

Mailing Date: January 13, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 09-1453
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

v. :

SAMMARK, INC. : License No. R-20004
t/a Tony's Big Easy :
129 S. Pugh Street :
State College, PA 16801-4745 :

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OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) appeals the dismissal of Count 2 of Citation No. 09-1453 as set forth in the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), dated September 17, 2009.

The citation underlying this appeal contained two (2) separate counts; however, Count 1 is not at issue in the present appeal and accordingly will not be addressed in this Opinion. Count 2 of the citation alleged that on April 10, 16, 17, 18, May 9, 20 and 24, 2009, Licensee, by its servants, agents or employees, failed to adhere to the terms of the court order governing the operation of its premises, issued by the Court of Common Pleas of Centre County, on March 3, 2009, at 2008-2863 (“Court Order”), in violation of section 471 of the Liquor Code. [47 P.S. § 4-471]. The ALJ dismissed Count 2 of the citation, filed against Sammark, Inc. t/a Tony’s Big Easy (“Licensee”), finding that the ALJ did not have subject matter jurisdiction to adjudicate Count 2. The Bureau filed a timely appeal.

The sole issue before Board in this appeal is whether the ALJ committed an error of law in determining that he lacked subject matter jurisdiction to adjudicate Count 2. 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 discretion, or if his decision was not based upon substantial evidence.¹ Subject matter jurisdiction is purely a question of law. Commonwealth v. D.S., 903 A.2d 582, 584 (Pa. Super. 2006); Commonwealth v. John, 854 A.2d 591, 593 (Pa. Super. 2004), *appeal denied*, 582 Pa. 682, 870 A.2d 320 (2005). “As with all questions of law, the appellate standard of review is *de novo* and the appellate scope of review is plenary.” In re Wilson, 879 A.2d 199, 214 (Pa. Super. 2005) (*en banc*).

The Board has reviewed the certified record, including the Admission, Waiver and Authorization Form submitted by Licensee, the Licensee’s response to the Bureau’s appeal², as well as the ALJ’s Adjudication and Order, with the Bureau’s contentions in mind and has concluded that the ALJ

¹ 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, 484 A.2d 413 (Pa. Cmwlth. 1984).

² Licensee’s response to this appeal consists of a one (1) page letter. The response asserts that the appeal in this matter is moot on the basis that the ALJ imposed a fine equal to that which was presented to the ALJ in the form of a joint recommendation. An issue before a court is moot if, in ruling upon the issue, the court cannot enter an order that has any legal force or effect. See, Consumer Educ. and Protective Ass'n v. Public Utility Commission, 847 A.2d 789 (Pa. Cmwlth. 2004). Licensee’s argument is meritless since the Board’s decision in this matter will result in an order with legal force and effect.

committed an error of law when he found that he lacked subject matter jurisdiction to adjudicate Count 2. Accordingly, the ruling as to Count 2 must be reversed.

It is well settled that whether a court has subject matter jurisdiction over a controversy is a fundamental issue of law which may be raised at any time in the course of the proceedings, including, as in this case, by the court *sua sponte*. Commonwealth v. Little, 455 Pa. 163, 314 A.2d 270, 272 (1974); Com., Office of Atty. Gen. ex rel. Corbett v. Locust Township, 600 Pa. 533, 968 A.2d 1263 (2009). Jurisdiction over the subject matter of a controversy is conferred solely by the Constitution and by the laws of the Commonwealth. In re Administrative Order No. 1-MD-2003, Appeal of Troutman, 594 Pa. 346, 936 A.2d 1 (2007). “Subject matter jurisdiction may not be conferred by consent of the parties and a defect of such jurisdiction may not be waived.” Id. at 6.

The Pennsylvania Supreme Court has long held that the test for determining whether a tribunal has jurisdiction of the subject matter goes to “the competency of the court to determine controversies of the *general class* to which the case presented for its consideration belongs...” Strank v. Mercy Hospital of Johnstown, 376 Pa. 305, 102 A.2d 170 (1954) (emphasis in

original) (*citing* Witney v. Lebanon City, 369 Pa. 308, 85 A.2d 106 (1952)). Further, the ultimate inquiry regarding subject matter jurisdiction is whether the court or tribunal is empowered to hear and determine a *controversy of the character involved*. Id. (emphasis added) (*citing* Upholsterers' International Union of North America v. United Furniture Workers of America, C. I. O., 356 Pa. 469, 52 A.2d 217 (1947)).

