

Mailing Date: October 26, 2011

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 10-1553
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
KENRICH ATHLETIC CLUB	:	License No. C-1927
121 South 19 th Street	:	
Philadelphia, PA 19103-4905	:	LID 1117
(Mailing address: P.O. Box 30484,	:	
Philadelphia, PA 19103)	:	

Representative for Licensee: Francis W. Twardy, *Pro Se*
Steward of Licensee (on appeal)

Counsel for Bureau: James E. Dailey, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
6901 Woodland Avenue
Philadelphia, PA 19142

OPINION

Kenrich Athletic Club (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge David L. Shenkle (“ALJ”), mailed July 22, 2011, wherein the ALJ sustained Citation No. 10-1553 (“the Citation”) issued by the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”), and imposed a fine of three hundred dollars (\$300.00).

On July 27, 2010, the Bureau issued the Citation to Licensee, setting forth a single count. The Citation charged Licensee with violating section 474.1(a) of the Liquor Code [47 P.S. § 4-474.1(a)] and section 7.31(a) of the Regulations of the Pennsylvania Liquor Control Board (“Board”) [40 Pa. Code § 7.31(a)], in that Licensee had failed to return its Club Liquor License and Wholesale Liquor Purchase Permit Cards to the Board after the licensed establishment had not been in operation for a period of fifteen (15) consecutive days between May 2 and June 25, 2010.

A hearing was held regarding the Citation on May 26, 2011. James E. Dailey, Esquire, appeared at the hearing as counsel for the Bureau. There was no appearance at the hearing on behalf of Licensee. At the ALJ’s direction, the hearing proceeded *ex parte*.¹

By Adjudication and Order mailed July 22, 2011, the ALJ sustained the Citation and imposed a fine of three hundred dollars (\$300.00). 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

¹ The Notes of Testimony from the May 26, 2011 hearing indicate that the ALJ had a discussion with Donald Moser, the attorney of record, earlier in the day. The ALJ noted for the record that he had advised Mr. Moser that no further continuances would be granted because the matter had been continued previously and notice of the proceeding had been given. [N.T. 4]. Licensee has not raised the propriety of the ALJ’s decision to proceed *ex parte*; therefore, it will not be addressed in this Opinion.

revoked. It does not appear from records maintained by the Board that this fine has been paid. [Admin. Notice].

In its appeal, Licensee asserts that the ALJ committed an error of law and/or abused his discretion in sustaining the Citation. Specifically, Licensee asserts that the ALJ committed an error of law or abuse of discretion because Licensee's liquor license was valid and it was able to reopen until the license was placed in safekeeping.

The Board has reviewed the certified record, including the Notes of Testimony from the hearing held on May 26, 2011, as well as the ALJ's Adjudication and Order, with the Licensee's contentions in mind and has concluded that the ALJ's ruling is without error and is supported by substantial evidence.

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 or her discretion, or if his or 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 record reveals that the Business Compliance Unit of the Department of Licenses and Inspections, City of Philadelphia, certified that a Cease Operations Order had been issued to Licensee on May 1, 2010, for sales of alcohol without a valid liquor license and for operating without a Special Assembly License. This certification was entered into evidence as Exhibit B-3 and was appended to the Notes of Testimony from the May 26, 2011 hearing. [N.T. 9-10]. The certification was dated September 1, 2010 and confirmed that the Cease Operations Order was still in effect as of that date. [Ex. B-3].

Testimony presented at the hearing further proved that Bureau Enforcement Officer Eric Gall visited the licensed premises on June 25, 2010. [N.T. 6]. He arrived at the premises at approximately 3:00 p.m. and observed that the premises was closed. He also observed that the Cease Operations Order was posted on the premises. [N.T. 7-8]. On June 21, 2010, Officer Gall telephoned the Business Compliance Unit of the Department of Licenses and Inspections, City of Philadelphia and spoke to an individual whose name was transcribed phonetically in the Notes of Testimony as “Dominick Berney.” Mr.

Berney confirmed that the Cease Operations Order was still in effect as of June 21, 2010. [N.T. 7–8].

Because of the Cease Operations Order, which was effective on and after May 1, 2010, Licensee would not have been lawfully able to operate its licensed premises after May 1, 2010. Upon the expiration of fifteen (15) consecutive days, on or about May 17, 2010, Licensee was required to place its license and its Wholesale Liquor Purchase Permit Cards into safekeeping with the Board, pursuant to section 7.31 of the Board's Regulations. [40 Pa. Code § 7.31]. Further, the Board takes administrative notice that its records indicate that, by letters from Attorney Donald M. Moser dated September 30 and October 15, 2010, the subject liquor license and Licensee's temporary operating authority were submitted to the Board for safekeeping. Further, notice is taken that this is a date at least five (5) months after May 1, 2010.

Licensee asserts in its appeal that its license was valid until it was submitted for safekeeping. However, the validity of the license was not at issue in the Citation. At issue was Licensee's failure to comply with section 7.31 of the Board's Regulations. The evidence presented at the hearing proved that Licensee failure to comply with section 7.31 of the Board's Regulations.

The evidence of record establishes that Licensee failed to submit its license to the Board for safekeeping. Based on the foregoing, the Board finds that the ALJ did not commit an error of law or abuse his discretion and that there is sufficient evidence to sustain the Citation. Therefore, the Adjudication and Order of the ALJ sustaining the Citation and imposing a fine of three hundred dollars (\$300.00) is affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

The fine of three hundred dollars (\$300.00) remains unpaid. The fine must be paid within sixty (60) days of the mailing date of this Order.

The case is hereby remanded to the ALJ to ensure compliance with this Opinion. The ALJ's Order remains in effect.

Board Secretary