

Mailing Date: March 1, 2012

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 10-2531
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
REDNECKS BAR & GRILLE, LLC	:	License No. R-14367
771 Old Route 71	:	
Charleroi, PA 15022-3039	:	LID 62153

Counsel for Licensee: No appearance

Counsel for Appellant: Mark E. Kozar, Esquire  
Stanley J. Wolowski, Esquire  
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(on appeal) John H. Pietrzak, Esquire  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
313 Mt. Nebo Road  
Pittsburgh, PA 15237

**OPINION**

Debra L. Yasek (“Appellant”), holder of a security interest in Rednecks Bar & Grill, LLC (“Licensee”), appeals *nunc pro tunc* from the Second Supplemental Order of Administrative Law Judge Roderick Frisk (“ALJ”), dated

November 16, 2011, wherein the ALJ revoked Restaurant Liquor License No. R-14367 due to Licensee's failure to pay a previously-imposed fine for Citation No. 10-2531 ("the Citation"). Appellant is a previous owner of License No. R-14367, who sold her restaurant business, including the license, to Licensee and retained a security interest in the license as collateral. Based upon a review of the certified record, including the ALJ's Adjudication and Order, First Supplemental Order, Second Supplemental Order, Appellant's Appeal and supporting Brief, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau")'s Response and the Notes of Testimony and Exhibits from the hearing held on May 17, 2011, the Pennsylvania Liquor Control Board ("Board") denies the appeal and affirms the ALJ's decision to revoke License No. R-14367.

On December 10, 2010, the Bureau issued the Citation to Licensee, charging two (2) counts. The first count charged Licensee with violating sections 491(1), 492(2), and 493(16) of the Liquor Code [47 P.S. §§ 4-491(1), 4-492(2), and 4-493(16)] in that on July 28, 2010, Licensee, by its servants, agents, or employees, sold alcoholic beverages after the restaurant liquor license expired on June 30, 2010 and had not been renewed and/or validated. The second count charged Licensee with violating section 5.32(a) of the Board's

Regulations [40 Pa. Code § 5.32(a)] in that on September 24, 2010, Licensee, by its servants, agents or employees, used or permitted to be used inside the licensed premises a loudspeaker or similar device whereby the sound of music or other entertainment could be heard outside. The Citation was sent by first class and certified mail to Licensee at its licensed premises (771 Old Route 71, Charleroi, Pennsylvania), and received by Licensee on December 17, 2010.

A hearing regarding the Citation was held on May 17, 2011. Emily L. Gustave, Esquire, appeared at the hearing as counsel for the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”). No one appeared on behalf of the Licensee.<sup>1</sup> By Adjudication and Order mailed June 17, 2011, the ALJ sustained both counts of the Citation and imposed a fine of two thousand dollars (\$2,000.00) for the first count and a fine of five hundred dollars (\$500.00) for the second count, for a total fine of two thousand five hundred dollars (\$2,500.00). The Order stated that if the fine was not paid within twenty (20) days of the mailing date, Licensee’s license would be suspended or revoked.

As of September 1, 2011, Licensee had failed to pay the fine imposed, which was to be paid by July 7, 2011. Accordingly, the ALJ entered a

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<sup>1</sup> The certified mailing of the notice of the hearing sent to Licensee at its licensed premises on April 4, 2011 was returned unclaimed. The first class mailing was not returned.

Supplemental Order whereby Licensee's license was suspended beginning at 7:00 a.m. on October 11, 2011, and continuing thereafter until the fine of two thousand five hundred dollars (\$2,500.00) was paid. The Supplemental Order was mailed to Licensee on September 9, 2011. Licensee's continuing failure to pay the fine prompted the ALJ's Second Supplemental Order, at issue here, which ordered that the suspension continue in full force until Licensee paid the fine or until January 2, 2012, at which time the license would be revoked. The Second Supplemental Order was sent to Licensee via first class and certified mail at its licensed premises on November 18, 2011.<sup>2</sup> Licensee failed to pay the fine, and the license was revoked on January 2, 2012.

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. [47 P.S. § 4-471(b)]. 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.

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<sup>2</sup> The certified copies of both the Supplemental Order and the Second Supplemental Order were returned unclaimed. The first class letters were not returned.

