

Mailing Date: January 25, 2012

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 10-1171
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
SOLO NIGHTCLUB, LLC	:	License No. R-8363
520 North Columbus Boulevard	:	
Philadelphia, PA 19123	:	LID 57893
	:	

Counsel for Licensee: No appearance

Counsel for Third-Party  
Creditor: Paul L. Herron, Esquire

Counsel for Bureau: Erik S. Shmukler, Esquire  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
6901 Woodland Avenue  
Philadelphia, PA 19142

**OPINION**

Spring Del Associates L.P. (“Spring Del”) appeals *nunc pro tunc* from the August 16, 2011 Amended Second Supplemental Order of Administrative Law Judge David L. Shenkle (“ALJ Shenkle”), which revoked Restaurant Liquor License

No. R-8363 (“the license”) held by Solo Nightclub, LLC (“Licensee”) for failure to pay the fine associated with Citation No. 10-1171 (“the Citation”).<sup>1</sup>

On May 19, 2010, the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“BLCE”) sent a letter via certified mail, return receipt requested, to Licensee at 520 North Christopher Columbus Blvd, Philadelphia, Pennsylvania, 19123 (“the licensed premises”). [Letter from BLCE, May 19, 2011, Ex. B-1]. This letter advised Licensee that the BLCE had received information which could result in the issuance of a citation to show cause why the license should not be suspended or revoked or a fine imposed, or both. [Id.]. Specifically, the letter indicated that:

1. On April 8, 2010 at No. 03272, in the Court of Common Pleas of Philadelphia County, you, after your licensed establishment had been adjudged a common nuisance and a public nuisance at law, were permanently enjoined from using your licensed premises for a period of one (1) year from April 8, 2010 and from transferring your liquor license for a period of one (1) year and further that the premises shall not be occupied or used during that period of time for any other purpose unless approved by further order of the court.

[Id.]. This letter was returned by the postal authorities as unclaimed. [Id.].

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<sup>1</sup> While the first paragraph of the Petition for Leave to Appeal *Nunc Pro Tunc* filed in this matter identifies the petitioner as Licensee, it is clear from the remaining portions of such petition that the petitioner is actually Spring Del, the landlord of the licensed premises and third party creditor of Licensee who purchased the rights to apply for the transfer of the license at a Sheriff’s Sale. Spring Del has not yet filed an application for transfer of the license.

On June 8, 2010, the BLCE issued the Citation, charging Licensee with violating sections 471 and 611 of the Liquor Code [47 P.S. §§ 4-471, 6-611], in that, on April 8, 2010, the Court of Common Pleas of Philadelphia County adjudged the licensed premises to be a public nuisance and enjoined the operation/use of the licensed premises and/or transfer of the license for a period of one (1) year from April 8, 2010. [Citation No. 10-1171, dated June 8, 2010, Ex. B-2]. The Citation was sent to Licensee via certified mail, return receipt requested, at the licensed premises. [Id.]. However, the Citation was returned by the postal authorities as undeliverable. [Id.]. On June 29, 2010, the BLCE resent the Citation to Attorney Edward McHugh, who was known by the BLCE to represent Licensee, via certified mail, return receipt requested. [Id.]. The return receipt was signed acknowledging that the Citation had been received on June 30, 2010. [Id.].

On December 10, 2010, the Office of Administrative Law Judge (“OALJ”) sent a Citation Hearing Notice via certified mail, return receipt requested, to Licensee’s attorney Edward McHugh. [Citation Hearing Notice, December 10, 2010]. The Citation Hearing Notice advised Licensee that a hearing on the Citation to show cause why the license issued by the Pennsylvania Liquor Control Board (“Board”) should not be suspended or revoked or a fine imposed, or both, would be held on January 25, 2011, at 3:00 p.m., at the Meetinghouse Business Center, 140 West Germantown Pike, Suite 100, Plymouth Meeting, Pennsylvania, 19462-

1421. [Id.]. The return receipt was signed acknowledging that the Citation Hearing Notice had been received on January 11, 2011. [Id.].

