

Mailing Date: August 13, 2014

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 14-0601
ENFORCEMENT	:	
	:	
	:	
v.	:	
	:	
DI'S GUYS CORP.	:	License No. R-6828
t/a J.R.'s Rathskellers	:	
2306 State Street	:	LID 48766
Erie, PA 16503-1851	:	

Representative for Licensee:	Robin L. Snarski Di's Guys Corp. 2306 State Street Erie, PA 16503-1851
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Counsel for Bureau:	Michael C. Nickles, Esquire Pennsylvania State Police, Bureau of Liquor Control Enforcement 313 Mt. Nebo Road Pittsburgh, PA 15237-1305
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OPINION

Di's Guys Corp. t/a J.R.'s Rathskellers ("Licensee") appeals from the Adjudication and Order of Administrative Law Judge ("ALJ") Roderick Frisk mailed June 23, 2014, wherein the ALJ sustained Citation No. 14-0601 and imposed a fine of two thousand dollars (\$2,000.00).

On April 21, 2014, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") issued the Citation to Licensee, charging it with four (4) counts. The first count charged Licensee with violating subsections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§ 4-406(a)(2), 4-493(16)] in that on October 19, 2013, Licensee, by its servants, agents, or employees, sold, furnished, and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m. The second count charged Licensee with violating subsections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §§ 4-406(a)(3), 4-493(16)] in that on November 24, 2013, Licensee, by its servants, agents, or employees, sold, furnished, and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 7:00 a.m. The third count charged Licensee with violating subsection 499(a) of the Liquor Code [47 P.S. § 4-499(a)] in that on October 19 and November 24, 2013, Licensee, by its servants, agents, or employees, failed to require patrons to vacate the 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 fourth count charged Licensee with additional violations of subsection 499(a) in that on October 19 and November 24, 2013, Licensee, by its servants, agents, or employees, permitted patrons to

possess and/or remove alcoholic beverages from the part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

Licensee submitted an Admission, Waiver, and Authorization (“Waiver”) form to the Office of Administrative Law Judge (“OALJ”) on or about May 13, 2014, admitting the charges and, *inter alia*, waiving the right to a hearing and to appeal the ALJ’s decision. By Adjudication and Order mailed June 23, 2014, the ALJ sustained the four (4) charges and imposed an aggregate fine of two thousand dollars (\$2,000.00).¹ Licensee filed a timely appeal and an application for supersedeas with the Board on July 18, 2014.

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 if the ALJ committed an error of law or abuse of 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

¹ Counts one and two were merged for penalty assessment purposes, as were counts three and four; the ALJ assessed merged penalties of one thousand six hundred dollars (\$1,600.00) and four hundred dollars (\$400.00), respectively.

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).

At the outset of the Appeal Form, Licensee states that it is not appealing the substance of the charges. Rather, Licensee requests a reduction in the penalty ordered by the ALJ. Licensee explains that it is having difficulty coming up with sufficient funds to pay the fine because it has experienced a decline in patronage.²

The record reveals that even if Licensee sought review of the underlying charges, it would not be entitled to do so as a result of submitting the Waiver form. The Waiver, which was signed by board member and treasurer of the licensed corporation, Jeffrey R. Snarski, provided that Licensee: (1) admitted to all violations charged in the

² Licensee filed an untimely request for reconsideration with the ALJ raising the same issue, but it was returned to Licensee due to its untimeliness.

Citation; (2) agreed that the Bureau complied with all applicable investigatory and notice requirements; (3) waived the right to a hearing and to appeal the adjudication; (4) authorized the ALJ to enter an adjudication based upon a summary of facts provided by the Bureau as well as consideration of Licensee's prior citation history; and (5) acknowledged that it was afforded the opportunity to review all documents which the Bureau submitted to the ALJ.

The voluntary waiver of appeal rights in an enforcement matter is binding against a licensee. See Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Wilner, 687 A.2d 1216 (Pa. Cmwlth. 1997), citing with approval Pennsylvania Liquor Control Bd. v. Dentici, 542 A.2d 229 (Pa. Cmwlth. 1988). The Waiver signed by Licensee here was in no way conditional, and Licensee does not allege it was misled in submitting it. The Waiver is clear as to the violations alleged, as well as the ramifications of submitting the form to the OALJ. Accordingly, Licensee voluntarily relinquished its right to appeal the ALJ's decision, including the penalty.

Moreover, the Waiver form notified Licensee of the possible penalties applicable to each of the four (4) charges of the Citation. To wit, section 471 permits the ALJ to impose a license suspension or revocation and/or a fine of not less than one thousand dollars

(\$1,000.00) nor more than five thousand dollars (\$5,000.00) for each of the violations charged in counts one and two, while the permissible range of fines is between fifty dollars (\$50.00) and one thousand dollars (\$1,000.00) for counts three and four. [47 P.S. § 4-471(b)].

Although Licensee's financial troubles are unfortunate, even if Licensee had not waived its right to appeal, the end result would be the same. It is within the sole discretion of the ALJ, once satisfied that a licensee committed the violation or violations charged, to determine an appropriate penalty within the statutory parameters. In this case, the ALJ imposed a fine of two thousand dollars (\$2,000.00). The fine pursuant to each charge is within the range set forth in the Liquor Code and, in fact, is on the low end of the permitted scale. Since the fine is within the statutory guidelines set forth in the Liquor Code, the Board cannot alter the penalties imposed by the ALJ.

Therefore, for the foregoing reasons, the Adjudication and Order of the ALJ is affirmed.³

³ Licensee's Application for Supersedeas is rendered moot by the Board's decision.

ORDER

The appeal of Licensee is denied.

The decision of the ALJ is affirmed.

The fine of two thousand dollars (\$2,000.00) has been paid in part. Four hundred dollars (\$400.00) is still unpaid to date.

The ALJ's Order mailed June 24, 2014, remains in effect. This case is hereby remanded to the ALJ to ensure Licensee's compliance.

Board Secretary