

Mailing Date: December 3, 2014

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 11-1413
ENFORCEMENT	:	
	:	
v.	:	
	:	
CROOKED CREEK INN, INC.	:	License No. R-18470
t/a Crooked Creek Inn	:	
Crooked Creek Dam Road	:	LID 26587
RD #3	:	
Ford City, PA 16226-9803	:	

Representative for	Cori Pitzer, Pro Se
Licensee:	Crooked Creek Inn, Inc.
	Crooked Creek Dam Road
	RD #3
	Ford City, PA 16226-9803

Counsel for Bureau:	Emily Gustave, Esquire
	Pennsylvania State Police,
	Bureau of Liquor Control Enforcement
	313 Mt. Nebo Road
	Pittsburgh, PA 15237-1305

OPINION

Crooked Creek Inn, Inc. t/a Crooked Creek Inn ("Licensee") appeals from the Supplemental Order of Administrative Law Judge ("ALJ") Richard O'Neill Earley mailed July 16, 2014, wherein the ALJ "revoked for administrative purposes" Restaurant Liquor License No.

R-18470. For the reasons set forth below, the Pennsylvania Liquor Control Board ("Board") dismisses Licensee's appeal as moot.

On September 14, 2011, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") issued Citation No. 11-1413 to Licensee, charging Licensee, by its servants, agents, or employees, with selling alcoholic beverages on August 3, 2011, after the license had expired¹ on June 30, 2011. Licensee's president, Cori Pitzer, signed an Admission, Waiver, and Authorization form ("Waiver") and submitted it to the Office of Administrative Law Judge ("OALJ") on or about February 17, 2012, admitting the charge and, *inter alia*, waiving the right to a hearing and to appeal the ALJ's decision. By Adjudication and Order mailed March 6, 2012, the ALJ sustained the charge and imposed a one (1)-day suspension of the license. The suspension was deferred pending the reactivation of the license, since the license had expired on June 30, 2011. By Supplemental Order mailed July 16, 2014, the ALJ took administrative notice of the fact that the license had passed from existence and ordered that the

¹ The license period for restaurant liquor licenses is two (2) years, but licenses must be validated for each one (1)-year portion of the license term to remain active. [47 P.S. § 1-102]. The periods are staggered by license district, with licenses in Armstrong County requiring renewal during even-numbered years and validation during odd-numbered years. Licensee, which is in Armstrong County, renewed the license for the license period beginning July 1, 2010, but failed to validate the license for the period beginning July 1, 2011.

license be immediately “revoked for administrative purposes.” Licensee filed an appeal² with the Board on August 14, 2014.

Licensee’s appeal form contains four (4) statements, which may be summarized as alleging two (2) errors. First, Licensee claims it was “not aware” of the Citation and wonders why the license was revoked since it was “not notified of any pending procedure.”³ Second, Licensee contends that the license is in safekeeping and “should still be able to be reactivated (renewed) pending tax clearances.”⁴

² Licensee simultaneously filed a Request for Supersedeas; however, as will be discussed more fully below, there is no supersedeas issue since the license no longer exists.

³ As an aside, Licensee’s claim that it was not aware of the Citation may be quickly dismissed. The record demonstrates that Licensee submitted the Waiver to the OALJ on or about February 17, 2012, in which it admitted to the violation charged and to the Bureau’s compliance with the applicable notice requirements of the Liquor Code. The Waiver was signed by Ms. Pitzer on behalf of Licensee. Moreover, on March 9, 2012, Ms. Pitzer signed as having received the Adjudication and Order, sent by the OALJ via certified mail on March 6, 2012. Since Ms. Pitzer clearly was aware of the Citation and its adjudication in 2012, there is no basis for Licensee to now claim it lacked notice.