On January 25, 2011, a hearing was held on the Citation before ALJ Shenkle at the time and place specified in the Citation Hearing Notice. Erik S. Shmukler, Esquire appeared at the hearing on behalf of the BLCE, and no appearances were made on behalf of Licensee.

At the hearing, BLCE officer supervisor Frank Spera testified on behalf of the BLCE. Mr. Spera testified that he is the nuisance bar coordinator for his agency. [N.T. 5]. In July of 2008, Mr. Spera was advised by the Philadelphia District Attorney's Office that it was going to file an action under section 611 of the Liquor Code seeking to have the licensed premises declared a public nuisance. [N.T. 5]. As a result, Mr. Spera opened an investigation regarding the licensed premises. [N.T. 5-6]. In April of 2010, Mr. Spera received a certified copy of an order from the Court of Common Pleas of Philadelphia County, which declared the licensed premises to be a public nuisance and enjoined the operation of the licensed premises for a period of one (1) year from April 8, 2010. [N.T. 7-8, Order of Court of Common Pleas of Philadelphia County, April 8, 2010, Ex. B-3].

Philadelphia Assistant District Attorney Matt Mueller also testified on behalf of the BLCE. Mr. Mueller testified that he works as part of the public nuisance task force and that he is the citywide nuisance bar prosecutor. [N.T. 14]. He

indicated that he is responsible for filing actions under section 611 against nuisance bars on behalf of the City of Philadelphia. [N.T. 15]. Mr. Mueller indicated that he became aware of Licensee due to numerous incidents that occurred at the licensed premises involving shootings, fights, and other disturbances which resulted in large crowds blocking traffic. [Id.]. According to Mr. Mueller, there has always been a large police presence at the licensed premises as a result of these problems, which has been a drain on the police force. [Id.].

Mr. Mueller indicated that he filed the 611 action against Licensee in November of 2008. [N.T. 16]. Mr. Mueller explained that, prior to filing the 611 action, he had met with Licensee's counsel, Edward McHugh, to discuss the problems occurring at the licensed premises and had received promises that things were going to change. [Id.]. Mr. Mueller indicated that the 611 action was served, without any difficulty, upon Licensee and Mr. McHugh. [Id.]. Mr. Mueller indicated that he continued to have discussions with Mr. McHugh about resolving the problems at the licensed premises until a shooting occurred inside the licensed premises, at which time he was compelled to seek a temporary restraining order to have the licensed premises shut down. [Id.]. Mr. Mueller indicated that Licensee's owner, Tam Tran, participated at the evidentiary hearing held with regard to the temporary restraining order. [N.T. 17]. Mr. Mueller

testified that, at that time, Mr. Tran had dropped Mr. McHugh as his counsel and hired Vince Defino. [Id.]. According to Mr. Mueller, Vince Defino's brother, Michael Defino, actually represented Mr. Tran at the hearing. [Id.]. The parties subsequently agreed to use the evidence received at the evidentiary hearing on the temporary restraining order for purposes of the 611 action, in lieu of having another hearing. [N.T. 17-18].

Mr. Mueller indicated that Licensee voluntarily closed the licensed premises prior to the filing of the temporary restraining order, and the licensed premises has not been open since that time. [N.T. 19]. Mr. Mueller explained that the license is now inactive, as the Board refused to renew the same. [Id.] Mr. Mueller indicated that an appeal was filed with regard to the Board's non-renewal decision, but such appeal was filed by the landlord of the licensed premises, Spring Del, which had repossessed the liquor license and evicted Mr. Tran. [Id.]. The District Attorney's Office believed that the landlord lacked the ability to challenge the non-renewal because it had not taken any action seeking to have the license transferred to it. [N.T. 21].<sup>2</sup>

