

Mailing Date: December 3, 2014

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 11-1852
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 November 7, 2011, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") issued Citation No. 11-1852 to Licensee, charging Licensee, by its servants, agents, or employees, with selling alcoholic beverages on August 9, 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 6, 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 it 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 license be

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.

immediately “revoked for administrative purposes.” Licensee filed an untimely appeal² with the Board on August 27, 2014.

In its appeal, Licensee claims it was “not aware” of the Citation and requests an opportunity to bring the license up to date, but it provided no explanation for the untimely³ filing of its appeal. Nonetheless, 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

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

³ Pursuant to section 17.21 of the Board’s Regulations [40 Pa. Code § 17.21], Licensee’s appeal should have been filed or postmarked within thirty (30) days of the mailing of the Supplemental Order, i.e. on or before August 15, 2014, yet it was not filed until August 27, 2014. Given the heavy burden on an appellant to demonstrate entitlement to *nunc pro tunc* relief, Licensee clearly failed to meet its burden here by failing to even address the issue. See Bass v. Commonwealth Bureau of Corrections, 485 Pa. 256, 401 A.2d 1133 (1979); Cook v. Unemployment Compensation Board of Review, 543 Pa. 381, 671 A.2d 1130 (1996); Criss v. Wise, 566 Pa. 437, 781 A.2d 1156 (2001). Therefore, if the Supplemental Order had been an appealable order, the Board would be without authority to consider the untimely appeal.

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 prohibited⁴ 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.].

⁴ 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)].

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.

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