francis Twardy, Licensee's steward, testified that the suspension placard was properly posted from March 30 to April 2, 2009. [N.T. 7/21/10, 28-31]. However, Officers from the Bureau of Enforcement testified that while the premises was closed, the suspension placard was not posted on the premises during the suspension period. [N.T. 3/10/10, 18, 20-24, 26-27, 56, 61, 67]. On April 1 and April 2, 2009, Officers observed a sign posted that indicated that the premises was closed for plumbing repairs and would reopen on Friday, April 3, 2009. [N.T. 3/10/10, 27, 55].

Nevertheless, Licensee argues that it was not obligated to comply with the Order of Suspension for Citation No. 08-0930 because the Supplemental

Order did not give Licensee thirty (30) days prior to the imposition of the suspension. Section 471(b) of the Liquor Code [47 P.S. § 4-471(b)] states that suspensions and revocations shall not go into effect until thirty (30) days have elapsed from the date of the adjudication during which time the licensee may take an appeal as provided for in the Liquor Code. However, more than thirty (30) days elapsed between the date of the Adjudication on February 9, 2009 and the imposition of suspension on March 30, 2009. Moreover, even if Licensee were entitled to another thirty (30) days notice, Licensee cannot disregard Orders of the Court. There are legal remedies available of which Licensee may avail himself. In fact, Licensee did file a Petition for Reconsideration. That request was granted by the ALJ who issued a Second Supplemental Order modifying the suspension to allow Licensee to reopen on April 3, 2009 and serve the remaining ten (10) days of the suspension from April 17 to April 27, 2009. Accordingly, the Board finds that the ALJ did not abuse her discretion in regard to Citation 09-1094.

ORDER

The decision of the ALJ is affirmed.

Licensee's appeal is dismissed.

The fine of five hundred dollars (\$500.00) remains unpaid.

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

Pennsylvania Liquor Control Board

Board Secretary