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<sup>2</sup> Section 468(d) of the Liquor Code provides that a license is a privilege as between the Board and a licensee, but is property as between the licensee and a third party. [47 P.S. § 4-468(d)]. Because a liquor license is considered property as between a licensee and a creditor/lender, the creditor/lender may perfect a security interest in the license as it would with any other type of intangible property (i.e., UCC-1, Security Agreement, etc.). However, because the license is not recognized as property as between the Board and the licensee, the Board does not recognize any security interests in the licenses that it issues. Therefore,

By Adjudication and Order mailed March 9, 2011, ALJ Shenkle sustained the charge set forth in the Citation and imposed a fine of one thousand dollars (\$1,000.00). [Adjudication and Order, mailed March 9, 2011]. The Adjudication and Order also indicated that Licensee was required to pay the fine within twenty (20) days of the mailing date of the Order and that failure to do so would result in the license being suspended or revoked. [Id.]. The Adjudication and Order was sent to Tam Tran via certified mail, return receipt requested, at 6 Bayard Street, Newark, Delaware, 19702. [Id.]. However, the postal authorities returned the Adjudication and Order as unclaimed and unable to be forwarded. [Id.].

Licensee subsequently failed to pay the fine, and, on May 12, 2011, ALJ Shenkle issued a Supplemental Order, which suspended the license indefinitely for a period of at least one (1) day. [Supplemental Order, mailed May 12, 2011]. However, the suspension period was deferred pending renewal of Licensee's license. [Id.]. Additionally, the Supplemental Order noted that it did not excuse Licensee from the duty to pay the fine immediately and that ALJ Shenkle would

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while a license issued by the Board may be subject to security interest, the Board recognizes only the named licensee(s) as having an interest therein. Until the Board receives either a Court Order or a Writ of Execution together with a Sheriff's Bill of Sale directing or stating otherwise or a sworn Affidavit executed by counsel, representing that licensee is in default, that all necessary and required procedures have been followed pursuant to any underlying agreements as well as all applicable laws, the named licensee(s) retains its privileges in the license including the right to transfer the license to another. The Board will not become involved in resolving the property rights in a dispute between a licensee and third parties. Befwick of Philadelphia, Inc. v. Cobblestones, Inc., 466 Pa. 488, 353 A.2d 459 (1976).

review the matter again in sixty (60) days and impose further sanctions, which could include revocation of the license, if the fine remained unpaid. [Id.]. The Supplemental Order was sent to Tam Tran via certified mail, return receipt requested, at 6 Bayard Street, Newark, Delaware, 19702. [Id.]. However, the postal authorities returned the Supplemental Order as unclaimed and unable to be forwarded. [Id.].

Licensee again failed to pay the required fine, and, on August 5, 2011, ALJ Shenkle issued a Second Supplemental Order, which revoked the license, effective at 7:00 a.m., on Monday, August 29, 2011. [Second Supplemental Order, mailed August 5, 2011]. On August 16, 2011, ALJ Shenkle issued an Amended Second Supplemental Order, which noted that the thirty (30)-day notice period required by section 471(b) of the Liquor Code [47 P.S. § 471(b)] had not been met for purposes of revoking the license. [Amended Second Supplemental Order, mailed August 16, 2011]. Accordingly, ALJ Shenkle vacated the Second Supplemental Order mailed August 5, 2011, and revoked the license effective at 7:00 a.m., on Monday, October 24, 2011. [Id.]. The Amended Second Supplemental Order was sent to Tam Tran via certified mail, return receipt requested, at 6 Bayard Street, Newark, Delaware, 19702. [Id.]. However, the postal authorities returned the Amended Second Supplemental Order as unclaimed and unable to be forwarded. [Id.].

On December 22, 2011, Spring Del filed a Petition for Leave to Appeal *Nunc Pro Tunc* of ALJ Shenkle’s Amended Second Supplemental Order (“Petition”) along with an Application for Supersedeas. In its Petition, Spring Del asserts that Licensee ceased operations at the licensed premises and placed the license in safekeeping with the Board as of May 6, 2009, as a result of numerous incidents that occurred at the licensed premises which ultimately resulted in an injunction being issued by the Court of Common Pleas of Philadelphia County. [Petition ¶ 8]. Around the time that Licensee ceased operating, Licensee was in substantial default under the terms of its Real Estate lease for the licensed premises with its landlord, Spring Del. [Petition ¶ 9].

