

Mailing Date: August 7, 2013

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 12-1391
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
SLOVAK-AMERICAN CITIZENS	:	License No. C-3124
CLUB OF DUNLO	:	
234 Huff Street	:	
P.O. Box 205	:	
Dunlo, PA 15930-0205	:	LID 1511

Counsel for Licensee: None (Pro se)

Counsel for Bureau: Emily Gustave, Esquire  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
313 Mount Nebo Road  
Pittsburgh, PA 15237-1305

**OPINION**

Slovak-American Citizens Club of Dunlo (“Licensee”) filed an untimely appeal from the Adjudication and Order of Administrative Law Judge Felix

Thau (“ALJ”), mailed May 6, 2013, wherein the ALJ sustained Citation No. 12-1391 (“the Citation”) and imposed a one thousand dollar (\$1,000.00) fine.

On September 24, 2012, the Bureau issued the Citation to Licensee, charging Licensee with violating section 102 of the Liquor Code [47 P.S. § 1-102] in that Licensee failed to hold regular meetings from January 1, 2012 through August 19, 2012. The Citation was sent by first class and certified mail to Licensee at its licensed premises (243 Huff Street, P.O. Box 205, Dunlo, Pennsylvania). The certificate of mailing was signed as received on September 27, 2012.

A hearing regarding the Citation was held on April 3, 2013. Emily L. Gustave, Esquire, appeared at the hearing as counsel for the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”). Attorney Gustave presented the testimony of Officer Christopher Burns, (“Officer Burns”) of the Pennsylvania State Police, Bureau of Liquor Control Enforcement. Licensee failed to attend or present any evidence.

By Adjudication and Order mailed May 6, 2013, the ALJ sustained the Citation and imposed a fine of one thousand dollars (\$1,000.00). The Order stated that if the fine was not paid within twenty (20) days of the mailing date,

Licensee's license would be suspended or revoked.<sup>1</sup> The Adjudication and Order was sent by first class and certified mail to Licensee at its licensed premises, as required by statute. [47 P.S. § 4-471(b)].

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)]. 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). Furthermore, the ALJ has the exclusive right to resolve conflicts in the evidence and to make credibility determinations. McCauley v. Pennsylvania Board of Probation and Parole, 98 Pa. Cmwlth. 28, 510 A.2d 877 (1986).

Based upon a review of the certified record, including the ALJ's Adjudication and Order and the Notes of Testimony and Exhibits from the

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<sup>1</sup> To date, the fine has not been paid.

hearing held on April 3, 2013, the Pennsylvania Liquor Control Board (“Board”) denies the appeal as untimely and affirms the ALJ’s decision.

Pursuant to section 471 of the Liquor Code, the thirty (30)-day filing deadline for an appeal from the ALJ’s Order was June 5, 2013. [47 P.S. § 4-471(b)]. The appeal in the instant matter was filed on July 10, 2013, over a month late, with no explanation offered as to the untimeliness of the appeal.

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).

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. Cook v. Unemployment Compensation Board of Review, 671 A.2d at 1131. In order for Appellant's late appeal to be permitted, Appellant must satisfy all four (4) prongs of the Cook test.

In applying the Cook standards, the Board finds that Appellant has failed to satisfy the first prong of the four prong test. Appellant has neither alleged circumstances that could suggest a fraud or breakdown in the administrative process, nor has it established that the failure to file an appeal by June 5, 2013, was caused by non-negligent conduct. In fact, Appellant has offered no explanation whatsoever for its untimely appeal. Therefore, the Board must dismiss the appeal as untimely.

Even if Appellant were able to establish grounds for allowing the appeal to proceed *nunc pro tunc*, the appeal would be denied on the merits of the case. Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], an appeal 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)]. “Substantial evidence” is defined as such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers’ Compensation Appeal Board (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Board of Probation and Parole, 484 A.2d 413 (Pa. Cmwlth. 1984).

The Citation charged Appellant with failure to hold regular meetings. Section 102 of the Liquor Code provides that a club “shall hold regular meetings.” [47 P.S. § 1-102]. Officer Burns testified that Appellant had not conducted regular meetings from January 1, 2012, through August 19, 2012, although the club’s bylaws require monthly meetings.<sup>2</sup> [N.T. 9]. Therefore, the Board finds no basis for reversing the ALJ’s Adjudication and Order.

For the reasons articulated above, Appellant’s appeal is dismissed.

## **ORDER**

The appeal of Licensee is dismissed as untimely.

The Order of Administrative Law Judge Felix Thau is sustained.

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<sup>2</sup> The Citation did not charge Licensee with violating section 5.81 of the Board’s Regulations [40 Pa. Code § 5.81], which requires a club licensee to follow its constitution and bylaws.

It is hereby ordered that Licensee shall pay a fine of one thousand dollars (\$1,000.00) 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 an additional 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