Mailing Date: June 10, 2015

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	: : : : : : : : : :	Citation No. 14-2423
v.		
EDMUND A. SKWIRUT t/a Alfie McDuff's 711 Hawthorne Street Vandergrift, PA 15690-1525		License No. R-16728 LID 18171

Representative for Licensee: Edmund Skwirut (*pro se*)
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O P I N I O N

Edmund A. Skwirut t/a Alfie McDuff's ("Licensee"), appeals from the Supplemental Order of Administrative Law Judge ("ALJ") Roderick Frisk, mailed March 25, 2015, wherein the ALJ denied Licensee's request for a reduction in the fine imposed in the Adjudication of Citation No. 14-2423 ("the Citation").

On December 22, 2014, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") issued the Citation to Licensee, charging a violation of section 493(12) of the Liquor Code [47 P.S. § 4-493(12)] and section 5.52 of the Board Regulations [40 Pa. Code § 5.52] in that during the period January 30 through September 30, 2014, Licensee, by its servants, agents or employees, failed to maintain malt or brewed beverage dispensing system cleaning records. On January 7, 2015, Licensee executed a Statement of Admission, Waiver and Authorization (PLCB-1947).

By Adjudication and Order mailed February 25, 2015, the ALJ sustained the Citation and imposed a fine of five hundred dollars ($500.00). Licensee filed an untimely Application for Reconsideration on March 13, 2015, requesting a reduced fine. Licensee set forth an apology for its failure to keep cleaning records, stated that the kitchen had been closed due to health reasons, and that the normal business operations were interrupted by Licensee's diagnosis of cancer. By Supplemental Order mailed March 25, 2015, the ALJ denied Licensee's application, citing a lack of the court's jurisdiction pursuant to Licensee's failure to submit its request within the fifteen (15) day

requisite time period.[1] Licensee filed the instant appeal to the Pennsylvania Liquor Control Board ("Board") on April 16, 2015.

In the event a party is aggrieved by a decision of an ALJ, there is a right of appeal to the Board. [47 P.S. § 4-471(b); 40 Pa. Code § 17.21(a)]. The Board's Regulations provide that failure to file or have the appeal postmarked within thirty (30) calendar days of the mailing date of the ALJ's order will result in dismissal of the appeal. [40 Pa. Code § 17.21(b)(2)].

The filing of a timely appeal is a jurisdictional prerequisite; if an appeal is filed outside the statutory period from the time the determination is made, it becomes final, and the appeal may not be considered. Hessou v. Unemployment Comp. Board of Review, 942 A.2d 194 (Pa. Cmwlth. 2008). The Supreme Court of Pennsylvania has held that the time for taking an appeal cannot be extended as a matter of grace or mere indulgence. West Penn Power Co. v. Goddard, 460 Pa. 551, 333 A.2d 909 (1975); In re: Dixon's Estate, 443 Pa. 303, 279 A.2d 39 (1971). Extension of a statutory period for filing an appeal is generally limited to cases where "there is fraud or some breakdown in the court's operation." West Penn Power Co., 460

[1] Requests for reconsideration are governed by 40 Pa. Code § 15.56 and must be filed within fifteen (15) days of the adjudication, as set forth in 1 Pa. Code § 35.241(a).

Pa. at 556, 333 A.2d at 912. The Court later recognized another exception to the general prohibition against late appeals for the non-negligent conduct of an appellant's attorney or the attorney's staff. Bass v. Commonwealth Bureau of Corrections, 485 Pa. 256, 401 A.2d 1133 (1979).

The rule set forth in Bass was further clarified in Cook v. Unemployment Compensation Board of Review, 543 Pa. 381, 671 A.2d 1130 (1996). Specifically, the Court ruled that an untimely appeal is only excusable if: (1) it was caused by extraordinary circumstances involving fraud or breakdown in the court's operation or non-negligent conduct of the appellant or the appellant's counsel; (2) the appeal is filed within a short time after the appellant or the appellant's counsel learns of and has the opportunity to address the untimeliness; (3) the time period which elapses is of very short duration; and (4) the appellee is not prejudiced by the delay. Id. at 1131.

In the instant matter, Licensee has failed to meet even one of the factors under the Cook test. The first and most important factor is whether the failure to meet the deadline of the appeal was because of extraordinary circumstances or non-negligent conduct. Licensee admitted, via waiver, the basis of the initial citation, specifically Licensee's failure to keep cleaning records of his dispensing system.

After a fine was imposed, Licensee requested a reduction of the amount via an untimely-filed application for reconsideration. When it was denied, Licensee filed the instant appeal on April 16, 2015, beyond the requisite time period of thirty (30) days from the date of the ALJ decision of February 25, 2015. These untimely filings can be attributed only to the negligence of the Licensee. Additionally, there is an absence of any extraordinary circumstances to meet the first threshold of Cook.

The second and third factors are whether the time that has elapsed since the missed deadline is of very short duration and whether the licensee acted promptly once it was made aware of the missed deadline. The answer to both of those questions in this case is no. Licensee has failed to comply with the requisite time periods set for appeals and has neither enumerated nor substantiated any valid reasons for doing so, other than his displeasure with the amount of the fine levied against him. Finally, as to the fourth factor of prejudice, arbitrarily extending the time periods of an appeal would ignore the will of the Legislature, and result in the inconsistent enforcement of procedures within the Liquor Code.

While the Board sympathizes with Mr. Skwirut, particularly in light of his medical issues, the statutory deadline for appeals cannot be

ignored or suspended. In light of the aforementioned, the Board does not have authority to entertain Licensee's untimely appeal.[2]

Further, even had Licensee timely filed its appeal, there would be no entitlement to do so as a result of submitting the Waiver form. The Waiver, which was signed by Mr. Skwirut, provided that Licensee: (1) admitted to violation charged in the 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

[2] Licensee also failed to timely file its motion for reconsideration to the ALJ, resulting in the lack of jurisdiction of the ALJ.

misled in submitting it. The Waiver is clear as to the violation 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 the violation of the Citation. Section 471 of the Liquor Code permits the ALJ to impose a license suspension or revocation and/or a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000.00) for this type of violation [47 P.S. § 4-471(b)]. The ALJ imposed a fine in the amount of five hundred dollars ($500.00), noting some mitigation due to Licensee's Admission and Waiver.

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

ORDER

The appeal of Licensee is denied.

The decision of the ALJ is affirmed.

The fine of five hundred dollars ($500.00) has been paid in full.

The case is hereby remanded to the ALJ to ensure compliance with this Order.

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Board Secretary