Consequently, Spring Del commenced landlord and tenant proceedings against Licensee in the Municipal Court of Philadelphia. [Petition ¶ 10]. As of August 24, 2009, Spring Del obtained a judgment against Licensee for a sum in excess of one hundred thousand dollars (\$100,000.00) and possession of the leased premises. [Id.]. After obtaining the judgment, Spring Del commenced execution proceedings against Licensee. [Petition ¶ 11]. On April 29, 2010, Spring Del caused a Sheriff’s Sale of the license to be held, and Spring Del was the successful bidder at the sale, thus acquiring all of Licensee’s rights in the license. [Id.]. Thus, Spring Del “stands in the shoes” of Licensee. [Id.].

Spring Del asserts that, prior to and subsequent to the Sheriff's Sale and Spring Del's acquisition of all rights in the license, Spring Del communicated with the Board to advise that it was asserting claims against the license and that the rights in the license had been acquired at a Sheriff's Sale. [Petition ¶ 12]. On June 16, 2010, following Spring Del's acquisition of all rights in the license, Spring Del appeared for Licensee at a non-renewal hearing held as a result of the Board's objection to the renewal of the subject license for the license term commencing November 1, 2008. [Petition ¶ 13]. On or about October 20, 2010, the Board issued a decision refusing to renew the license. [Petition ¶ 17].

Thereafter, a timely appeal was taken to the Court of Common Pleas of Philadelphia County seeking a reversal of the Board's decision. [Id.] A *de novo* hearing was held on March 23, 2011. [Petition ¶ 18]. The parties prepared and submitted legal briefs, but before a decision was rendered, the parties requested an opportunity to enter into a Conditional Licensing Agreement ("CLA") which would enable Spring Del to maintain the license and ultimately cause the transfer of the same due to its acquisition of rights in the license as a result of the Sheriff's Sale. [Id.]. Spring Del asserts that at no time during the pendency of the non-renewal case did the Board or any of its representatives advise Spring Del or its counsel of the existence of the Citation, the adjudication of that Citation, or the

orders that resulted from the adjudication of that Citation. [Petition ¶ 19]. As a result, Spring Del had no notice of the same. [Id.].

For several months following the hearing in the Court of Common Pleas, counsel for Spring Del was in regular communication with the Board and its legal counsel with respect to the negotiations of the CLA. [Petition ¶ 20]. A CLA was completed, signed by Licensee and sent to counsel for the Board on November 2, 2011. [Id.].

On December 13, 2011, Spring Del's counsel received a letter from Faith S. Diehl, Chief Counsel for the Board, which advised that her office was unable to present the proposed CLA to the Board for approval because it had become aware of an Order from the OALJ revoking the license. [Petition ¶ 21]. It was at this time that Spring Del asserts it first learned of the Citation, the orders relating to the same, and the revocation of the license. [Id.].

Additionally, on or about June 21, 2010, after Spring Del became aware of a citation which was outstanding against the license (Citation No. 09-0754), Spring Del paid, through counsel, a fine in the amount of five hundred (\$500.00) dollars as ordered by Administrative Law Judge Tania Wright. [Petition ¶ 15].

Spring Del further asserts that neither notice of the Citation leading to the suspension, nor notice of any of the subsequent orders was ever given to or received by Licensee or Spring Del. [Petition ¶ 22]. Thus, Spring Del asserts that

the forgoing was not the result of any negligence on the part of either party. [Id.]. In addition, Spring Del asserts that Licensee and Spring Del were misled by the Board's failure to advise of the Citation or subsequent orders and the ongoing discussions and negotiations engaged in by the Board. [Id.]. Spring Del further asserts that the Board will not be prejudiced by permitting this appeal, Spring Del will immediately pay the outstanding fine if its appeal is granted, and the failure to file a timely appeal was due to non-negligent circumstances. [Petition ¶¶ 23-25]. Accordingly, Spring Del asserts that it is entitled to have its appeal considered *nunc pro tunc*.