2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

Pursuant to section 471 of the Liquor Code, the thirty (30)-day filing deadline for an appeal from the ALJ's Second Supplemental Order was on or about December 18, 2011. [47 P.S. § 4-471(b)]. Accordingly, this appeal was filed over one (1) month late. Appellant is, therefore, seeking to leave to appeal *nunc pro tunc*.

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)]. The extension of 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 counsel is not a sufficient excuse for the failure to timely file an appeal. [See Bass v. Commonwealth, 485 Pa. 256, 401 A.2d 1133 (1979)]. The rule articulated in Bass was further refined in Cook v. Unemployment Compensation Board of Review. [671 A.2d 1130 (Pa. 1996)]. Specifically, a tribunal may allow an appeal *nunc pro tunc* where (1) an appeal is not timely because of non-negligent circumstances, either as they relate to the appellant

or appellant's counsel, (2) the appeal is filed within a short time after the appellant or counsel learns of and has an opportunity to address the untimeliness, (3) the time period that elapses is of very short duration, and (4) the appellee is not prejudiced by the delay. [See id. at 1131].

On February 7, 2012, Appellant filed for leave to appeal *nunc pro tunc* the ALJ's Second Supplemental Order and the revocation of the license. In support, Appellant avers that she sold her restaurant business and the liquor license to Gregory E. Woodell, Sharon M. Woodell (collectively, "the Woodells"), and Rednecks Bar & Grill, LLC, the current Licensee. The parties entered into a commercial note wherein the Woodells and Rednecks borrowed one hundred twenty-five thousand dollars (\$125,000.00) from Appellant to purchase the collateral. As part of this transaction, the parties entered into a Collateral Security Agreement wherein Appellant held a security interest in Restaurant Liquor License No. R-14367.

Appellant alleges that the Woodells and Rednecks defaulted on the commercial note by failing to make monthly payments. Because of the default, Appellant and her attorney made inquiries as to the status of the license, with the intention of starting the transfer procedure back to Appellant pursuant to the security agreement. In early January, 2012, Appellant and her attorney

learned of the Second Supplemental Order and revocation of the license. Appellant maintains that she never received notice of Citation No. 10-2531, and, therefore, did not attend the May 17, 2011 hearing to protect her security interest in the collateral. She likewise claims lack of knowledge of the ALJ's Supplemental Order and Second Supplemental Order. Accordingly, Appellant filed leave to appeal *nunc pro tunc* the Second Supplemental Order upon receiving notice of the revocation, and avers that, if leave to appeal is granted, she will promptly pay the outstanding fine owed by Licensee.

Importantly absent from Appellant's brief, however, are any allegations that suggest that Appellant perfected her security interest or put any of the relevant bodies on notice of her interest in the license. It is not the responsibility of the Office of the ALJ, the Bureau, or the Board to seek out and provide notice to any potential holder of a security interest in the license. Rather, the duty to provide notices is to the Licensee, who was duly notified of the Citation, the Adjudication and Order, the Supplemental Order, and the Second Supplemental Order.

As noted above, it is the Appellant's burden to demonstrate a breakdown in the administrative process, or that the appeal is not timely because of non-negligent circumstances, is filed within a short time after

learning of the need to appeal, the time that elapses is short, and appellee would not be prejudiced by the delay. In applying the Cook standards, the Board finds that Appellant has failed to satisfy the first prong. Appellant neither has alleged circumstances that could suggest a fraud or breakdown in the administrative process, nor has she established that the failure to file an appeal by December 18, 2011 was caused by non-negligent conduct. The Board does not discount Appellant's allegations that she was diligent in pursuing an appeal when she eventually learned about the revocation of the license. Nonetheless, her lack of knowledge until after the time to appeal had expired was caused by negligent failure to be aware of the status of the license prior to Licensee's alleged default.

Even assuming, *arguendo*, that the circumstances warranted leave to appeal *nunc pro tunc*, nothing in the record suggests that the ALJ abused its discretion, committed an error of law, or rendered a decision unsupported by substantial evidence. Therefore, the appeal would be dismissed regardless.

For the reasons articulated above, Appellant's appeal is dismissed and the Second Supplemental Order revoking Restaurant Liquor License R-14367 is affirmed in all respects.



**ORDER**

The appeal *nunc pro tunc* of Debra L. Yasek is dismissed.

The Second Supplemental Order of Administrative Law Judge Roderick Frisk is sustained.

It is hereby ordered that Licensee's Restaurant Liquor License No. R-14367 remains revoked as of January 2, 2012.

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Board Secretary