

Mailing Date: December 5, 2012

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 11-2185
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
THE EAGLES CLUB, INC.	:	License No. CC-2554
16-22 East Main Street	:	
Waynesboro, PA 17268-1875	:	
	:	

Counsel for Licensee: James A. Snell, Esquire  
322 South Eighth Street  
Lebanon, Pa. 17042

Counsel for Bureau: John H. Piertrzak, Esquire  
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Bureau of Liquor Control Enforcement  
3655 Vartan Way  
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**OPINION**

The Eagles Club, Inc. (“Licensee”) filed an appeal from the Opinion and Order upon Licensee’s Application for Reconsideration dated October 17, 2012 in which Administrative Law Judge Felix Thau (“ALJ”) denied the request for a reduction/revision of the assigned days of suspension imposed in the

Adjudication and Order of September 20, 2012. In the first Order, pursuant to the violations delineated in Citation No. 11-2185, the ALJ assessed fines totaling four thousand dollars (\$4,000.00) against Licensee and imposed a suspension of the license for a period of one hundred fifty (150) days beginning December 10, 2012 and ending May 9, 2013. Based upon a review of the certified record, including an agreement to the facts, the ALJ's Adjudication and Order, Licensee's Motion for Reconsideration, the ALJ's Opinion and Order denying the same, and the Bureau's response, the Pennsylvania Liquor Control Board ("Board") denies the appeal and affirms the decision of the ALJ.

On December 29, 2011, the Bureau issued the Citation to the Licensee setting forth four (4) counts. The first count of the Citation alleged that, during the period of May 27, 2010 through May 26, 2011, Licensee violated section 471 of the Liquor Code [47 P.S. § 4-471], section 314 of the Local Option Small Games of Chance Act [10 P.S. § 314], and section 910 of the Department of Revenue Regulations [61 Pa. Code § 901], in that funds derived from the operations of games of chance were used for purposes other than those authorized by law.

Count two alleged that Licensee violated section 471 of the Liquor Code [47 P.S. § 4-471], and section 315(b) of the Local Option Small Games of Chance

Act [10 P.S. § 315(b)], in that Licensee by its servants, agents or employees, awarded more than five thousand dollars (\$5,000.00) in cash or merchandise in any seven (7) day period during the periods of January 17-23, February 14-20, March 7-13, April 18-24, May 2-8, June 27-July 3, July 11-17, August 15-21, and September 5-11, 2011.

Count three alleged violations of section 471 of the Liquor Code [47 P.S. § 4-471] and sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §§ 5512 and/or 5513] in that, on February 5 and April 30, 2011, Licensee, by its servants, agents or employees, possessed or operated gambling devices of paraphernalia or permitted gambling or lotteries, pool selling and/or bookmaking on the licensed premises.

Count four alleged Licensee violated sections 471 and 493(12) of the Liquor Code [47 P.S. §§ 4-471; 4-493(12)], section 311 of the Local Option Small Games of Chance Act [10 P.S. § 311], and section 901 of the Department of Revenue Regulations [61 Pa. Code § 901], in that, Licensee by its servants, agents or employees, failed to maintain complete and truthful records of the operations for a period of two (2) years preceding September 27, 2011.

Notice of the Citation was sent by first class and certified mail to Licensee at the licensed premises, and Licensee's attorney entered his appearance on

April 2, 2012. At the evidentiary hearing on July 23, 2012, the matter was submitted by way of an agreement of the facts wherein Licensee admitted that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code. Licensee did offer mitigating circumstances, none of which the ALJ regarded as meritorious. Licensee's prior adjudication history of seven (7) citations from 1988 included repetition of the same infractions of unlawful gambling, and was summarily characterized as habitual behavior. Thereafter, the ALJ made his Findings of Facts and Conclusions of Law, imposing the fine and suspension of the license.

In a timely-filed Request for Reconsideration, Licensee appealed regarding the specific dates and duration of the suspension, alleging both as an abuse of discretion under the circumstances of the violation and an excessive harm to Licensee, Licensee's employees, and members caused by a suspension during the holiday season. Specifically, the designated suspension dates include most of the holiday season, the busiest and most profitable time of the year. Licensee alleged that the duration of one hundred fifty (150) days constituted a substantial economic hardship and an inconvenience. Additionally, the proceeds from the small games of chance were used for the purchase of other small games of chance, charitable contributions and

operational expenses. Further, Licensee submitted a list of the charitable contributions for the year 2012 in the amount of forty-eight thousand, four hundred fifteen dollars, and sixty-five cents (\$48,415.65). Licensee sought a reconsideration of the length of the suspension, as well as a commencement period beginning after January 2, 2013. The motion was denied and this appeal follows.