Section 471 of the Liquor Code establishes a thirty (30)-day filing deadline for taking an appeal from an adjudication of an administrative law judge. [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 for 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 considered 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).

Here, Spring Del seeks to appeal ALJ Shenkle's August 16, 2011 Amended Second Supplemental Opinion and Order revoking the license. The thirty (30)-day deadline for filing an appeal of that Order was September 15, 2011. However,

Spring Del did not file its appeal until December 22, 2011, which was more than three (3) months past the appeal deadline. Therefore, Spring Del's appeal was clearly untimely.

Acknowledging that its appeal was untimely, Spring Del asks the Board to consider its appeal *nunc pro tunc*. However, the Board cannot agree with Spring Del that it has satisfied its burden of proving that it is entitled to such relief.

Initially, Spring Del asserts that Licensee was never given notice of the Citation, the hearing on the Citation, and the orders regarding the Citation. However, this assertion is unsupported by the record. The record evidence establishes that both the Citation and the Citation Hearing Notice were sent, via certified mail, to Licensee at the licensed premises and to Licensee's then counsel. It was Licensee's responsibility to keep the BLCE and the OALJ apprised of any changes regarding where notifications should be sent, as well as any changes in counsel. However, Licensee failed to notify the BLCE and/or the OALJ of any such changes. Following the hearing, the OALJ sent the Adjudication and Order and all subsequent orders involving the Citation to Licensee's owner at his home address. Again, Licensee's owner did not notify the OALJ of any changes to his home address. Certainly, if Licensee had notified the BLCE and the OALJ of a different address at which it desired correspondence involving its license to be sent, and the BLCE and OALJ did not send correspondence to that different

address, that would constitute a breakdown in the administrative process warranting *nunc pro tunc* relief. See United States Postal Service v. Unemployment Compensation Board of Review, 620 A.2d 572 (Pa. Cmwlth. 1993) (holding that a breakdown in the administrative process occurred where notice was sent to the employer's last known address even though the employer had requested that notice be sent elsewhere). However, Licensee did not take any such action to notify either the BLCE or the OALJ of a different address. Therefore, the BLCE and OALJ fulfilled their obligations with regard to providing notice.

Moreover, to the extent that Spring Del asserts that it was not given notice of the Citation, the hearing on the Citation, and the orders regarding the Citation, it is important to stress that Spring Del is not the licensee in this matter, and notice in Citation matters is not typically sent to non-licensees. It is also worth pointing out that the BLCE's initial letter of May 19, 2010 and the Citation were sent to the licensed premises, and Spring Del acknowledges that it is the landlord of the licensed premises and had taken repossession of the licensed premises prior to when the May 19, 2010 letter and the Citation were sent. Thus, to the extent that the May 19, 2010 letter and the Citation were sent to the licensed premises, which Spring Del had repossessed as the landlord, Spring Del was put

on notice of the Citation and should have been more diligent in protecting its interests.

Furthermore, while Spring Del asserts that the late filing of its appeal was due to non-negligent circumstances and that it was misled by the Board's negotiations, such assertions are without merit. What Spring Del fails to recognize is that the Liquor Code establishes the BLCE as part of the Pennsylvania State Police and the OALJ as an autonomous entity within the Board. [47 P.S. §§ 2-211, 2-212]. Thus, the BLCE and the OALJ act separate and apart from the Board. Consequently, the BLCE and the OALJ may not necessarily always be aware of the same facts and circumstances of which the Board is aware and vice versa. Although Spring Del may have made the Board aware that it had acquired the rights to apply for a transfer of the license through a Sheriff's Sale and was actively engaging in the negotiation of a CLA, it apparently never made the BLCE and/or the OALJ aware of the same. Spring Del seems to insinuate that the OALJ should have been aware of its interest in the license because, through counsel, it paid the fine associated with a prior citation. Importantly, however, Spring Del was in no way identified in the correspondence from its counsel paying such fine. Therefore, this cannot be considered to have sufficiently to put the OALJ on notice of Spring Del's interest in the license.

