

Mailing Date: June 1, 2011

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 10-0706
ENFORCEMENT	:	
	:	License No. H-5973
v.	:	
	:	LID - 53520
TOM PECKHAM	:	
PATRICIA PECKHAM	:	
ALISON PECKHAM	:	
9909 STATION ROAD	:	
ERIE, PA 16510	:	

Counsel for Licensee: Tom Peckham, Patricia Peckham, Alison Peckham, Pro Se

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**OPINION**

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) appealed from the Adjudication and Order of Administrative Law Judge Robert F. Skwaryk (“ALJ”), mailed on March 21, 2011, wherein the ALJ sustained Counts 1, 2 and 3, but dismissed Count 4 of Citation No. 10-0706 (“the

Citation”) issued to Tom Peckham, Patricia Peckham and Alison Peckham (“Licensee”).<sup>1</sup>

The first count of the Citation charged Licensee with violating section 406(a)(1) of the Liquor Code [47 P.S. § 4-406(a)(1)] on October 29, 2009, by selling, furnishing and/or giving alcoholic beverages at a place other than the licensed premises.

The second count of the Citation charged Licensee with violating section 437 of the Liquor Code [47 P.S. § 4-437] and section 5.41 of the Board’s Regulations [40 Pa. Code § 5.41] on October 29 and December 27, 2009, by operating the licensed establishment without a valid health permit or license, which expired on August 30, 2009 and was revoked on September 28, 2009.

The third count of the Citation charged Licensee with violating sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §§ 4-406(a)(3), 4-493(16)] on December 27, 2009 by selling, furnishing and/or giving alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The fourth count of the Citation charged Licensee with violating section 404 and 471 of the Liquor Code [47 P.S. §§ 4-404, 4-471] in that on October 13, 2009, Licensee’s partner and manager, Thomas W. Peckham, was found guilty

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<sup>1</sup> Since the Bureau’s appeal relates only to Count 4, the first three (3) counts are not addressed herein.

by Magisterial District Judge Gerard J. Alonge, of nine (9) counts of failure to obtain a permit for sewage system, 35 P.S. § 750.7(a)(1), and seven (7) counts of nuisances, 35 P.S. § 750.14.

In its appeal, the Bureau argues that the ALJ committed an error of law and improperly dismissed Count 4 of the Citation. The Bureau contends that Count 4 of the Citation should have been sustained because there was a final judgment of the sanitation citations, the underlying violation for the charge in Count 4 of the Citation. Although the judgment was subsequently appealed and dismissed by the Commonwealth Court, the Bureau argues that the initial judgment by the Court of Common Pleas was sufficient evidence to find Licensee guilty of the charge in Count 4 of the Citation.

Pursuant to section 471 of the Pennsylvania 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 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).

The Board has reviewed the record, including the ALJ's Adjudication and Order mailed March 21, 2011, the Bureau's Appeal of the ALJ's Adjudication, the Notes of Testimony and Exhibits from the hearing held on January 20, 2011, and has concluded that the ALJ committed an error of law and/or abused his discretion in dismissing Count 4 of the Citation.

The record reveals the following relevant facts: Licensee is located in Erie County, Pennsylvania and holds Hotel Liquor License No. H-5973. [N.T. 4]. In June 2009, the Erie County Health Department issued sixteen (16) citations to Thomas Peckham for violations regarding the campsite and cabins on the licensed campgrounds. [N.T. 36-38, Exhibit C-7]. On October 13, 2009, Mr. Peckham was found guilty by Magisterial District Judge Alonge of nine (9) counts of failure to obtain a permit for sewage system in violation of Section 750.7(a)(1) of the Sewage Facilities Act, 35 P.S. § 750.7(a)(1), and seven (7) counts of nuisances in violation of Section 750.14 of the Sewage Facilities Act, 35 P.S. § 750.14. [N.T. 23, 46-47, Exs. C-7 and C-8].

Mr. Peckham filed an appeal to Erie County Court of Common Pleas, which resulted in the Court finding him guilty, on February 9, 2010, on the

sixteen (16) citations. [N.T. 56, Ex. C-8]. The Court ordered Mr. Peckham to pay a total amount of four thousand six hundred forty-two dollars and fifty cents (\$4,642.50) in fines and costs for the violations of Section 750.7(a)(1) of the Sewage Facilities Act, 35 P.S. § 750.7(a)(1), and three thousand seven hundred fifty dollars (\$3,750.00) in fines and costs for the violations of Section 750.14 of the Sewage Facilities Act, 35 P.S. § 750.14. [N.T. 56, Ex. C-8]. On May 10, 2010, Mr. Peckham filed an appeal to Pennsylvania Superior Court, which transferred the case to the Pennsylvania Commonwealth Court. On June 10, 2010, the Commonwealth Court dismissed the appeal, but on June 17, 2010, it granted Mr. Peckham's application for reargument/reconsideration. [Ex. C-10]. On November 17, 2010, the Commonwealth Court again dismissed Mr. Peckham's appeal. [Admin. Notice].

