

Mailing Date: August 3, 2011

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 10-2604
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
7401 KIM & KIM, INC.	:	License No. E-1718
7401 Stenton Avenue	:	
Philadelphia, PA 19150-3709	:	LID 43082

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Pennsylvania State Police,
Bureau of Liquor Control Enforcement
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OPINION

7401 Kim & Kim, Inc. (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge Tania E. Wright (“ALJ”), mailed June 10, 2011, wherein the ALJ sustained Citation No. 10-2604 (“Citation”) issued by the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”),

and imposed a fine of two thousand dollars (\$2,000.00), ordered Licensee to comply with the requirements of section 471.1 of the Liquor Code [47 P.S. § 4-471.1] concerning the Responsible Alcohol Management Program (“RAMP”) within ninety (90) days of the Order and remain in compliance for a period of one (1) year from the date of the RAMP Certification, and ordered a two (2)-day suspension beginning at 7:00 a.m. on Monday, August 8, 2011 and ending at 7:00 a.m. on Wednesday, August 10, 2011.

The Citation charged Licensee with violating section 493(1) of the Liquor Code [47 P.S. § 4-493(1)], in that on October 30, 2010, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) female minors, fifteen (15) and sixteen (16) years of age.

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 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).

In the instant appeal, Licensee challenges when the two (2)-day suspension period penalty imposed by the ALJ should take place. Therefore, only the two (2)-day suspension, as issued in the ALJ's Adjudication and Order, will be addressed by the Board.¹

Licensee argues that it did not agree to arecommended two (2)-day suspension in August 2011 and the dates of the suspension were not discussed before or during the hearing. Also, Licensee argues that August is a very busy time for it and the lost sales during a suspension in August would be very damaging to it. Lastly, Licensee requests the two (2)-day suspension be changed to sometime in January 2012.

The imposition of penalties is the exclusive prerogative of the ALJ. The Board may not disturb penalties that are within the parameters set forth in section 471(b) of the Liquor Code. [47 P.S. § 4-471(b)]. Section 471(b) specifically prescribes a penalty of license suspension or revocation or a fine between one thousand dollars (\$1,000.00) and five thousand dollars

¹ Licensee's Notice of Appeal incorrectly has the suspension starting on August 11, 2011.

(\$5,000.00), or both, for sales to minors. The statute does not specify the number of days a license can be suspended and the only reference to when a suspension can occur is that a suspension shall not go into effect until thirty (30) days have elapsed from the adjudication.²

Therefore, the ALJ's Order that Licensee's license be suspended for two (2) days beginning at 7:00 a.m. on Monday, August 8, 2011 and ending at 7:00 a.m. on Wednesday, August 10, 2011, is clearly permissible and well within the scope of section 471(b). Accordingly, the Board finds that the penalty was not excessive and the ALJ's decision is affirmed.

² The ALJ's Adjudication and Order occurred on May 16, 2011 and the ALJ's two (2)-day suspension begins on August 8, 2011, which is more than thirty (30) days.

ORDER

The decision of the ALJ is affirmed.

Licensee's appeal is dismissed.

The fine of two thousand dollars (\$2,000.00) for Citation No. 10-2604 has been paid.

The case is hereby remanded to the ALJ to ensure compliance with this Order, and for resetting of the suspension period.

Board Secretary