

Mailing Date: 4/15/14

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 11-2224
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
MEDINAS HOTEL GRAND LLC	:	License No. H-585
t/a Medinas Hotel Grand	:	
42-46 North Tenth Street	:	
Allentown, PA 18102-1125	:	LID 57111

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OPINION

On February 24, 2014, Demetrios Parashos (“Petitioner”), under a Limited Power of Attorney granted by Fidel Medina, owner of Medinas Hotel Grand, LLC, trading as Medinas Hotel Grand (“Licensee”), filed a Petition for Appeal *Nunc Pro Tunc* from the Second Supplemental Order of Administrative

Law Judge (“ALJ”) David Shenkle mailed on March 19, 2013, wherein the ALJ revoked Hotel Liquor License No. H-585 (LID 57111) effective May 6, 2013, due to Licensee’s failure to pay the fine relative to Citation No. 11-2224 (“the Citation”).

On January 4, 2012, the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) issued the Citation to Licensee, charging it with three (3) counts. The first count charged Licensee with violating section 499(a) of the Liquor Code [47 P.S. § 4-499(a)], in that on October 23, 2011, Licensee, by its servants, agents, or employees, failed to require patrons to vacate the part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages. The second count charged Licensee with violating section 499(a) of the Liquor Code [47 P.S. § 4-499(a)] in that on October 23, 2011, Licensee, by its servants, agents, or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m. The third count charged Licensee with violating section 5.32(a) of the Regulations of the Pennsylvania Liquor Control Board (“Board”) [40 Pa. Code § 5.32(a)], in that on November 5, 2011, Licensee, by its servants, agents or

employees, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

On July 23, 2012, Licensee submitted an Admission, Waiver and Authorization (“Waiver”) to the Office of the Administrative Law Judge (“OALJ”), in which Licensee admitted to the violations charged in the Citation and waived the right to appeal the adjudication. The Waiver was signed by Mr. Medina on July 23, 2012. The Waiver included a handwritten notation which stated, “Will transfer on or about Aug 2012.” By Adjudication and Order mailed August 3, 2012, the ALJ sustained the Citation on all three (3) counts and imposed an aggregate fine of one thousand one hundred fifty dollars (\$1,150.00).¹

Licensee failed to submit timely payment of the fine to the OALJ, and thus the ALJ issued a Supplemental Order mailed October 17, 2012. The Supplemental Order noted that the aggregate fine of one thousand one hundred fifty dollars (\$1,150.00) had not been paid within the required twenty (20) days and remained unpaid. Taking notice that the license was submitted to the Board for safekeeping on March 15, 2012, the ALJ imposed a one (1)-day

suspension of the license but deferred the suspension until reactivation of the license. The Supplemental Order further stated that if the fine remained unpaid sixty (60) days after the mailing date of the Supplemental Order, further sanctions including revocation of the license would be considered.

After prolonged nonpayment of the fine, the ALJ issued a Second Supplemental Order mailed March 19, 2013, noting that the fine of one thousand one hundred fifty dollars (\$1,150.00) had still not been paid by Licensee. The ALJ therefore ordered revocation of the license effective at 7:00 a.m. on May 6, 2013. The Second Supplemental Order further provided that until that date, the license remained subject to the Supplemental Order mailed on October 17, 2012, and that the ALJ would reconsider the revocation of the license if full payment of the fine was received prior to May 6, 2013. However, Licensee never paid the fine, and the license was revoked on May 6, 2013.

On January 2, 2014, Petitioner submitted a Request for Reconsideration, which was returned by the OALJ since the request was filed more than fifteen (15) days after the date of the Second Supplemental Order. On February 24,

¹ The ALJ merged counts 1 and 2 and imposed a fine of four hundred dollars (\$400.00); count 3 resulted in a fine of seven hundred fifty dollars (\$750.00).

2014, Petitioner filed the instant Petition for Appeal *Nunc Pro Tunc* with the Board.²

Section 471 of the Liquor Code establishes a thirty (30)-day filing deadline for taking an appeal from an adjudication of an administrative law judge. [47 P.S. § 4-471(b)]. Further, section 17.21 of the Board's Regulations provides that failure to file or have the appeal postmarked within thirty (30) calendar days will result in dismissal of the appeal. [40 Pa. Code § 17.21(b)(2)].

The time for taking an appeal cannot be extended as a matter of grace or mere indulgence. West Penn Power Co. v. Goddard, 460 Pa. 551, 333 A.2d 909 (1975); In re: Dixon's Estate, 443 Pa. 303, 279 A.2d 39 (1971). Furthermore, the extension of the time of filing an appeal should be limited to cases where "there is fraud [or] some breakdown in the court's operation" caused by extraordinary circumstances. West Penn Power Co., 333 A.2d at 912. The negligence of an appellant, or an appellant's counsel, or an agent of appellant's counsel, has not been considered a sufficient excuse for the failure to file a timely appeal. Bass v. Commonwealth, 485 Pa. 256, 401 A.2d 1133 (1979).

² The Petition includes a second heading which states, "Petition for Appeal from the Refusal to Accept Petition to Reconsider the March 14, 2013 Order"; however, that issue is dismissed as moot because the final order from which Petitioner seeks *nunc pro tunc* relief is the revocation. Moreover, the OALJ had no authority to accept a request for reconsideration after fifteen (15) days. [See 40 Pa. Code § 15.56; 1 Pa. Code § 35.241].

