

Mailing Date: October 26, 2011

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 10-1882
	:	
	:	
	:	
v.	:	
	:	
TWO HEARTS, INC. t/a Lily Lake Hotel RD 1, Box 101-A Wapwallopen, PA 18660-9801	:	License No. H-2467
	:	
	:	
	:	LID 28712

Counsel for Licensee: Bryan P. Johnson, *Pro Se* (on appeal)

Counsel for Bureau: Craig A. Strong, Esquire  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
7448 Industrial Park Way  
Macungie, PA 18062

OPINION

Two Hearts, Inc., trading as Lily Lake Hotel (“Licensee”) timely appealed from the Supplemental Order of Administrative Law Judge Felix Thau (“ALJ”) mailed on June 24, 2011, wherein the ALJ revoked Hotel

Liquor License No. H-2467 (LID 28712) effective August 15, 2011, stemming from Licensee's failure to pay the fine for Citation No. 10-1882.

Pursuant to section 471 of the Liquor Code, an appeal must be based solely on the record before the ALJ. [47 P.S. § 4-471]. The Pennsylvania Liquor Control Board ("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).

Citation No. 10-1882 contained seven (7) counts. Count one of the Citation alleged that Licensee violated section 471 of the Liquor Code [47 P.S. § 4-471] and section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. § 637.6(a)(2)] when Licensee, by its servants, agents, or employees, permitted smoking in a public place where smoking was prohibited on April 4, April 17, May 1, May 19, and May 25, 2010. Count two of the Citation alleged that Licensee violated section 471 of the Liquor Code [47

P.S. § 4-471] and section 637.6(a)(1) of the Clean Indoor Air Act [35 P.S. § 637.6(a)(1)] when Licensee, by its servants, agents, or employees, failed to post signage required by the Clean Indoor Air Act on April 4, April 17, May 1, May 19, and May 25, 2010. Count three of the Citation alleged that Licensee violated section 474.1(a) of the Liquor Code [47 P.S. § 4-474.1(a)] and section 7.31(a) of the Board's Regulations [40 Pa. Code § 7.31(a)] when Licensee, by its servants, agents, or employees, failed to return its Hotel Liquor License and Wholesale Liquor Purchase Permit Cards to the Board after its licensed establishment had not been in operation for a period of fifteen (15) consecutive days between July 7 and July 21, 2010. Count four of the Citation alleged that Licensee violated section 493(26) of the Liquor Code [47 P.S. § 4-493(26)] when Licensee, by its servants, agents, or employees, issued checks or drafts dated May 20, May 21, May 22, May 29, June 8, June 9, and June 15, 2010, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution for the payment of such checks. Count five of the Citation alleged that Licensee violated section 473 of the Liquor Code [47 P.S. § 4-473] when Licensee, by its servants, agents, or employees, refused and/or failed to provide the Board with information regarding the

involvement of Kevin Kocher in the operation of its licensed premises from January 1 through June 15, 2010. Count six of the Citation alleged that Licensee violated section 404 of the Liquor Code [47 P.S. § 4-404] during the period from January 1, 2010 and June 15, 2010 when Licensee was not the only entity with a pecuniary interest in the license. Count seven of the Citation alleged that Licensee violated section 493(12) of the Liquor Code [47 P.S. § 4-493(12)] when Licensee, by its servants, agents, or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding July 27, 2010.

After a hearing where Licensee failed to attend or present any evidence, the ALJ sustained the Citation on all seven (7) counts. [Adjudication & Order, mailed February 9, 2011]. The ALJ imposed an aggregate penalty of a fine of one thousand six hundred dollars (\$1,600.00).<sup>1</sup>

Subsequent to the issuance of the Adjudication & Order mailed on February 9, 2011, Licensee neither paid the fine nor filed an appeal, and the ALJ issued an Opinion and Order Upon Licensee's Failure to Pay a Fine on

---

<sup>1</sup>Counts 1 and 2 were merged into a five hundred dollar (\$500.00) fine; Count 3 resulted in a two hundred dollar (\$200.00) fine; Count 4 resulted in a two hundred dollar (\$200.00) fine; Counts 5 and 6 were

April 4, 2011. [Opinion and Order, mailed April 4, 2011]. The Opinion and Order noted that the aggregate fine of one thousand six hundred dollars (\$1,600.00) had not been paid, whereupon the ALJ imposed a two (2) day suspension of Licensee's liquor license, continuing thereafter until the fine was paid, but deferred the suspension until reactivation of the license. The ALJ noted that if the fine should remain unpaid by sixty (60) days of the mailing date of the Order, revocation of the license would be considered.