Meanwhile, after the Erie County Court of Common Pleas issued its February 9, 2010 Order of Sentence, the Bureau issued the Citation to Licensee on April 12, 2010. Count 4 of the Citation charged Licensee with violation of section 404 and 471 of the Liquor Code [47 P.S. §§ 4-404, 4-471] in that on October 13, 2009, Licensee's partner and manager, Thomas W. Peckham, was found guilty by Magisterial District Judge Gerard J. Alonge of nine (9) counts of

failure to obtain a permit for sewage system, 35 P.S. § 750.7(a)(1), and seven (7) counts of nuisances, 35 P.S. § 750.14.

An evidentiary hearing was held before Administrative Law Judge Skwaryk on January 20, 2011. At the hearing, the Bureau introduced a copy of the February 9, 2010 Order of Sentence by the Erie County Court of Common Pleas upholding the charges and fines of the sanitation citations issued to Licensee, which was the basis of the Citation, as Commonwealth Exhibit C-8. [N.T. 54-56, Ex. C-8]. The Bureau also introduced Commonwealth Exhibits C-9 and C-10, which were copies of the docket sheets from Commonwealth Court and Superior Court of Pennsylvania. [N.T. 67-69, Exs. C-9 and C-10]. These docket sheets, however, were not up-to-date documents at the time the exhibits were admitted and reflected that Mr. Peckham's appeal was still pending disposition instead of being dismissed. The Bureau argues in its appeal that, although the appeals were in fact dismissed, the February 9, 2010 Order of Sentence by the Court of Common Pleas was sufficient evidence for the ALJ to sustain Count 4 of the Citation. The Board agrees.

In Shaffer v. Smith, 543 Pa. 526, 673 A.2d 872, 874-75 (1996), the Supreme Court held that “[a] judgment is deemed final for purposes of res judicata or collateral estoppel unless or until it is reversed on appeal. . . . [T]he pendency

of an appeal of a criminal conviction does not deprive a party of the right to invoke collateral estoppel in a civil proceeding unless or until that conviction is reversed on appeal.” In Shaffer, the appellant struck the appellee in his left eye which resulted in the loss of that eye. Appellee filed a civil action for damages caused by the criminal act. Shaffer, 543 Pa. at 528, 673 A.2d at 873. While the civil action was pending, the appellant was convicted of aggravated assault for the same act, a criminal offense. Id. The appellee moved for partial summary judgment based upon the criminal conviction. Id. Prior to a decision on the motion, the appellant filed a petition in the criminal court alleging that he had been denied the effective assistance of counsel. Id. at 528, 673 at 874.

When the trial court granted the appellee’s motion for partial summary judgment and awarded damages, the appellant appealed to Superior Court contending that the pendency of his petition prevented the use of his conviction to invoke the doctrine of collateral estoppel. Id. at 528-529, 673 at 874. The Superior Court affirmed the award of damages and held that the appellant’s criminal conviction estopped him from denying his acts in the subsequent civil trial, and the criminal conviction was a final judgment for the purposes of collateral estoppel unless or until his conviction should be reversed on appeal. Id. The Supreme Court agreed and stated “[f]or purposes of

finality, we believe that holding a criminal conviction in abeyance until appellate review is completed would result in hardship to the party seeking to invoke collateral estoppel. If this Court were to hold to the contrary, the party seeking to invoke collateral estoppel would be forced to duplicate the effort and expense of litigating the same issue in the second action. In the alternative, that party would have to postpone the second action for some indefinite period until the criminal defendant's appeals were exhausted.” *Id.* at 532, 673 at 875.

In the instant case, there is clear evidence in the record that reveals the ALJ’s conclusion to dismiss Count 4 of the Citation was an error of law. At the hearing, the Bureau entered a copy of the February 9, 2010 Order of Sentence by the Erie County Court of Common Pleas. Since the February 9, 2010 Order of Sentence by the Court upheld the criminal charges and the fines of the sanitation citations against Mr. Peckham, this would constitute sufficient evidence for the ALJ to sustain Count 4 of the Citation against Licensee. Although Commonwealth Exhibits C-9 and C-10 were not up-to-date docket sheets and incorrectly reflected that Mr. Peckham’s appeal was still pending disposition when it was final, it should not have mattered because there was

still sufficient evidence to sustain Count 4 of the Citation in the form of the February 9, 2010 Order of Sentence by the Erie County Court.

Applying the foregoing law to the facts of this case, the Board concludes that the ALJ committed an error of law and/or abused his discretion in dismissing the charge. Accordingly, the Board must reverse the decision of the ALJ to dismiss Count 4 of the Citation.

### **ORDER**

The appeal of the Bureau, as it relates to Count 4, is granted.

The decision of the ALJ to dismiss Count 4 of the Citation is reversed.

The decision of the ALJ to sustain Counts 1, 2, and 3 of the Citation is affirmed.

The case is remanded to the ALJ for the imposition of an appropriate penalty on Count 4.

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Board Secretary