

Mailing Date: April 8, 2015

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 14-1898
ENFORCEMENT	:	
	:	
	:	
v.	:	
	:	
TONY'S BAR OF CARNEGIE, INC.	:	License No. R-6214
307 West Main Street	:	
Carnegie, PA 15106-2623	:	LID 57256

Counsel for Licensee: Thomas W. Brown, Esquire
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Carnegie, PA 15106

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OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") appeals from the Adjudication and Order of Administrative Law Judge ("ALJ") Richard O'Neill Earley mailed January 28, 2015, wherein the ALJ sustained count one of Citation No. 14-1898 and dismissed count two. Having considered the record, the

Adjudication and Order, as well as the Bureau's appeal, the Pennsylvania Liquor Control Board ("Board") affirms.

The Bureau issued the Citation to Tony's Bar of Carnegie, Inc. ("Licensee") on September 19, 2014, setting forth the following charges:

1. During the period July 1 through August 6, 2014, you, by your servants, agents or employees, failed to comply with the order of the Administrative Law Judge at Citation No. 13-2534C mandating responsible alcohol management training, in violation of Section 471(d) of the Liquor Code, 47 P.S. §4-471(d).
2. You, by your servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding August 6, 2014, in violation of Sections 493(12) and 471.1(f) of the Liquor Code, 47 P.S. §§4-493(12) and 4-471.1(f).

[Citation, p. 1].

Licensee submitted an Admission, Waiver, and Authorization ("Waiver") form on December 22, 2014, in which it, *inter alia*, admitted to the violations charged and waived the right to a hearing. The parties stipulated to the summary of facts as provided in the Bureau's pre-hearing memorandum; however, at the direction of the ALJ, the parties later submitted memoranda regarding the basis for count two of the Citation. Based upon the memoranda and stipulated facts, by Adjudication and Order mailed January 28, 2015, the ALJ

sustained count one but declined to accept Licensee's waiver with respect to count two, dismissing the charge as a matter of law.¹ Licensee was ordered to pay a fine in the amount of five hundred fifty dollars (\$550.00) on count one, for its failure to obtain certification through the Board's Responsible Alcohol Management Program ("RAMP") within the time period required by the Adjudication and Order relative to Citation No. 13-2534C. The Bureau filed a timely appeal as to count two with the Board on February 27, 2015.

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 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

¹ Acceptance of a Waiver is at the discretion of the ALJ. [40 Pa. Code § 15.45(a)].

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, the Bureau alleges that the ALJ committed an error of law in dismissing count two of the Citation. The ALJ’s decision to dismiss count two, which alleged a failure to maintain complete business records, was based on his interpretation of the Board’s opinion in Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Dipal Corporation, Citation No. 12-0613 (Decided July 24, 2013). The Board’s decision in Dipal, in relevant part, dismissed a charge similar to count two of the subject Citation, i.e., an alleged violation of sections 493(12) and 471.1(f) of the Liquor Code [47 P.S. §§ 4-493(12), 4-471.1(f)] for failure to maintain complete business records.

The specific language in Dipal upon which the ALJ based his decision in this case is as follows:

A careful reading of the transcript compels the conclusion that this Count was assessed against Licensee because it was unable to produce RAMP certification. [N.T. 13]. There is nothing to indicate that Licensee’s records were incomplete for some other reason. And if the reference to

incomplete records refers to RAMP, the records were not incomplete because they did not contain certification for something—RAMP certification—that had not yet been attained. Therefore, the record does not contain substantial evidence to support Count 3.

[Dipal, pp. 10-11].

The ALJ took the above excerpt from Dipal as support for his interpretation of section 471.1 that “there exists no enforceable obligation to keep RAMP records before one is RAMP-certified.” [Adjudication, p. 4]. In other words, he construed this analysis to have declared a rule that, with respect to recordkeeping, “licensees are not obligated under [section] 471.1(f) unless and until they receive RAMP certification.” [Adjudication, p. 5]. Since Licensee in this case was not yet RAMP certified at the time of the alleged violation on August 6, 2014, the ALJ dismissed the recordkeeping charge.

The Bureau argues that the ALJ misinterpreted Dipal and committed an error of law in concluding that the recordkeeping requirement of section 471.1(f) only applies to licensees that are RAMP-certified. Instead, the Bureau urges an interpretation of section 471.1(f) that would require *all* licensees, regardless of RAMP certification status, to maintain as business records any completed RAMP trainings undertaken by their employees. The Board agrees that, when viewed in isolation, the recordkeeping provisions of section

471.1(f) do not appear to make a distinction between RAMP-certified and non-RAMP-certified licensees; however, to discern when the recordkeeping requirements apply, section 471.1(f) must be considered in the context of the entire RAMP statute.