On April 19, 2011, the ALJ's office received an Application for Reconsideration from the ALJ's April 4, 2011 Opinion and Order. On May 6, 2011, the ALJ issued an Opinion and Order Upon Application for Reconsideration and Bureau's Response Thereto, denying the Application for Reconsideration, and reiterating that the April 4, 2011, Adjudication and Order remained in effect. [Opinion and Order, mailed May 6, 2011].

On June 24, 2011, the ALJ issued a Supplemental Opinion and Order, noting that the fine of one thousand, six hundred dollars (\$1,600.00) had not been paid by Licensee. [Supplemental Opinion and Order, mailed June 24, 2011]. The ALJ vacated the April 4, 2011 Adjudication and Order, and issued a new Order revoking the license

---

merged into a five hundred dollar (\$500.00) fine; and Count 7 resulted in a two hundred dollar (\$200.00)

effective August 15, 2011. On July 22, 2011, Licensee filed an appeal to the Board of the ALJ's Supplemental Order mailed June 24, 2011.<sup>2</sup>

In addressing this matter, the Board has reviewed the certified record provided by the Office of the Administrative Law Judge ("OALJ"), including the ALJ's Adjudication and Order mailed February 9, 2011, the ALJ's Opinion and Order Upon Licensee's Failure to Pay a Fine mailed April 4, 2011, the ALJ's Opinion and Order Upon Application for Reconsideration and Bureau's Response Thereto mailed May 6, 2011, the ALJ's Supplemental Opinion and Order mailed June 24, 2011, Licensee's *Pro Se* Appeal, and the Notes of Testimony and Exhibits from the hearing held on January 10, 2011, and has concluded that the ALJ's Supplemental Order is without error and is supported by substantial evidence.

Initially, the Board notes that Licensee's appeal can only be considered a timely appeal of the ALJ's June 24, 2011 Supplemental Opinion and Order. Licensee failed to file an appeal from the ALJ's February 9, 2011 Adjudication and Order; nor did it file an appeal from the ALJ's May 6,

---

fine.

<sup>2</sup> The appeal was purportedly submitted by Bryan Johnson; however, the handwriting is quite similar to that of Roberta Lieberman, who filed the Application for Reconsideration on April 19, 2011. ALJ Thau noted that Mr. Johnson is the sole corporate officer and stockholder of Licensee, and found that Ms. Lieberman had no standing to request reconsideration. It appears that Ms. Lieberman filed the appeal but signed Mr. Johnson's name to it. While

2011 Opinion and Order Upon Application for Reconsideration and Bureau's Response Thereto. Further, Licensee failed to establish a good cause for not timely filing appeals of those orders such that this appeal might be considered on a *nunc pro tunc* basis. As a result, the Orders of February 9 and May 6 are final and are not present before us for appellate review.

In its appeal to the Board, Licensee stated that it did not contend that the ALJ's order of revocation was illegal, but rather, Licensee appealed to the equitable power and conscience of the Board on the basis that the revocation was an abuse of discretion and overly harsh.

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 [47 P.S. § 4-471].

Section 471(b) of the Liquor Code addresses the circumstances under which an ALJ may revoke a license and provides the following guidance:

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

---

there is obviously some question as to whether Ms. Lieberman has standing to represent Licensee, the Board declines to address this issue, given the outcome of this appeal.

mail addressed to the licensed premises. Suspensions and revocations shall not go into effect until thirty days have elapsed from the date of the adjudication during which time the licensee may take an appeal as provided for in this act . . . . The appeal [to the Board] shall be based solely on the record before the administrative law judge. The board shall only reverse the decision of the administrative law judge if the administrative law judge committed an error of law, abused its discretion or if its decision is not based on substantial evidence.

[47 P.S. § 4-471(b)].

A review of the record indicates that the ALJ adhered to the provisions of section 471 of the Liquor Code. The ALJ initially imposed the fine in his February 9, 2011 Order and gave Licensee until March 1, 2011, or twenty (20) days, to pay the fine. More than a month later, on April 4, 2011, the ALJ imposed a two (2) day suspension and continuing thereafter until the fine was paid. Furthermore, the ALJ advised that if the fine was not paid within sixty (60) days from the date of the April 4 Order, he would consider revocation of the license. Eighty-one (81) days later, on June 24, 2011, the ALJ issued his Supplemental Opinion and Order revoking Licensee's license.

The Board does not consider the ALJ's determination to be an abuse of discretion. Based upon a review of the record, the ALJ was considerate of Licensee's circumstances and was more generous with deadlines than required

by statute. Abuse of discretion is an extremely high standard of review, and the Board does not find that it has occurred in the instant matter.

For the reasons set forth above, the Board affirms the decision of the ALJ.

**ORDER**

The decision of the ALJ in regard to Citation 10-1882 is affirmed.

The appeal of Licensee is denied.

Hotel Liquor License No. H-2467 remains revoked.

---

Board Secretary