Mailing Date: August 18, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	: : : :	Citation No. 09-2819X
v.	: :	
McKEAN/BATES PROPERTIES, INC. t/a Cuckoo's Nest RR3, Box 440 Hawley, PA 18428-8901	: : : :	License No. R-20153 LID 53657

Counsel for Licensee: Dawn K. Bates, 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

McKean/Bates Properties, Inc. t/a Cuckoo's Nest ("Licensee"), filed the instant appeal challenging the decision of Administrative Law Judge Felix Thau ("ALJ") in his Second Supplemental Order, wherein the ALJ ordered a one (1) day suspension of Restaurant Liquor License No. R-20153 for the failure of Licensee to timely pay a fine of eight hundred fifty dollars ($850.00).

On December 4, 2009, Licensee was issued Citation No. 09-2819 by the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") for violating section 493(26) of the Liquor Code, in that Licensee, by its servants, agents or employees, issued checks or drafts dated October 14, 15 and 28, 2009, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payments of such checks. [47 P.S. § 4-493(26)].

Licensee submitted a Statement of Waiver, Admission and Authorization on December 29, 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 January 26, 2010, the ALJ issued an Adjudication and Order in which he sustained the citation and imposed a fine of eight hundred fifty dollars ($850.00).

When the ALJ's office had not received payment of the fine within the allotted twenty (20) days, the ALJ issued a Supplemental Order on April 7, 2010, suspending the license for at least one (1) day and continuing thereafter until the fine was paid. Upon payment of the fine on April 13, 2010, a Second Supplemental Order was issued by the ALJ on April 15, 2010, in which the ALJ

vacated the Supplemental Order's continuing suspension and reaffirmed the one (1) day suspension. The instant appeal challenging the one (1) day suspension of the license was timely filed on April 30, 2010.

Licensee's appeal states that Licensee timely paid the fine by money order sent to the ALJ's office. Upon receipt of the Supplemental Order, Licensee alleges that it checked the status of the money order with the issuing post office, which indicated that the money order was never cashed. Licensee immediately sent a cashier's check via certified mail, which was received by the ALJ's office on April 13, 2010.

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/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).

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, January 26, 2010]. 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. However, Licensee is claiming it sent timely payment via a mail order which the post office indicated was never cashed. If true, evidence of this timely payment would be relevant to the instant action, as a reasonable person might accept this evidence as adequate to support the conclusion that payment, while not received/acknowledged by the ALJ's office, was timely made nonetheless. However, the Board is constrained by its standard/scope of review to decide the instant appeal based solely on the record before the ALJ. And based on that record, there was no evidence presented to verify Licensee's attempted payment. Should Licensee choose to pursue an appeal to the court of common pleas, it might be able to present sufficient evidence of a timely payment to that court, but at this stage, Licensee's appeal must be dismissed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

The fine of eight hundred fifty dollars ($850.00) has been paid.

The case is hereby remanded for imposition of the one (1) day suspension in accordance with this Opinion.

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Board Secretary