

Mailing Date: May 4, 2011

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 09-2152
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

v. :

HUME MCNEAL BYERS : License No. CC-9195
AMVETS POST 224 HOME :
ASSOCIATION : LID 43534
750 North Fifth Avenue :
Chambersburg, PA 17201-1275 :

Counsel for Licensee: Carol A. Redding, Esquire
Patrick J. Redding, Esquire
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Pennsylvania State Police,
Bureau of Liquor Control Enforcement
3655 Vartan Way
Harrisburg, PA 17110

OPINION

Hume McNeal Byers AmVets Post 224 Home Association
("Licensee") appeals from the Opinion and Order Upon Remand from the

Pennsylvania Liquor Control Board (“Board”) of Administrative Law Judge Felix Thau (“ALJ”), mailed January 25, 2011, wherein the ALJ, in accordance with the Board’s Opinion and Order mailed January 12, 2011, entered an additional finding of fact and conclusion of law sustaining the second count of the Citation and imposing a penalty consisting of a fine of one thousand dollars (\$1,000.00) and a sixty (60)-day license suspension.¹

The second count of the Citation charged that during the periods February 8 through February 14, March 15 through March 21, April 19 through April 25, May 24 through May 30, and June 14 through June 20, 2009, Licensee, by its servants, agents or employees, violated sections 471 of the Liquor Code [47 P.S. § 4-471] and section 315(b) of the Local Option Small Games of Chance (“LOSGCA”) [10 P.S. § 315(b)], by offering and/or awarding more than five thousand dollars (\$5,000.00) in cash or merchandise in any seven (7)-day period.

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

¹ Licensee’s appeal to the Board’s Opinion mailed January 12, 2011, is currently pending before the Franklin County Court of Common Pleas.

error of law or abused his discretion, or if his 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).

A hearing was held on Citation No. 09-2152 on September 23, 2010. At the hearing, Licensee was represented by counsel. By Order mailed October 22, 2010, the ALJ sustained the first and third counts and dismissed the second and fourth counts. The ALJ imposed an aggregate fine of two thousand dollars (\$2,000.00) and a one hundred twenty (120)-day suspension. Licensee timely appealed the ALJ Order mailed October 22, 2010, as to Counts 1 and 3. The Bureau filed a cross-appeal from the same Order, as to Counts 2 and 4. By Order mailed January 12, 2011, the Board remanded the case to the ALJ for an imposition of penalty as to the second count. By Order mailed January 25, 2011, the ALJ sustained the second count and imposed a fine of one thousand dollars (\$1,000.00) and a sixty (60)-day suspension.

In the instant appeal, Licensee challenges only the imposition of penalty imposed by the ALJ on the second count of the Citation. Therefore, only the penalty for the second count of the Citation, as issued in the ALJ's Opinion and Order Upon Remand from the Pennsylvania Liquor Control Board, will be addressed.²

Licensee argues that the one thousand dollar (\$1,000.00) fine and the sixty (60)-day suspension was excessively harsh. The imposition of penalties is the exclusive prerogative of the ALJ. The Board may not disturb penalties that are within the parameters set forth in section 471(b) of the Liquor Code. [47 P.S. § 4-471(b)]. Section 471(b) specifically prescribes a penalty of license suspension or revocation or a fine of fifty dollars (\$50.00) to one thousand dollars (\$1,000.00), or both, for the second count. The statute does not set an upper limit to the number of days a license can be suspended. Thus, the one thousand dollar (\$1,000.00) fine and the sixty (60)-day suspension are clearly permissible and well within the scope of

² Contemporaneous with its present appeal, Licensee filed an Application for Supersedeas. This application was unnecessary because Licensee was not charged with a violation that was subject to an enhanced penalty. The filing of the appeal acts as a supersedeas or stay of the ALJ's Order, without the need to file an Application for Supersedeas. [47 P.S. § 4-471(b)].

section 471(b). Accordingly, the Board finds that the penalty was not excessive and the ALJ's decision is affirmed.

ORDER

The decision of the ALJ is affirmed.

Licensee's appeal is dismissed.

The fine of one thousand dollars (\$1,000.00) on Count 2 has been paid.

The case is hereby remanded to the ALJ to ensure compliance with this Order and to impose new dates for the suspension(s).

Board Secretary