

Mailing Date: August 28, 2013

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, :
BUREAU OF LIQUOR CONTROL : Citation No. 12-1253
ENFORCEMENT :

v. :

JHC OF YORK, INC. : License No. R-18786
t/a Jamie's Courtside :
18 South Belmont Street : LID 53065
York, PA 17403-1915 :

Representative for : Harry E. Craley, *Pro Se*
Licensee: JHC of York, Inc. t/a Jamie's Courtside
18 South Belmont Street
York, PA 17403-1915

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OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") appeals from the Adjudication and Order of Administrative Law Judge ("ALJ") Felix Thau, mailed May 2, 2013, in which the ALJ dismissed Citation No. 12-1253 ("the Citation"), holding that the Conditional Licensing

Agreement (“CLA”), which had formed the basis for the violation alleged, was no longer in effect as of the date charged.

On August 23, 2012, the Bureau issued the Citation to JHC of York, Inc. t/a Jamie’s Courtside (“Licensee”), charging it with violating section 404 of the Liquor Code [47 P.S. § 4-404], in that on July 1, 2012, Licensee, by its servants, agents, or employees, failed to adhere to the conditions of the CLA it had entered into with the Pennsylvania Liquor Control Board (“Board”). The Board’s Bureau of Licensing (“Licensing”) had objected to the renewal of Licensee’s license for the licensing terms effective March 1, 2008 and March 1, 2010. In order to convince the Board to renew its license at that time, Licensee offered to enter into the CLA, which imposed additional conditions on both the license and the premises. On May 4, 2011, the Board approved both the license renewal and the CLA, thus resolving the objections Licensing had had with the 2008 and 2010 renewals.

Paragraph 11(b) of the CLA requires Licensee to use a transaction scan device, as that term is defined in the Liquor Code, to scan the identification of all patrons purchasing alcoholic beverages, notwithstanding the fact that a patron may have had his or her identification scanned on a previous occasion.

[N.T. 20: Ex. C-3].

A review of the testimony and exhibits from the hearing held on February 27, 2013, reveals the following: Bureau Officer Tammye Tuck went to the licensed premises at 1:07 a.m. on July 1, 2012 in an undercover capacity. [N.T. 126-128]. Licensee did not scan Officer Tuck's identification or even card her, upon entering or purchasing an alcoholic beverage. [N.T. 128]. She did not notice whether other patrons were served without be scanned, because she was unaware of the CLA provision requiring Licensee to scan all patrons' identifications purchasing alcoholic beverages. [N.T. 128-129; Ex. C-3]. Officer Tuck issued the Citation when she became aware of the restriction in Licensee's CLA.

By Adjudication and Order mailed May 2, 2013, the ALJ dismissed the Citation. The sole basis upon which the ALJ dismissed the Citation was the ALJ's conclusion that the CLA was no longer in effect at the time of the violation. As support for the ALJ's Conclusion of Law that "[a] renewal CLA cannot extend beyond the period for which it was issued," the ALJ cited his recent adjudication in Bureau of Liquor Control Enforcement v. Derry Street Pub, Inc., Citation No. 12-1348. The Bureau filed a timely appeal of the May 2, 2013 Adjudication and Order and iterates the same arguments it raised in its

appeal of Derry Street Pub. The Bureau asks the Board to reverse the ALJ's decision and to remand the matter to the ALJ for the imposition of a penalty.

Pursuant to section 471 of the Liquor Code, the appeal in this case must be based solely on the record before the ALJ. The Board may 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)]. 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, 484 A2d 413 (Pa. Cmwlth. 1984). Furthermore, the Pennsylvania Supreme Court has 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, 297, 602, A.2d 1300, 1305 (1992) (citations omitted).

Here, the underlying facts are not in dispute. [Finding of Fact No. 4]. The ALJ took official notice of paragraph 11(b) of the CLA and found that, on the

date charged, Licensee sold alcoholic beverages to a Bureau officer without scanning the officer's identification. [Findings of Fact No. 3, 4]. Nonetheless, the ALJ applied his reasoning in Derry Street Pub and concluded that the CLA was no longer in effect on the dates of the admitted violations.

The decision of the ALJ in Derry Street Pub has since been reversed by the Board, in an Opinion and Order mailed July 24, 2013.¹ There is no reason to revisit the ALJ's misguided decision in that case, which was an error of law and an abuse of discretion, and was not supported by substantial evidence. Like the CLA in Derry Street Pub, Licensee's CLA provides, "These terms will remain in effect both on the license and on the premises unless and until a subsequent agreement is reached with the Board rescinding these restrictions." [Ex. C-3]. The Board and Licensee have not reached any subsequent agreements rescinding the terms of the CLA.²

Therefore, the ALJ erred in concluding that the CLA was no longer in effect on the violation date of July 1, 2012. The decision to dismiss the Citation was an error of law, an abuse of discretion, and not supported by substantial evidence. It is therefore reversed, and pursuant to section 471 of the Liquor

¹Derry Street Pub, Inc., appealed the Board's decision, and the matter is currently pending before the Court of Common Pleas of Dauphin County.

²On May 22, 2013, York County Court of Common Pleas affirmed the Board's Order dated May 16, 2012, refusing the renewal of Licensee's Restaurant Liquor License No. R-18786 (LID 53065). This decision was not appealed.

Code [47 P.S. § 4-471], the matter must be remanded to the ALJ to impose an appropriate penalty.

ORDER

The appeal of the Bureau is sustained.

The decision of the ALJ is reversed.

Since the ALJ's Findings of Fact are supported by substantial evidence and show that Licensee breached its CLA, this matter is remanded to the ALJ solely for the purpose of imposing an appropriate penalty.

Board Secretary