Additionally, contrary to what Spring Del seems to imply, it was not the responsibility of the Board to notify the BLCE and the OALJ of Spring Del's interests in the license. Similarly, it was not the responsibility of the Board to keep Spring Del apprised of any citations issued regarding the license and the disposition of such citations. Rather, it was Spring Del's responsibility to take the necessary actions to protect its interests. However, it failed to do so.

Finally, Spring Del acknowledged that it first obtained actual knowledge of the Citation, the orders regarding the Citation, and the revocation of the license on December 13, 2011. However, Spring Del offers no explanation for why it waited nine (9) more days before filing its appeal in this matter. There is no excuse for this additional delay absent further information.

Therefore, the Board does not agree that the late filing of the appeal in this matter was the result of non-negligent conduct beyond the control of Licensee, Spring Del, or counsel for those entities; nor does the Board agree that Spring Del and/or its counsel acted diligently upon learning of the need to file an appeal in this matter. Accordingly, Spring Del's appeal *nunc pro tunc* is dismissed.<sup>3</sup>

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<sup>3</sup> Even assuming that Spring Del was entitled to have its appeal considered *nunc pro tunc*, the Board would not have been inclined to disturb the revocation because ALJ Shenkle acted within his discretion in revoking the license. Section 471(b) of the Liquor Code requires the imposition of a fine of between one thousand dollars (\$1,000.00) and five thousand dollars (\$5,000.00), or suspension or revocation of the license, or both, for violations of section 611. [47 P.S. § 4-471(b)]. Moreover, section 471(b) also authorizes administrative law judges to revoke or suspend a license if the licensee does not pay the

## **ORDER**

The appeal *nunc pro tunc* of Spring Del Associates L.P. is dismissed.

The Amended Supplemental Order of Administrative Law Judge David L. Shenkle, mailed August 16, 2011, is affirmed.

It is hereby ordered that Restaurant Liquor License No. R-8363 remains revoked as of October 24, 2011.

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**Board Secretary**

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previously imposed fine within twenty (20) days of its imposition. [*Id.*]. The imposition of penalties is the exclusive prerogative of the administrative law judge. The Board may not disturb penalties imposed by an administrative law judge if they are within the parameters set forth in section 471 of the Liquor Code.

Here, ALJ Shenkle imposed a one thousand dollar (\$1,000.00) fine with regard to the Citation. ALJ Shenkle's Adjudication and Order imposing the fine clearly stated that the fine had to be paid within twenty (20) days of the mailing date of the Order. When Licensee failed to pay the fine, ALJ Shenkle suspended the license and warned Licensee that its continued failure to pay the fine could result in revocation of the license. Despite the imposition of a suspension and the above-mentioned warning, Licensee still failed to pay the fine. As a result, ALJ Shenkle revoked the license effective at 7:00 a.m., on October 24, 2011. Because the penalty of revocation was within the parameters of section 471 of the Liquor Code, there was no abuse of discretion by ALJ Shenkle with regard to the Citation.

Further, while Spring Del asserts that it would be willing to pay the fine if the license is reinstated at this time, Spring Del does not assert that it would have timely paid the fine associated with the Citation had it received actual notice of the same prior to December 13, 2011. Any rights that Spring Del has with regard to the license would be subject to the penalties incurred by Licensee as a result of its improper conduct. The Board cannot overlook the conduct of Licensee which led to the revocation of the license simply because Spring Del wishes to acquire the license and continue the operation of the licensed premises.

Nevertheless, under the circumstances of this case, the Board is without authority to entertain Spring Del's appeal because it was not filed within the statutorily prescribed time limit of thirty (30) days, and Spring Del failed to establish adequate justification for the late filing.

