Mailed August 28, 2013

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 12-0759
v.	:	
ROMAN'S LOUNGE & CATERING, INC. 101-103 South Broad Mountain Avenue Frackville, PA 17931	:	License No. R-16295
	:	LID 32066

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OPINION

Roman's Lounge & Catering, Inc. ("Licensee") filed an appeal from the Adjudication and Order of Administrative Law Judge David L. Shenkle ("ALJ"),

wherein the ALJ assessed a fine of five hundred dollars ($500.00) against Licensee as the result of Citation No. 12-0759 ("The Citation").

The Citation charged that on February 18, March 2, and March 30, 2012, 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 beyond Licensee's property line, in violation of section 493(34) of the Liquor Code. [47 P.S. § 4-493(34)].

On May 2, 2013,[1] the ALJ held a hearing for the purpose of taking evidence relating to the charges asserted in the citation. Testimony was presented by License and by the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau").

On February 17, 2012, at 11:15 p.m., Bureau Officer Kristyn Klueg arrived at the licensed premises. [N.T. 22-23]. When the officer entered the licensed premises, she saw that there was a DJ who had set up to play music, as well as four (4) speakers from which music was emanating. [N.T. 23]. The officer stayed until 12:05 a.m. on February 18, 2012. [N.T. 23]. After she left the licensed premises, she could hear the music emanating from the licensed

[1] The hearing was originally scheduled to occur on August 14, 2012, at 2:00 p.m., but was continued at least twice and was ultimately held on May 2, 2013.

premises as she proceeded along South Broad Mountain Avenue until she reached approximately sixty (60) feet away from the licensed premises. [N.T. 23]. By that point she had passed at least two (2) other properties. [N.T. 23].

On March 2, 2012, at 10:45 p.m., Officer Krueg arrived at the licensed premises. [N.T. 24]. When she entered the licensed premises, Officer Krueg saw the same set up she saw on February 17, 2012, with a DJ and music being amplified through four (4) speakers. [N.T. 24]. After the officer left the licensed premises at approximately 11:00 p.m., she could hear the music emanating from the licensed premises as she walked across the street and continued down the sidewalk. [N.T. 25]. Officer Krueg was able to hear music emanating from the licensed premises as she proceeded north along Broad Mountain Avenue until she reached approximately one hundred eighty (180) feet away from the licensed premises. [N.T. 25].

On March 30, 2012, at 10:30 p.m., Officer Krueg arrived at the licensed premises. [N.T. 25-26]. When she entered the licensed premises, Officer Krueg again saw the same set up she saw on February 17 and March 2, 2012, with a DJ and music was being amplified through four (4) speakers. [N.T. 26]. After she left the licensed premises at approximately 11:10 p.m., the officer could hear the music emanating from the licensed premises as she proceeded along South

Broad Mountain Avenue until she reached approximately sixty (60) feet away from the licensed premises. [N.T. 23]. She paced the distance in the same way as she had on February 17, 2012, but she went a little bit further. [N.T. 26].

On June 21, 2013, the ALJ issued his Adjudication and Order sustaining the Citation. As a penalty, the ALJ assessed a fine of five hundred dollars ($500.00) against Licensee.

In its Appeal, Licensee argues that the ALJ's ruling was "contrary to the evidence" and that the "Pa. Liquor Control Board did not meet their burden of proof."[2] Because Licensee did not provide any further explanation for the basis of its appeal, the Board has reviewed the certified record provided by the Office of the Administrative Law Judge, including the ALJ's Adjudication and Order mailed June 21, 2013, Licensee's Appeal, and the Notes of Testimony and Exhibits from the hearing held on May 2, 2013, and has concluded that the ALJ's ruling is without error and is supported by substantial evidence.

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 discretion, or if his decision was not based upon substantial evidence. [47 P.S. § 4-471(b)].

[2] It is assumed that Licensee meant that the Bureau did not meet its burden of proof, not the Board.

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). 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 ALJ concluded that on February 17, March 2, and March 30, 2012, Licensee violated section 493(34) pertaining to the use of loudspeakers such that the sound of music could be heard beyond Licensee's property line. Based on the first-hand testimony provided by the Bureau Officer, the Board finds sufficient evidence in the record to support this conclusion.

Having found that the ALJ's decision was supported by substantial evidence, the Board turns its attention to whether the ALJ abused his discretion in sustaining the Citation and imposing a fine of five hundred dollars

($500.00). 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).

In this case, there is no evidence in the record to suggest that the ALJ's conclusion was the result of prejudice or bias, or that it was manifestly unreasonable. The imposition of penalties is the exclusive prerogative of the ALJ; the Board may not disturb penalties which are within the parameters set forth in the Liquor Code. Section 471 of the Liquor Code prescribes the penalty for the type of violation sustained in the Citation, and permits the ALJ to impose a license suspension or revocation and/or a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000.00). [47 P.S. § 4-471]. The ALJ imposed a fine of five hundred dollars ($500.00). Since the penalty is clearly within the statutory range set forth in the Liquor Code, and

the Board has no authority to alter the penalty imposed by the ALJ, the decision of the ALJ as to the penalty is affirmed.

For the foregoing reasons, the Adjudication and Order of the ALJ sustaining the Citation and imposing a fine of five hundred dollars ($500.00) is affirmed.

O R D E R

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee shall pay a fine of five hundred dollars ($500.00) within twenty (20) days of the mailing date of this Order. Failure to pay the fine within twenty (20) days of the mailing date of this Order will result in a license suspension and/or revocation.

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

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Board Secretary