

Mailing Date: August 28, 2013

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 13-0274
ENFORCEMENT	:	
	:	
v.	:	
	:	
PROFER, INC.	:	License No. R-3249
t/a Helen's Tavern	:	
131 West Main Street	:	LID 48024
Leola, PA 17540-1748	:	

Representative for Licensee: Susan Poppe, President  
Profer, Inc. t/a Helen's Tavern  
131 West Main Street  
Leola, PA 17540-1748

Counsel for Bureau: John H. Pietrzak, Assistant Counsel  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
3655 Vartan Way  
Harrisburg, PA 17110

**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. 13-0274 (“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Agreement (“CLA”), which had formed the basis for the violation alleged, was no longer in effect as of the date charged.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 February 21, 2013, the Bureau issued the Citation to Profer, Inc. t/a Helen’s Tavern (“Licensee”), charging it with violating section 404 of the Liquor Code [47 P.S. § 4-404], in that on December 12, 14, 23, and 28, 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 term effective March 1, 2010. In order to convince the Board to renew its license, Licensee offered to enter into the CLA, which imposed additional conditions on both the license and the premises. On February 9, 2011, the Board approved both the license renewal and the CLA, thus resolving the objections Licensing had had with the 2010 renewal.

Paragraph 6(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 under the age of forty (40) who purchase alcoholic beverages, notwithstanding the fact that a patron may have had his or her identification scanned on a previous occasion. Finding of Fact No. 1.

In response to the Citation, Licensee submitted an Admission, Waiver and Authorization (“Waiver”), signed by Susan Poppe, president of Licensee, to the Office of the Administrative Law Judge (“OALJ”), in which Licensee admitted to the violation charged in the Citation and, *inter alia*, waived its right to appeal the adjudication. (Adjudication and Order, p. 2).

The Waiver notwithstanding, 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 violations. As support for the principle that “[a] renewal CLA cannot be extended beyond the term for which it was issued,” the ALJ cites 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 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).

Here, as a result of the Waiver, the underlying facts are not in dispute. The ALJ took official notice of paragraph 6(b) of the CLA and found that, on the dates charged, Licensee sold alcoholic beverages to Bureau officers who were under forty (40) years of age. Finding of Fact Nos. 1, 2. 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.<sup>1</sup> 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 shall 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." (Admin. Notice). The Board and Licensee have not reached any subsequent agreements rescinding the terms of the CLA.

Therefore, the ALJ erred in concluding that the CLA was no longer in effect during the admitted violations on December 12, 14, 23, and 28, 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.

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

**ORDER**

The appeal of the Bureau is sustained.

The decision of the ALJ is reversed.

Licensee admitted to the violation charged in the Citation.

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

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Board Secretary