⁴ With regard to the safekeeping allegation, a restaurant licensee whose licensed establishment is no longer in operation must return the license to the Board for safekeeping within fifteen (15) days, although any period of time in which a licensee allows the license to lapse by not filing a timely renewal or validation is considered time in which the license was held in safekeeping, for purposes of determining deadlines. [47 P.S. §§ 4-474.1(a), (d)]. Licensee produced no evidence to support its contention that the license is being held by the Board in safekeeping, and the Board takes administrative notice of the absence in its records of any correspondence from Licensee even addressing safekeeping prior to this appeal. In fact, in section 5(a) of the Waiver, Licensee affirmed that the license had not been returned to the Board for safekeeping, more than six (6) months after the license had expired. Furthermore, even assuming, *arguendo*, the license at issue here was being “held” in safekeeping as of July 1, 2011, when it became inactive, any license remaining in safekeeping for a period exceeding three (3) consecutive years, i.e. in this case July 1, 2014, must be immediately revoked unless a transfer application or reissue request has been received or unless the Board has approved a request to extend the safekeeping period for an additional year, none of which apply here. [47 P.S. § 4-474.1(b)].

Licensee provided no further explanation or evidence to support its claims.

Having reviewed the record, Licensee's appeal, and the Bureau's reply brief, the Board does not believe there exists an appealable issue materially affecting Licensee. Rather, the action taken by the ALJ in the Supplemental Order mailed July 16, 2014, was purely ministerial in nature, having no impact upon Licensee's rights or privileges.

The record demonstrates that Licensee has not submitted renewal or validation applications to the Board's Bureau of Licensing since the expiration of the license on July 1, 2011. Specifically, Licensee failed to validate the license for the one (1)-year period beginning July 1, 2011, failed to renew the license for the renewal period beginning July 1, 2012, and failed to validate the license for the one (1)-year period beginning July 1, 2013.

Although renewal applications must be filed at least sixty (60) days prior to the expiration of the license period, the legislature established a *nunc pro tunc* period in section 470 of the Liquor Code [47 P.S. § 4-470], providing a two (2)-year period after the expiration of a license during which the license may be renewed as long as the licensee submits the appropriate forms and fees to bring the license up

to date. However, the Board has no authority to renew a license beyond that two (2)-year window.

In this case, the license period ended on June 30, 2012, and the statutory *nunc pro tunc* renewal period ended on June 30, 2014, extinguishing the license. The Board received no renewal or validation applications during the intervening two (2) years. Therefore, the license no longer existed at the time the ALJ issued the Supplemental Order of July 16, 2014, which perhaps confusingly purported to “revoke” the license.

Given the impossibility of revoking a license that does not exist, the Board does not believe the ALJ intended to order a true “revocation.” Rather, the ALJ took administrative notice that the license was already out of existence and ordered that the license be considered revoked “for administrative purposes,” effective on the date of mailing. In so doing, the OALJ was simply performing the ministerial task of closing out its records on the Citation, while retaining jurisdiction. This administrative action did not alter Licensee’s position in any way, since the license had already expired by operation of law, and thus the Supplemental Order was not an appealable order or adjudication. [See 40 Pa. Code § 15.55; Pa.R.A.P. Rule 341].

Moreover, had the license been truly revoked as a matter of law by the ALJ, Licensee as well as the formerly-licensed premises would have been subjected to unintended and unwarranted additional restrictions. For one, Licensee would be ineligible to hold another license for three (3) years after the date of revocation. [47 P.S. § 4-471(b)]. In addition, the Board would be prohibited⁵ from granting a license for, or approving the transfer of a license to, the formerly-licensed premises for a period of at least one (1) year after the date of revocation. [Id.].

These constraints do not apply to a licensee or premises where the license merely passes out of existence for failure to renew. Nothing in the Liquor Code or the Board's Regulations *requires* a licensee to renew its license. As such, Licensee's decision to not renew the license, or Licensee's apathy, whichever the case may be, should not subject it to the additional penalties imposed by subsection 471(b) upon licensees whose license is revoked for malfeasance.

Therefore, for the foregoing reasons, the appeal of Licensee is dismissed as moot.

⁵ An exception is made in cases in which the licensee or a member of the licensee's immediate family is not the owner of the premises. [47 P.S. § 4-471(b)].

ORDER

The appeal of Licensee is dismissed.

The appeal fee of thirty-five (\$35.00) is being returned because the Supplemental Order was not an appealable order.

Restaurant Liquor License No. R-18470 no longer exists as of July 1, 2014.

Board Secretary