Mailing Date: May 14, 2014

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE BUREAU OF LIQUOR CONTROL ENFORCEMENT	: : : : : : :	Citation No. 13-1054
v.		
PINE GROVE DINER, INC. T/A PINE GROVE DINER 490 Suedberg Road Pine Grove, PA 17963-8830	: : : :	License No. R-4355 LID 66058

Counsel for Licensee: David S. Frew (Pro se)

Counsel for Bureau: Roy Harkavy, Esquire
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
2936 Airport Road
Bethlehem, PA 18017

OPINION

Pine Grove Diner, Inc., ("Licensee") filed an appeal to the Pennsylvania Liquor Control Board ("Board") from the Adjudication and Order of Administrative Law Judge David L. Shenkle ("ALJ"), mailed March 18, 2014,

wherein the ALJ sustained Citation No. 13-1054 ("the Citation") and imposed a two hundred dollar ($200.00) fine.

On July 29, 2013, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") issued the Citation to Licensee, charging Licensee with violating section 471.1(g) of the Liquor Code [47 P.S. § 4-471.1(g)] during the period February 28 through April 16, 2013,[1] in that Licensee failed to have its Board-approved manager complete Responsible Alcohol Management Program ("RAMP") training within one hundred eighty (180) days of the Board's approval of the appointment.

A hearing regarding the Citation was held on January 15, 2014. Roy Harkavy, Esquire, appeared at the hearing as counsel for the Bureau, and David S. Frew appeared on behalf of Licensee. The parties stipulated to a summary of the facts and agreed that the case only involved a question of law.

Mr. Frew was appointed by Licensee as manager on December 20, 2011, prior to the enactment and effective date of Act 113 of 2011, which was signed into law on December 22, 2011, and became effective on February 22, 2012. Act 113 added section 471.1(g) to the Liquor Code, which requires all Board-approved managers to complete manager/owner RAMP training within one

[1] The record is silent as to why the Bureau chose to use this particular period of time in its Citation, since Mr. Frew testified that he did not complete the manager/owner RAMP training until September of 2013. [N.T. 12].

hundred eighty (180) days after approval. Mr. Frew was approved by the Board to serve as manager on August 1, 2012, and the one hundred eighty (180) day period expired on February 27, 2013. Mr. Frew testified that he completed the manager/owner RAMP training in September of 2013. [N.T. 12].[2] At the hearing, Mr. Frew asserted that Act 113 could not retroactively apply to his appointment as manager, and therefore he could not be required to complete manager/owner RAMP training, or more relevantly, cited for the failure to do so.

By Adjudication and Order mailed March 18, 2014, the ALJ sustained the Citation and imposed a fine of two hundred dollars ($200.00). 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)]. Licensee filed this timely appeal to the Board.

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

[2] The ALJ stated in his Adjudication that Mr. Frew obtained manager/owner RAMP training on July 9, 2013. There does not appear to be any record evidence that supports this finding, but the lack of support is immaterial. There is no dispute that Mr. Frew did not obtain manager/owner RAMP training within one hundred eighty (180) days after his approval by the Board.

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 argues that the ALJ committed an error of law and abused his discretion by holding that section 471.1(g) applies to managers who were appointed by licensees prior to the enactment of Act 113. Licensee asserts that this interpretation creates a retroactive provision that is not contained in Act 113, and that it improperly co-mingles the terms "appointment" and "approval," which Act 113 "specifically unwinds and

forever separates Appointment from Approval, by mandating different timeframes for each definitional use." [Licensee's Appeal].

Based upon a review of the certified record, including the ALJ's Adjudication and Order and the Notes of Testimony and Exhibits from the hearing held on January 15, 2014, the Board affirms the ALJ's decision.

Licensee's argument appears to be based on the law set forth in section 1926 of the Statutory Construction Act of 1972: "No statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly." [1 Pa. C.S. § 1926]. Because his appointment occurred before Act 113 was enacted, Licensee argues that the ALJ's interpretation renders the law retroactive and therefore an error of law.

However, the United States Supreme Court has held that "a statute is not made retroactive merely because it draws upon antecedent facts for its operation." Cox v. Hart, 260 U.S. 427, 435 (1922). More specifically, a statute is not considered to be retroactive "merely because the facts or requisites upon which its subsequent action depends, or some of them, are drawn from a time antecedent to the enactment." Reynolds v. United States, 292 U.S. 443, 448 (1934).

The Pennsylvania Supreme Court has followed the same analysis set forth by the United States Supreme Court when determining whether a statute is improperly retroactive, as explained in the case of Alexander v. Pennsylvania Dept. of Transp., 583 Pa. 592, 880 A.2d 552 (2005). In that case, the statute at issue was the Ignition Interlock Devices Law ("Interlock Law"), which required courts to order the installation of an ignition interlock device on the vehicle of a person with two (2) or more convictions for driving under the influence ("DUI"). John Alexander had three (3) DUI offenses, two (2) that occurred before the enactment of the Interlock Law and one (1) that occurred after the Interlock Law. Mr. Alexander argued that the trial court could not consider his previous two (2) DUIs when determining whether he must have an ignition interlock device on his vehicle after his third DUI, since those events occurred prior to the enactment of the law. However, the Department of Transportation argued that the triggering event for the interlock device was the third DUI, which occurred after the Interlock Law was enacted. The Court agreed.

In explaining when retroactivity is prohibited, the Court stated:

> [A] statute does not operate retrospectively merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment.

Id. at 604, 880 A.2d at 559 (citing Gehris V. Pennsylvania Dept. of Transp., 471 Pa. 210, 369 A.2d 1271 (1977)). Thus, although two (2) of Mr. Alexander's DUIs occurred prior to the Interlock Act, the third DUI, which triggered the requirement, occurred after the enactment of the Interlock Act, and the Court concluded that the Department did not err in considering the two (2) prior DUIs.

In the instant matter, Mr. Frew was appointed by the licensed corporation as manager prior to the enactment of Act 113. However, the language of section 471.1(g) makes it clear that the triggering event for obtaining RAMP training is the Board's approval of the manager:

> Unless successfully completed prior to appointment, a manager appointed by any restaurant, eating place retail dispenser, hotel, club, limited distillery licensee or distributor licensee shall be required to complete the manager/owner training under subsection (c) **within one hundred eighty days of approval of appointment by the board.**

[47 P.S. § 471.1(g) (emphasis added)]. A manager must be appointed by a licensee before the Board can approve of the manager. It is the Board's approval of the manager that triggers the requirement to obtain manager/owner training within one hundred eighty (180) days. The mere fact that Mr. Frew was appointed prior to Act 113 does not render the statute

unlawfully retroactive. Therefore, the Board finds no basis for reversing the ALJ's Adjudication and Order.

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

O R D E R

The appeal of Licensee is denied.

The Order of Administrative Law Judge David Shenkle is sustained.

The fine of two hundred dollars ($200.00) has been paid in full and all RAMP requirements regarding the Manager have been satisfied.

_____

Board Secretary