In the present case, the ALJ based his dismissal of Count 2 upon the erroneous conclusion that the “upon any other sufficient cause” portion of section 471 was not broad enough to allow the Bureau to cite Licensee for violations of the Court Order. In reaching his decision the ALJ concluded that the Court Order was an injunction and that the only relief available for violations of its provisions was through a contempt petition filed in the Centre County Court of Common Pleas. The ALJ’s position is fundamentally flawed. The Board finds that a violation of a lawfully issued court order, explicitly imposing conditions on the sale of alcoholic beverages, constitutes sufficient cause for citation by the Bureau. Because this citation involved a controversy, the character of which the ALJ is empowered to hear, subject matter jurisdiction is not lacking.

Section 471 of the Liquor Code states, in pertinent part, that:

Upon learning or *any violation* of [the Liquor Code] or *any laws of this Commonwealth relating to liquor, alcohol, or malt or brewed beverages*, or of any regulations of the board adopted pursuant to such laws, *or any violation of any laws of this Commonwealth* or of the Federal Government relating to the payment of taxes on liquor, alcohol or malt or brewed beverages by any licensee within the scope of this article, his officers, servants, agents or employes, *or upon any other sufficient cause shown*, the enforcement bureau, may within one year from the date of such violation or cause appearing, cite such licensee to appear before the administrative law judge...

[47 P.S. § 4-471(a) (emphasis added)].

The legislature of Pennsylvania has vested in the Bureau broad authority to hold liquor licensees accountable for violations relating to service of alcoholic beverages in order to protect the public welfare, health, peace and morals of the citizens of the Commonwealth. To achieve these purposes, the Liquor Code must be liberally construed pursuant to section 104(a) [47 P.S. § 1-104(a)]. See also, V.J.R. Bar Corporation v. Pennsylvania Liquor Control Board, 480 Pa. 322, 390 A.2d 163 (1978) (stating that it is the command of the Legislature that all the provisions of the Liquor Code be liberally construed for the protection of the public welfare, health, peace and morals of the people of the Commonwealth).

As stated by the Pennsylvania Supreme Court: “there is perhaps no other area of permissible state action within which the exercise of the police powers of a state is more plenary than in the regulation and control of the use and sale of alcoholic beverages.” In re Tahiti Bar, Inc. Liquor License Case, 395 Pa. 355, 150 A.2d 112, 115 (1959)(abrogated on other grounds Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Hospitality Investments of Philadelphia, Inc., 547 Pa. 142, 689 A.2d 213, 216 (1997)).

Further, the Commonwealth Court has previously recognized that it is almost impossible to anticipate all the actions that may justify remedial proceedings against a licensee. “Therefore, to accomplish the remedial purposes of the [Liquor Code] a ‘catch-all’ provision is needed. The ‘other sufficient cause’ provision is proper for this purpose.” In Re Quaker City Development Co., 365 A.2d 683, 684 (Pa. Cmwlth. 1976). It is also well-established that in accordance with the clear language of the statute, “sufficient cause” is not limited to violations of law. V.J.R. Bar Corp. v. Com., Liquor Control Bd., 480 Pa. 322, 390 A.2d 163 (1978). As a result, the Bureau may properly enforce all conduct reasonably related to the

sale and use of alcoholic beverages, not just enforcing the laws directly related to the sales of liquor and malt or brewed beverages.³

In arriving at the conclusion that sufficient cause was not present in this matter, the ALJ relied upon hyperbole rather than case law. In doing so, the ALJ essentially established arbitrary boundaries on the scope of what qualifies as sufficient cause.⁴ This capricious decision overlooked nearly six (6) decades of precedent regarding the sufficient cause doctrine. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Harrisburg Knights of Columbus Home Ass'n, 2009 WL 4895480 (Pa. Cmwlth. 2009). Indeed, the ALJ, the Bureau and the Board are not without guidance from the Pennsylvania Supreme Court in determining the limits placed on a finding of sufficient cause. In V.J.R. Bar Corp. v. Pennsylvania Liquor Control Bd., *supra* and Pennsylvania Liquor Control Bd. v. T.L.K., Inc., 544 A.2d 931