Section 471.1 provides the manner in which the Board may offer an educational program in responsible alcohol service. The RAMP program consists of four (4) parts: new employee orientation, training for alcohol service personnel, manager/owner training, and the displaying of responsible alcohol service signage. [47 P.S. § 4-471.1(a)]. "Compliance" with these responsible alcohol management provisions, for purposes of section 471 of the Liquor Code, entails that a restaurant liquor licensee such as Licensee must:

- (1) have at least fifty per centum of its alcohol service personnel certified as having successfully completed an alcohol beverage servers training;
- (2) have its manager or owner certified as having successfully completed manager/owner training;
- (3) have all alcohol service personnel undergo new employee orientation; and
- (4) have appropriate responsible alcohol service signage posted on the licensed premises.

[47 P.S. § 4-471.1(d)]. Although participation in the program is optional, licensees may be required to complete all of the above steps and obtain RAMP certification for a variety of reasons.²

Section 471.1(f), the provision at issue in count two here, states:

Upon completion of a certified alcohol service personnel program or the board's owner/manager training program, the participant will be certified by the training entity or the board as having successfully completed the program. Said certification will be valid for two years. **The licensee shall keep records of the certification status of its employes, managers and owners, including the name of the employe, manager or owner and the date of that individual's certification, in the same manner as it keeps other business records pursuant to section 493(12). The licensee shall also keep records of its new employe orientation program and records of its responsible alcohol service signage as set forth by the board by regulation.**

[47 P.S. § 4-471.1(f) (emphasis added)]. The first sentence provides that servers and owners/managers must receive certification upon successfully completing a RAMP training course, while the second sentences provides a duration of two (2) years for such certification. The third and fourth sentences contain the recordkeeping requirements, which the Board has expanded upon by regulation,

² RAMP certification is mandatory pursuant to section 471(d) of the Liquor Code [47 P.S. § 4-471(d)] in the event a licensee has violated section 493(1) for the first time; it may be ordered at the discretion of an ALJ pursuant to section 471(e) [47 P.S. § 4-471(e)] for a second or subsequent violation of section 493(1); and a licensee may agree to obtain and maintain RAMP certification as part of a conditional licensing agreement with the Board.

under Subchapter I, titled “Responsible Alcohol Management Program.” [See 40 Pa. Code § 5.243].

In ascertaining the point at which these latter provisions are triggered, the Board is guided by the Statutory Construction Act of 1972 [1 Pa. C.S.A. § 1901, *et seq.*], which instructs that “[e]very statute shall be construed, if possible, to give effect to all its provisions.” [1 Pa. C.S.A. § 1921(a)]. Recognizing that “the principle of construing statutory parts harmoniously is one which is fundamental to [the] methodology of statutory construction,” the Supreme Court recently iterated:

[S]tatutory language must be read in context, that is, in ascertaining legislative intent, every portion of statutory language is to be read ‘together and in conjunction’ with the remaining statutory language, ‘and construed with reference to the entire statute’ as a whole.

Commonwealth v. Office of Open Records, 103 A.3d 1276, 1284-85 (Pa. 2014).

Mindful of this principle, the Board believes that the inclusion of the RAMP recordkeeping provisions within the RAMP statute indicates a legislative intent to limit the scope of the requirements to licensees that are RAMP-certified. That is, once a licensee receives notice of RAMP certification from the Bureau of Alcohol Education, it joins the class of licensees required to maintain as business records the records

identified in section 471.1(f) of the Liquor Code and section 5.243 of the Board's Regulations.

This interpretation ensures that each provision of section 471.1(f) is given full effect. Otherwise, the third and fourth sentences of section 471.1(f) would, somewhat confusingly, have vastly different scopes despite both beginning with the clause "[t]he licensee shall" Specifically, with regard to the reference in the fourth sentence to new employee orientation and RAMP signage records, only RAMP-certified licensees are required to have RAMP signage posted on the premises. Thus, it would be illogical to impose the requirement to maintain such records on a licensee other than one that is RAMP-certified. Although the third sentence, which references records of employee, owner, and manager training, could under the Bureau's interpretation apply broadly to any licensee, its similarity of structure and placement with the fourth sentence suggests the two requirements should be read harmoniously.

Therefore, the Board does not find an error of law in the ALJ's interpretation of section 471.1(f) or his dismissal of count two. Licensee was not RAMP certified on August 6, 2014, in violation of the ninety (90)-day deadline imposed as a result of Citation No. 13-2534C, but not in violation of section 471.1(f).

Accordingly, for the foregoing reasons, the Adjudication and Order is affirmed, and the appeal of the Bureau is dismissed.

ORDER

The appeal of the Bureau is dismissed.

The decision of the ALJ is affirmed.

Licensee has paid the fine of five hundred fifty dollars (\$550.00).

Board Secretary