

Mailing Date: October 5, 2016

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 16-0744
ENFORCEMENT	:	
	:	
v.	:	
	:	
D & M SHUMBRIS, INC.	:	License No. R-8145
t/a The Swizzle Stick	:	
434 Main Street	:	LID 36742
Edwardsville, PA 18704	:	

Counsel for Licensee (on appeal):	James J. Haggerty, Esquire Law Offices of James J. Haggerty, P.C. 183 Market Street, Suite 100 Kingston, PA 18704
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Counsel for Bureau:	Craig A. Strong, Esquire Pennsylvania State Police, Bureau of Liquor Control Enforcement 2936 Airport Road Bethlehem, PA 18017
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OPINION

D & M Shumbris, Inc. t/a The Swizzle Stick ("Licensee") appeals from the Adjudication and Order of Administrative Law Judge ("ALJ") Daniel T. Flaherty, Jr., mailed July 12, 2016, wherein the ALJ sustained Citation No. 16-0744 and ordered Licensee to pay a fine in the amount of \$750.00.

On May 27, 2016, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") issued the Citation to Licensee, charging it with violating section 493(1) of the Liquor Code, 47 P.S. § 4-493(1) in that on April 21, 2016, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to a visibly intoxicated person. Licensee submitted an Admission, Waiver, and Authorization ("Waiver") form in which it, *inter alia*, admitted to the violation; authorized the ALJ to enter an adjudication, without a hearing, based on the Bureau's summary of facts; and waived the right to appeal the resulting adjudication. By Adjudication and Order mailed July 12, 2016, the ALJ sustained the charge and imposed a \$750.00 fine. Notwithstanding its execution of the Waiver, Licensee appealed the ALJ's decision to the Pennsylvania Liquor Control Board ("PLCB") on August 11, 2016.¹

Pursuant to section 471 of the Liquor Code, the appeal in this case must be based solely on the record before the ALJ. The PLCB 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

¹ Licensee also filed an application for supersedeas pursuant to section 17.31 of the PLCB's Regulations, 40 Pa. Code § 17.31, which was granted on August 26, 2016.

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).

It must first be emphasized that by executing the Waiver, Licensee waived its right to appeal the ALJ’s decision in this matter. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Wilner, 687 A.2d 1216 (Pa. Cmwlth. 1997). Moreover, the Waiver form clearly set forth the possible penalties Licensee faced for the violation charged. Nonetheless, Licensee requests that the PLCB modify the penalty imposed by the ALJ, and in lieu of the \$750.00 fine, it asks for a two-day license suspension, preferably beginning on a

Sunday, Monday, or Tuesday. However, even if Licensee had not submitted the Waiver, the PLCB would be unable to grant Licensee's request.

While the PLCB sympathizes with Licensee's financial needs, nothing in the Liquor Code permits the PLCB to alter a legal penalty imposed by the ALJ. It is within the sole discretion of the ALJ, once satisfied that a licensee committed the violation or violations charged by the Bureau, to determine an appropriate penalty within the statutory parameters.²

For the type of violation sustained in the subject Citation, section 471 of the Liquor Code permits the ALJ to impose a license suspension or revocation and/or fine of not less than \$50.00 and no more than \$1,000.00. 47 P.S. § 4-471(b). Since the \$750.00 fine is consistent with the parameters set forth in the Liquor Code, there is no basis for the PLCB to find an error of law or abuse of discretion.

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

² Thus, the appropriate remedy when seeking to modify a penalty would be to file a motion for reconsideration with the ALJ within fifteen days of the mailing date of the Adjudication and Order. 40 Pa. Code § 15.56; 1 Pa. Code § 35.241. In this case, Licensee attempted to do so but missed the filing deadline.

ORDER

The appeal of Licensee is denied.

The decision of the ALJ is affirmed.

The fine of \$750.00 has not been paid. Licensee is hereby ordered to pay the fine in the amount of \$750.00. Failure to pay the fine within twenty days of the mailing date of this Order will result in license suspension and/or revocation. Instructions for payment of the fine may be obtained by contacting the Office of Administrative Law Judge.

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



Board Secretary