

Mailing Date: October 12, 2011

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 11-0010X
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

v. :

SNOCKEY'S OYSTER HOUSE, INC. : License No. R-6753
1020 S. 2nd Street :
Philadelphia, PA 19147-4205 : LID 12385
:

Representative for : Kenneth Snock
Licensee: : President of Licensee

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

OPINION

Snockey's Oyster House, Inc. ("Licensee") appeals from the Supplemental Order of Administrative Law Judge Tania Wright ("ALJ"), mailed July 26, 2011, wherein the ALJ suspended the license because of Licensee's nonpayment of the fine of one hundred dollars (\$100.00) imposed by the ALJ's Adjudication and Order mailed May 27, 2011, which

sustained Citation No. 11-0010X (“the Citation”) issued by the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”).

On January 11, 2011, the Bureau issued the Citation, charging Licensee with violating section 493(26) of the Liquor Code [47 P.S. § 4-493(26)] in that Licensee, by its servants, agents or employees, issued checks or drafts dated September 19, 2010, in payment for purchases of malt or brewed beverages when it had insufficient funds in, or credit with, the institution upon which payment of such checks was drawn.

On April 11, 2011, Licensee submitted an Admission, Waiver and Authorization (“Waiver”) to the Office of the Administrative Law Judge (“OALJ”), in which Licensee admitted to the violation charged in the Citation and, *inter alia*, waived a right to appeal the adjudication. [Adjudication, p. 1]. The Waiver was signed by Edward Snock, Licensee’s secretary, on April 11, 2011.

The ALJ’s Order and Adjudication, mailed May 27, 2011, imposed a fine of one hundred dollars (\$100.00) to be paid within twenty (20) days of the mailing date, i.e., by June 16, 2011. The ALJ further notified Licensee that failure to pay the fine by that date would result in suspension or revocation of the license.

Licensee failed to make timely payment, and as of the mailing date of this Opinion, has yet to pay the fine. [Admin. Notice]. Therefore, on July 26, 2011, the ALJ by Supplemental Order ordered suspension of the license beginning on September 19, 2011, and continuing thereafter until further notice.

On August 26, 2011, Kenneth Snock, Licensee's president, filed this appeal of the ALJ's Supplemental Order on behalf of Licensee.¹

On appeal, Licensee indicates that it believes it already paid the fine, although it cannot produce a receipt. [Appeal, para. 1]. In the next paragraph, Licensee contradicts that contention, stating that it "will forward [the] fine in a separate [correspondence]." [Appeal, para. 2]. Licensee provides no further basis for its appeal.

There is no question that Licensee's right to appeal the substance of the violation and the penalty imposed were expressly waived. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Wilner, 687 A.2d 1216 (Pa. Cmwlth. 1997); Pennsylvania Liquor Control Bd. v. Dentici, 117 Pa. Cmwlth. 70, 542 A.2d 229 (1988). Regarding the suspension, it must be

¹ Although the Board received the Licensee's appeal on August 26, 2011, which is thirty-one (31) days from the mailing date of the Supplemental Order, the envelope appears to be postmarked August 25, 2011. Therefore, Licensee timely met the thirty (30)-day deadline for appeals under section 17.21 of the Board's Regulations [40 Pa. Code § 17.21(b)(2)].

noted that in the Order and Adjudication mailed May 27, 2011, Licensee received notice that failure to pay the fine within twenty (20) days of the mailing date would result in suspension or revocation of the license. Because Licensee has yet to pay the fine, as it concedes in its appeal, it clearly has not made timely payment of the fine. As such, the Board finds no legal basis for Licensee's appeal of the ALJ's Supplemental Order suspending the license.

For the foregoing reasons, the Supplemental Order of the ALJ is affirmed, and Licensee's appeal is dismissed.

ORDER

The appeal of Licensee is dismissed.

The decision of the ALJ is affirmed.

The fine of one hundred dollars (\$100.00) has not been paid.

Licensee's restaurant liquor license is suspended for a period of one (1) day, beginning Monday, November 21, 2011 at 7:00 a.m. and continuing thereafter until payment of the fine. The case is hereby remanded to the ALJ to ensure compliance with this Opinion. The Supplemental Order of the ALJ remains in effect.

Board Secretary