³ The courts have held that “other sufficient cause shown” includes a variety of conduct not expressly prohibited by the statute but related to the sale and use of alcoholic beverages. Examples of prohibited conduct include drug trafficking, prostitution, gambling and disorderly conduct. Pennsylvania Liquor Control Board v. T.L.K. Inc., *supra* (drug trafficking); V.J.R. Bar Corp. v. Pennsylvania Liquor Control Board, *supra* (gambling); Tahiti Bar, Inc. Liquor License Case, *supra* (prohibiting association between entertainers and patrons); In re Ciro’s Lounge, Inc., 358 A.2d 141 (Pa. Cmwlth. 1976) (noisy and disorderly conduct); Reiter Liquor License Case, 98 A.2d 465 (Pa. Super. 1953) (presence of prostitutes, lewd acts, obscene language, and noisy and disorderly conditions on premises). Each of these activities, when conducted in a licensed establishment, disrupts the orderly and peaceful sales and use of alcoholic beverages.

⁴ Indeed, the ALJ’s conclusion would seemingly suggest that the Bureau could not issue a citation in any instance where alternative proceedings could be initiated against the Licensee. Under this logic the ALJ would lack subject matter jurisdiction to hear any matter where criminal or civil proceedings could be pursued based upon the Licensee’s conduct. Such a position is patently incorrect.

(Pa. 1988), the Pennsylvania Supreme Court established a two (2) part-test in regard to a finding of “other sufficient cause.” Under these cases “other sufficient cause” may be found if the conduct in question is reasonably related to the sale and use of alcoholic beverages on the licensed premises and the licensee knew or should have known of the alleged misconduct.

The ALJ opined that the actions of the Bureau constitute improper enforcement of a court order. However, what the ALJ failed to recognize is that the Court Order in this case placed a series of specific conditions on the operation of Licensee’s establishment. These conditions were inexorably tied and directly related to the service of alcoholic beverages. When Licensee violated the conditions placed upon it by a court of competent jurisdiction, the Licensee had not only committed contempt of court;⁵ it had also violated the Liquor Code and Board Regulations. Further, there is little question that the Licensee knew or should have known that its actions were violations of the underlying Court Order.

⁵ The Board agrees with the ALJ that a contempt action could have been pursued based upon the conduct in this case. However, it should be noted that the Bureau would not have had standing to pursue a contempt action because it was not a party to the original proceeding before the Centre County Court of Common Pleas. That matter was initiated by the Board’s Bureau of Licensing and involved the non-renewal of the subject liquor license. Nevertheless, the availability of an alternate remedy does not foreclose citation by the Bureau.

The Bureau's enforcement action based upon violations of the Licensee's terms of continued operation is no different than enforcement of the Liquor Code based on violations of the Crimes Code, the Local Option Small Games of Chance Act or a conditional licensing agreement. See e.g., Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Harrisburg Knights of Columbus Home Ass'n, supra. The terms of the Court Order dealt directly with the sale and use of alcoholic beverages, therefore the Bureau has enforcement authority under the "other sufficient cause" provision of the Liquor Code.

Based upon the foregoing, the Board finds that the Bureau had the authority to conduct enforcement activities on licensed premises as set forth in the Liquor Code, including monitoring Licensee's compliance with the terms of the Court Order and that the ALJ has subject matter jurisdiction to adjudicate such violations. Accordingly, the Bureau's appeal of the ALJ's decision is granted. The decision of the ALJ as to Count 2 is reversed.

It must also be recognized that sufficiency of the evidence is not at issue in this matter as Licensee admitted to all violations charged in the citation in

the Statement of Admission, Waiver and Authorization form.⁶ [Statement of Admission, Waiver & Authorization Form, Sept. 9, 2009, *emphasis added*]. Therefore, the only remaining issue on remand is the assessment of a penalty for Count 2.

⁶In the Adjudication and Order, the ALJ states that during a pre-hearing conference via telephone, Licensee's counsel stated that Licensee was only admitting to Count 1 on the Statement of Admission, Waiver and Authorization Form. [Pg. 4, Adjudication and Order, Sept. 29, 2009]. This statement directly contradicts the contents of the actual document which has no limiting language anywhere on the form. 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]. As the pre-hearing conference was not made part of the record, other than through this passing statement of the ALJ, the Board will rely on the information contained in the Waiver form.

ORDER

The decision of the ALJ is reversed.

The appeal of the Bureau is granted.

This matter is remanded to the ALJ for implementation of an Order consistent with the Board's decision and to impose a penalty for Count 2.

Board Secretary