The rule set forth in Bass was further clarified in Cook v. Unemployment Compensation Board of Review, 671 A.2d 1130 (Pa. 1996); specifically, the court may allow an appeal *nunc pro tunc* where (1) an appeal is not timely because of non-negligent circumstances, either as they relate to appellant or his counsel; (2) the appeal is filed within a short time after the appellant or his counsel learns of and has an opportunity to address the untimeliness; (3) the time period which elapses is of very short duration; and (4) the appellee is not prejudiced by the delay. Id. at 1131.

The heavy burden of establishing the right to have an untimely appeal considered rests with the moving party. Hessou v. Unemployment Compensation Board of Review, 942 A.2d 194 (Pa. Cmwlth. 2008). Additionally, the filing of a timely appeal is a jurisdictional requirement that must be met before any appeal may be considered. Criss v. Wise, 781 A.2d 1156 (Pa. 2001); Morrisons Cove Home v. Blair County Bd. of Assessment Appeals, 764 A.2d 90 (Pa. Cmwlth. 2000).

In addressing this matter, the Board has reviewed the certified record provided by the OALJ, including the Adjudication and Order mailed August 3, 2012, the Supplemental Order mailed October 17, 2012, the Second

Supplemental Order mailed March 19, 2013, the Petition, as well as Exhibits A and B of the Petition, and has concluded that there is no basis for granting *nunc pro tunc* relief.

In justifying its untimely appeal, Petitioner asserts that there has been an administrative breakdown in the operation of the Board but provides no evidence to support this allegation. Petitioner avers that at the time Licensee and Petitioner entered into an agreement of sale, “Petitioner was informed by the [Board] that Petitioner would need to renew the license and that there were outstanding fines.” [Petition, para. 10]. Petitioner further contends that he was “misled” during contacts with the Board. [Petition, paras. 19-21]. However, the Petition does not provide dates or details with regard to when such breakdown occurred or who provided Petitioner with the alleged misinformation. Petitioner asserts an administrative breakdown but does not prove that one occurred.

Petitioner states that his company purchased the formerly licensed property and that he entered into an agreement of sale to purchase the license. However, the Petition does not identify the dates of these transactions. As discussed, the Second Supplemental Order revoking the license was mailed March 19, 2013, and the revocation took effect on May 6,

2013. Despite having the burden, Petitioner does not indicate the date of the alleged agreement of sale.

Nonetheless, Board records indicate that a copy of the agreement was received by the Board on October 11, 2013. The agreement was enclosed with a letter dated October 10, 2013, from the law offices of Corkery and Almonti, and was accompanied by a copy of a power of attorney executed by Mr. Medina, as well as an application for renewal of the license. These records demonstrate clearly that the agreement of sale was executed on June 4, 2013, almost a month after the license had already been revoked.

Petitioner further alleges that he “was never told that the license was revoked until well after he began the process of renewing this license” and that it “was not until on or about December 28, 2013 that the Petitioner became aware of Judge David L. Shenkle’s March 14, 2012 Order.” [Petition, paras. 11, 21]. Notwithstanding the fact that Petitioner should have researched the status of the license before entering into the agreement of sale, Board records indicate that Petitioner’s counsel was sent a letter dated October 30, 2013, in which Jerry Waters, Director of the Office of Regulatory Affairs, stated that the license was revoked pursuant to Citation No. 11-2224. Therefore, Petitioner’s averment that he did not learn of the revocation until December

28, 2013, is clearly false, and Petitioner's delay in filing the instant Petition until February 24, 2014, is even more difficult to justify.

Petitioner provides no explanation as to why he made no effort to apply for the license transfer until October 2013, when the agreement of sale was executed on June 4, 2013. Further, no explanation is provided as to why Petitioner did not inquire as to the status of the license prior to signing the agreement to purchase a license which no longer existed. Even if there was a license to transfer at the time the agreement of sale was executed on June 4, 2013, Petitioner's failure to inquire as to the status of the license until October 2013, a delay of over four (4) months, is inexplicable. There is simply no evidence from Petitioner that the Board somehow misled Petitioner into buying a revoked license.

With respect to the standards in Bass and Cook, Petitioner has not established that his delay was caused by an administrative breakdown on the part of the Board. Whatever breakdown may have occurred, it rests at the feet of Petitioner and Licensee. While the Board is sympathetic to Petitioner's circumstances, it is bound to follow the Liquor Code, the Board's Regulations, as well as the case law pertaining to *nunc pro tunc* appeals. The Board cannot simply bend the rules to reverse a revocation without justification.

Considering the heavy burden on an appellant seeking *nunc pro tunc* relief and the lack of evidence offered by Petitioner, the Board does not find any reasonable cause for the delay of this appeal other than the negligence of Licensee and Petitioner. For the reasons set forth above, the Board denies the Petition for Appeal *Nunc Pro Tunc*.

ORDER

The Petition for Appeal *Nunc Pro Tunc* of Licensee is denied.

The Petition for Appeal from the Refusal to Accept Petition to Reconsider the March 14, 2013 Order is dismissed as moot.

The ALJ's Second Supplemental Order revoking the license is affirmed.

Hotel Liquor License No. H-585 remains revoked.

Board Secretary