Mailing Date: August 17, 2011

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	: : : : : : :	Citation No. 10-0434
v.		
GOAL LINE, LLC t/a The Goal Line Sports Bar 171 Dundaff Street Carbondale, PA 18407-1554	: : : :	License No. R-11385 LID 60326

Counsel for Licensee (on appeal): Edwin A. Abrahamsen, Esquire
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O P I N I O N

Goal Line, LLC t/a The Goal Line Sports Bar ("Licensee") appeals from the Second Supplemental Order of Administrative Law Judge Felix Thau ("ALJ") mailed January 25, 2011, wherein the ALJ revoked the license due to Licensee's failure to pay the fine relative to Citation No. 10-0434 ("the Citation"), issued by

the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau").

On March 17, 2010, the Bureau issued the Citation to Licensee, charging Licensee with violating section 5.32(a) of the Board's Regulations [40 Pa. Code § 5.32(a)(1)] on February 12, 2010, in that Licensee, by its servants, agents or employees, used or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

A hearing was held regarding the Citation on July 20, 2010. Craig A. Strong, Esquire, appeared at the hearing as counsel for the Bureau. No representative for Licensee was present.

By Adjudication and Order mailed September 8, 2010, the ALJ sustained the Citation and imposed a fine of one thousand dollars ($1,000.00). The ALJ also advised Licensee that failure to pay the fine within twenty (20) days of the mailing date of the Order would result in Licensee's license being suspended or revoked. Licensee failed to pay the fine within the allotted twenty (20) days. As a result, by Supplemental Order mailed October 25, 2010, the ALJ suspended Licensee's license for at least one (1) day and continuing thereafter until the fine was paid and advised Licensee that if the fine remained unpaid after sixty

(60) days, the suspension would be reevaluated and revocation considered. The fine remains unpaid, and by Second Supplemental Order January 25, 2011, the ALJ revoked the license. Edwin A. Abrahamsen, Esquire, filed the instant appeal *nunc pro tunc* on behalf of Licensee on June 21, 2011.

In its Petition *Nunc Pro Tunc*, Licensee asserts that in October 2010 Licensee retained counsel, Bernard Brown, to represent it and to pay its fines relative to this and two (2) unrelated citations. Licensee contends that Mr. Brown failed to pay the fines, contrary to Licensee's instructions, thus placing Licensee in the predicament of now having to seek *nunc pro tunc* relief from the ALJ's Supplemental Orders. Furthermore, Licensee notes that its owner and manager, Kenneth Witkowski, suffered a head injury in June 2010, causing him to rely on the assistance of Mr. Brown in handling the matters.

Section 471 of the Liquor Code establishes a thirty (30)-day filing deadline for appeals from an ALJ decision. [47 P.S. § 4-471(b)]. Further, section 17.21 of the Board's Regulations provides that failure to file or have the appeal postmarked within thirty (30) calendar days will result in dismissal of the appeal. [40 Pa. Code § 17.21(b)(2)]. The Supreme Court of Pennsylvania has held that the time for taking an appeal cannot be extended as a matter of grace or mere indulgence. West Penn Power Co. v. Goddard, 460 Pa. 551, 333

A.2d 909 (1975); In re: Dixon's Estate, 443 Pa. 303, 279 A.2d 39 (1971). Extension of the time of filing an appeal should be limited to cases where "there is fraud [or] some breakdown in the court's operation" caused by extraordinary circumstances. West Penn Power Co., 333 A.2d at 912. The negligence of an appellant, or an appellant's counsel, or an agent of appellant's counsel, has not been considered a sufficient excuse for the failure to file a timely appeal. Bass v. Commonwealth, 485 Pa. 256, 401 A.2d 1133 (1979).

The rule set forth in Bass was further clarified in Cook v. Unemployment Compensation Board of Review, 671 A.2d 1130 (Pa. 1996). Specifically, a delay in filing an appeal is only excusable if: (1) it was caused by extraordinary circumstances involving fraud or breakdown in the court's operation or non-negligent conduct of the appellant, appellant's attorney or his/her staff; (2) the appeal is filed within a short time after appellant or his counsel learns of and has the opportunity to address the untimeliness; (3) the time period which elapses is of very short duration; and (4) appellee is not prejudiced by the delay. Id. at 1131.

The heavy burden of establishing the right to have an untimely appeal rests with the moving party. Hessou v. Unemployment Compensation Board of Review, 942 A.2d 194 (Pa. Cmwlth. 2008). Additionally, the filing of a timely

appeal is a jurisdictional requirement that must be met before any appeal may be considered. Criss v. Wise, 781 A.2d 1156 (Pa. 2001); Morrisons Cove Home v. Blair County Bd. of Assessment Appeals, 764 A.2d 90 (Pa. Cmwlth. 2000).

In the instant case, the Board finds that Licensee failed to meet its burden in justifying an untimely appeal. If Licensee's allegations are true, this is a clear case of negligence on the part of its former attorney. Despite the unfortunate circumstances involving an injury to Licensee's owner, the negligence of an appellant's counsel is not considered a sufficient excuse for the failure to file a timely appeal.

Furthermore, there is no evidence of an administrative breakdown on the part of the Office of the Administrative Law Judge ("OALJ"). Licensee conceded in its petition to appeal *nunc pro tunc* that it had notice of the September 8, 2010, Adjudication and Order of the ALJ imposing the fine relative to the Citation. (Petition *Nunc Pro Tunc* ¶ 5). The OALJ took the appropriate steps, by law[1], to send the Order to Licensee's last known address.

[1] The administrative law judge shall notify the licensee by registered mail, addressed to the licensed premises, of such suspension, revocation or fine. In the event the fine is not paid within twenty days of the adjudication, the administrative law judge shall suspend or revoke the license, notifying the licensee by registered mail addressed to the licensed premises. [47 P.S. § 4-471(b)].

Under the circumstances, the Board is without authority to entertain Licensee's appeal as it was not filed within the statutorily prescribed time limit of thirty (30) days. Therefore, the *nunc pro tunc* appeal is dismissed.

O R D E R

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed as untimely.

The fine of one thousand dollars ($1,000.00) remains unpaid.

The case is hereby remanded to the ALJ to ensure compliance with this Opinion. The Second Supplemental Order of the ALJ remains in effect.

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Board Secretary