

Mailing Date: August 28, 2013

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 12-1308
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, <i>Pro Se</i>
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. 12-1308 (“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Agreement (“CLA”), which had formed the basis for the violation alleged, was no longer in effect as of the date charged.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 30, 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 March 17, April 15, 27, and May 12, 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”).¹ 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

¹ The Bureau withdrew the violation date of March 17, 2012 at the hearing. [N.T. 156].

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 Susan Clever went to the licensed premises at 12:30 a.m. on April 15, 2012 in an undercover capacity.

[N.T. 153, 156-157]. She was aware that Licensee had a CLA, which included a provision to scan all patrons purchasing alcoholic beverages. [N.T. 157-158; Ex. C-3]. Officer Clever was met by two (2) male security employees, but she was neither wanded nor asked for identification. [N.T. 158-159]. She paid Licensee's five dollar (\$5.00) cover charge, entered the premises, and sat down. [N.T. 159]. Officer Clever ordered and was served an alcoholic beverage without having her identification checked or scanned. [N.T. 159-160]. She observed at least ten (10) other patrons entering the establishment without their identifications being checked or scanned. [N.T. 159-160]. Licensee's bartenders did not ask for their identifications either. [N.T. 160]. Officer Clever left Licensee's establishment at 1:30 a.m. [N.T. 161].

Similarly, on April 27 and May 12, 2012 at 9:45 p.m. and 1:15 a.m., respectively, Officer Clever visited Licensee's establishment, where she again entered the establishment and purchased an alcoholic beverage without

having her identification checked or scanned, by either security personnel or the bartender. [N.T. 162-167].

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. [Findings of Fact No. 4, 5]. The ALJ took official notice of paragraph 11(b) of the CLA and found that, on April 15, 27, and May 12, 2012, Licensee sold alcoholic beverages to a Bureau officer without scanning the officer’s identification. [Findings of Fact No. 3, 4, 5]. 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, 2013.² There is no reason to

²Derry Street Pub, Inc., appealed the Board’s decision, and the matter is currently pending before the Court of Common Pleas of Dauphin County.

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.³

Therefore, the ALJ erred in concluding that the CLA was no longer in effect on the violation dates of April 15, 27, and May 12, 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 Code [47 P.S. § 4-471], the matter must be remanded to the ALJ to impose an appropriate penalty.

³On 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.

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