

Mailing Date: October 2, 2013

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 12-1458
ENFORCEMENT	:	
	:	
v.	:	
	:	
I.B.P.O.E. OF W. BRIGHTON	:	License No. C-2807
PIONEER LODGE NO. 219	:	
610 7 th Street	:	
P.O. Box 478	:	
Beaver Falls, PA 15010-4531	:	LID 3349

Representative for	Jon Henderson, Exalted Ruler
Licensee:	I.B.P.O.E. of W. Brighton
	Pioneer Lodge No. 219
	610 7 th Street
	P.O. Box 478
	Beaver Falls, PA 15010-4531

Counsel for Bureau:	Nadia L. Vargo, Assistant Counsel
	Pennsylvania State Police,
	Bureau of Liquor Control Enforcement
	313 Mount Nebo Road
	Pittsburgh, PA 15237-1305

OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) appeals from the Adjudication and Order of Administrative Law

Judge Roderick Frisk (“ALJ”), mailed May 28, 2013, in which the ALJ dismissed Citation No. 12-1458 (“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holding that the Conditional Licensing Agreement (“CLA”), which had formed the basis for the violation alleged, was no longer in effect as of the date charged.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 October 3, 2012, the Bureau issued the Citation to the I.B.P.O.E. of W. Brighton Pioneer Lodge No. 219 (“Licensee” or “Club”), charging it with violating section 404 of the Liquor Code [47 P.S. § 4-404], in that on July 7, 2012, Licensee, by its servants, agents, or employees, failed to adhere to the conditions of the CLA it had entered into in July 2008 with the Pennsylvania Liquor Control Board (“Board”).

Paragraph 6(a) of the CLA states the following:

Club shall post one (1) sign at the entrance to the premises prohibiting weapons at the premises, shall use a metal detecting wand on all patrons entering the premises and shall prohibit detected weapons from being brought into the premises.

Paragraph 6(g) of the CLA states the following:

Club shall maintain regular monthly contact with [the] local police in order to address any problems, and maintain records indicating the date and substance of said contact, for a period of two (2) years from the date of said contact.

Paragraph 6(i) of the CLA states the following:

Club shall maintain in good working order its existing surveillance system at the premises to monitor the interior and exterior of the premises and make tapes from the system available to the Board, its employees, and to law enforcement officials, including, but not limited to, the local police department, the Bureau and the Beaver County District Attorney's office. The tapes recorded from these cameras shall be maintained by Club for at least three (3) months. The surveillance system shall be operational, shall record images during all operating hours and shall be routinely monitored by Club employees.

[Exhibit C-7].

On February 4, 2013, a Citation Hearing Notice was mailed by the Office of the Administrative Law Judge ("OALJ") to the licensed premises via first-class mail and certified mail, return receipt requested. The Notice advised Licensee that a hearing on the Citation, to show cause why Licensee's liquor license should not be suspended or revoked or a fine imposed, or both, would be held on March 27, 2013, at 11:30 a.m., at 2 Parkway Center, 875 Greentree Road, Room G-8, Pittsburgh, Pennsylvania.

The hearing was held on March 27, 2013. Nadia L. Vargo, Esquire, appeared at the hearing as counsel for the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"). Jon Henderson, Exalted Ruler, appeared on behalf of Licensee.

By Adjudication and Order mailed May 28, 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 violations. As support for the principle that "[a] renewal CLA cannot be extended beyond the term for which it was issued," the ALJ cites another administrative law judge's 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 28th Adjudication and Order and iterates the same arguments it raised in its appeal of Derry Street Pub.

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).

In the instant matter, the underlying facts are not in dispute. Mr. Henderson admitted that there was no sign at the entrance to the premises advising that weapons were prohibited, in violation of Paragraph 6(a) of the CLA. [N.T. 39, 64]. Although Licensee did maintain monthly contact with the local police from 2008 until 2010, Licensee met with the local police on a sporadic basis and did not keep records of those meetings, in violation of Paragraph 6(g) of the CLA. [N.T. 51, 62, 66-67]. Finally, Licensee maintained surveillance tapes for only sixty (60) days instead of three (3) months, in violation of Paragraph 6(i) of the CLA. [N.T. 41, 65].

Licensee and the Board entered into the CLA on July 23, 2008. The violations of the CLA were observed by the Bureau on July 7, 2012. Nonetheless, the ALJ, based upon the holding in Derry Street Pub,¹ concluded

¹ Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Derry Street Pub, Inc., Citation No. 12-1348.

that the CLA expired on June 30, 2010, was no longer in effect on the date of the admitted violations, and dismissed the Citation.

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 revisit the administrative law judge's misguided decision in that case, which was an error of law and an abuse of discretion, and was not supported by substantial evidence. Similar to the CLA in Derry Street Pub, Licensee's CLA provides, "Club further understands that 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 or until the license is transferred to a new owner for use at a new location." [Exhibit C-7]. The Board and Licensee have not reached any subsequent agreements rescinding the terms of the CLA, nor has the license been transferred to a new owner for use at a new location.

Therefore, the ALJ erred in concluding that the CLA was no longer in effect during the admitted violations of the CLA. 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

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

the Liquor 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.

This matter is remanded to the ALJ to impose an appropriate penalty.

Board Secretary