

Mailing Date: October 2, 2013

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 13-0013
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
v.	:	
	:	
YANSCAN ENTERPRISES, LLC	:	License No. R-10413
t/a Cocktales	:	
501-503 Dunmore Street	:	
Throop, PA 18512-1148	:	LID 64921

For Licensee: Anthony Yantorn, *Pro Se*

Counsel for Bureau: Craig A. Strong, Esquire  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
7448 Industrial Parkway  
Macungie, PA 18602

**OPINION**

Yanscan Enterprises, LLC, trading as Cocktales (“Licensee”), appeals from the Adjudication and Order of Administrative Law Judge Daniel T. Flaherty, Jr. (“ALJ”), mailed July 25, 2013, wherein the ALJ sustained three (3) of the six (6) counts set forth in Citation No. 13-0013<sup>1</sup> (“the Citation”) and imposed a total fine of eight hundred dollars (\$800.00).

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<sup>1</sup> Counts 4, 5, and 6 of the Citation were withdrawn by Counsel for the Bureau of Liquor Control Enforcement prior to the ALJ’s decision. The Board will not reiterate those counts in this Opinion, since their withdrawal is not the subject of this, or any, appeal.

On February 6, 2013, the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) issued the Citation to Licensee, charging it with six (6) counts. The first count charged Licensee with violating section 471 of the Liquor Code [47 P.S. § 4-471] and section 5513 of the Crimes Code [18 Pa. C.S. § 5513] in that on June 27, September 16, and October 3, 2012, Licensee, by its servants, agents, or employees, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling, and/or bookmaking on the licensed premises. The second count charged Licensee with violating section 499 of the Liquor Code [47 P.S. § 4-499] in that on September 16, 2012, Licensee, by its servants, agents, or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages. The third count charged Licensee with violating section 499 of the Liquor Code [47 P.S. § 4-499] in that on September 16, 2012, Licensee, by its servants, agents, or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

On June 3, 2013, Licensee submitted an Admission, Waiver and Authorization (“Waiver”) to the Office of the Administrative Law Judge

("OALJ"), in which Licensee admitted to the violations charged in the Citation and waived its right to appeal the adjudication. The Waiver was signed by Anthony Yantorn, Licensee's owner, on June 3, 2013. The Waiver included a handwritten notation, presumably written by Mr. Yantorn, which states, "Can we close 6/30, 7/1, 7/2?" By Adjudication and Order mailed July 25, 2013, the ALJ sustained the three (3) remaining counts, although counts two and three were merged for purposes of imposing a penalty. For count one, the ALJ assessed a penalty of five hundred fifty dollars (\$550.00), and for counts two and three, the ALJ assessed a penalty of two hundred fifty dollars (\$250.00). Licensee filed the instant appeal to the Pennsylvania Liquor Control Board ("Board") on August 23, 2013.

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 A.2d 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).

On appeal, Licensee asserts that Craig Strong, counsel for the Bureau, offered to withdraw three (3) of the six (6) counts, and “have us fined zero dollars but have to close the bar 2-3 days. For that reason we signed the guilty plea and sent it in. We then received a ruling and fine in the mail stating we were being fined \$800??” Licensee contacted the ALJ’s office, which advised Licensee that it did not receive information from Attorney Strong’s office on the “deal we had worked out” and the only thing Licensee could do was file an appeal.<sup>2</sup>

Licensee has not set forth any basis for reversing the ALJ’s decision.

Although Licensee’s appeal disputes some of the facts, Licensee admits that

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<sup>2</sup> The Board is aware that it has only Licensee’s statements regarding the agreement between Licensee and the Bureau, and that Mr. Strong might offer a different version of the facts, although he failed to offer any in his answer to this appeal. Nonetheless, to avoid problems like this in the future, the Board recommends that any communications between the Bureau and a licensee regarding agreements relating to the case should be in writing and forwarded to the administrative law judge as soon as an agreement is reached. Any such communication should include the caveat that, in accordance with the Liquor Code, the administrative law judge is free to impose a penalty of his or her own choosing and is in no way bound by the terms of any agreement between the parties.

the licensed premises houses an electronic gambling device, stating that “we never did pay out once even on the machine we had in, the original affidavit [sic] ... said a fruit machine not the dodge city which we had in the bar. We never had a fruit machine in the bar.” But Licensee’s primary objection to the ALJ’s decision is that a fine was imposed instead of a suspension: “[I]f we can again get a 2-3 day closure we will take it, if not we wish to retract our guilty plea.”<sup>3</sup>

Section 471 of the Liquor Code addresses fines and suspensions, as well as the revocation of licenses. [47 P.S. § 4-471]. If the administrative law judge is satisfied that a licensee has violated a provision of the Liquor Code, he “may suspend or revoke the license, or impose a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or both.” The imposition of penalties is the exclusive prerogative of the administrative law judge. The Board may not disturb penalties imposed by an administrative law judge if they are within the parameters set forth in section 471 of the Liquor Code [47 P.S. § 4-471]. Since the fines of five hundred fifty dollars (\$550.00) and two hundred fifty dollars (\$250.00) are well within the range set forth in the statute, the Board will not alter such penalties. [Id.]. The Liquor Code clearly bestows this

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<sup>3</sup> Neither the Liquor Code nor the Board’s Regulations provide any mechanism for withdrawing a waiver after the administrative law judge renders his/her decision. It is noted that Licensee did not file a request for reconsideration of the decision and it must be emphasized that Licensee admitted the violation and specifically waived the right to appeal the Adjudication by signing the Waiver.

authority on the administrative law judge, and the Board may not reverse the decision of the administrative law judge unless “the administrative law judge committed an error of law, abused its discretion or if its decision is not based on substantial evidence.” [Id.]. Licensee’s dissatisfaction with the issuance of a fine instead of a suspension is not a basis for overturning the ALJ’s decision.

For the foregoing reasons, the Adjudication and Order of the ALJ is affirmed.

**ORDER**

The appeal of Licensee is denied.

The ALJ's decision is affirmed.

The original fine of eight hundred fifty dollars (\$800.00) remains unpaid.

It is hereby ordered that Licensee shall pay a fine of eight hundred dollars (\$800.00) 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.

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Board Secretary