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

Additionally, the ALJ has the exclusive right to resolve conflicts in the evidence and to make credibility determinations. McCauley v. Pennsylvania Bd. of Probation and Parole, 510 A.2d 877 (Pa. Cmwlth. 1986). It is well settled that

the ALJ's findings on credibility will not be disturbed absent a showing of insufficient evidence. Borough of Ridgway v. Pennsylvania Public Utility Comm'n, 480 A.2d 1253 (Pa. Cmwlth. 1984). The determinations of the ALJ herein fall within that exclusive right.

On appeal, Licensee raises issues similar to those it raised in its Motion for Reconsideration. Specifically, Licensee argues that the impositions of the one hundred twenty (120) day suspension on Count 2 of the Citation, and the thirty (30) day suspension on Count 3 of the Citation, were an abuse of discretion, as was the combined total suspension, and the ALJ's refusal to delay the beginning of the suspension period from December 10, 2012 until at least January 2, 2013.

In the matter herein, there was no dispute between the parties as to the material facts underlying the Citation. Licensee and the Bureau agreed to the facts as presented by the Bureau at the hearing, and Licensee offered only some explanations, financial records, and mitigating circumstances which the ALJ did not find meritorious. Thus, there was substantial evidence offered as to the underlying violations.

Having found that the ALJ's decision was supported by substantial evidence and was proper, the Board turns its attention to whether the ALJ

abused his discretion in denying reconsideration as to the dates and duration of the suspension and affirming the original Order. The exercise of judicial discretion requires action in conformity with law, upon fact and circumstances judicially before the court, after hearing and due consideration. The Pennsylvania Supreme Court defined an abuse of discretion as “not merely an error of judgment, but, if in reaching a conclusion, the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record, discretion is abused.” Hainsey v. Pennsylvania Liquor Control Bd., 529 Pa. 286, 602 A.2d 1300, 1305 (1992) (emphasis and citations removed).

In this case, there is no evidence in the record to suggest that the ALJ’s conclusion was the result of misapplication of the law, prejudice or bias, or that it was manifestly unreasonable. The imposition of the suspension relative to counts two (2) and three (3) fell within the statutory guidelines under section 471 of the Liquor Code. [47 P.S. § 4-471]. The ALJ was under no obligation to schedule the license suspension around any major holidays. Given the length of the suspension, it will overlap holidays no matter when it is. Furthermore, the penalty was reasonable in light of the severity of the violations.

The imposition of penalties is the exclusive prerogative of the administrative law judge. The Board may not disturb penalties imposed by an administrative law judge if they are within the parameters set forth in section 471 of the Liquor Code [47 P.S. § 4-471].

The Liquor Code prescribes a penalty is that of license suspension or revocation or a fine of not less than fifty dollars (\$50.00), or more than one thousand dollars (\$1,000.00), or both, for the types of violations Licensee had. Additionally, since counts 2 and 3 of the Citation were the third such violations in four (4) years of the Crimes Code, section 471(c) required suspension or revocation of the Liquor Code [47 P.S. § 4-471(c)]. Thus, the allocation of a fine of one thousand dollars (\$1,000.00) per count and the suspensions as to counts two and three of one hundred twenty (120) days and thirty (30) days, respectively, fall within the statutory parameters of the Liquor Code.

Lastly, the decision to grant or to deny a request for reconsideration is a matter of administrative discretion to be reversed only for an abuse of discretion. Modzelewski v. Departmentt of Public Welfare, 109 Pa. Cmwlt. 519, 531 A2d 585 (1987). The party requesting reconsideration must set forth the reason justifying the motion, including matters that have arisen since the

hearing/order or the consequence that would result from compliance. 1 Pa. Code § 35.241(b).

In its Motion for Reconsideration, Licensee had simply set forth that compliance with the dates and duration of suspension would constitute a hardship. This is not a valid basis for reconsideration, nor is it an abuse of discretion for the ALJ to have denied.

For the foregoing reasons, the Adjudication and Order of the ALJ denying the Motion for Reconsideration and sustaining the Order in which penalties of a one hundred fifty (150)-day suspension beginning December 10, 2012, as well as a fine of four thousand dollars (\$4,000.00) was imposed, is affirmed in all respects.

**ORDER**

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

The fine of four thousand dollars (\$4,000.00) has been paid in full.

It is hereby ordered that Licensee's Catering Club License No. CC-2554 be suspended for one hundred fifty (150) days, beginning Monday, January 7, 2013, 7:00 a.m., and ending Thursday, June 6, 2013, 7:00 a.m.

The case is hereby remanded to the ALJ to ensure compliance with this Order.

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Board Secretary