

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pennsylvania State Police, :  
Bureau of Liquor Control Enforcement :  
 :  
v. :  
 :  
Bernie's Inc. and John A. Henderson : No. 2604 C.D. 2009  
 : No. 2605 C.D. 2009  
Appeal of: John A. Henderson : Submitted: June 11, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE McGINLEY

FILED: August 18, 2010

John A. Henderson (Henderson) appeals the order of the Court of Common Pleas of Venango County (common pleas court) which granted the petition to quash of the Pennsylvania State Police Bureau of Liquor Control (State Police).

**I. December 10, 2007, Revocation-Unappealed.**

Henderson was the stockholder, president, and vice president of Bernie's Inc. (Bernie's). Bernie's held a liquor license in the Commonwealth of Pennsylvania. The establishment was located at 2 Willow Street in Oil City, Pennsylvania. Effective December 10, 2007, the Administrative Law Judge for the Pennsylvania Liquor Control Board (ALJ) revoked Bernie's liquor license for a violation of Section 493(26) of the Liquor Code (Code)<sup>1</sup> when it or its servants,

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<sup>1</sup> Act of April 12, 1951, P.L. 90, *as amended*, 47 P.S. §4-493(26).

agents or employees issued checks or drafts dated July 16, 2007, in payment for purchases of malt or brewed beverages, when Bernie's had insufficient funds in, or credit with, the institution upon which payment was to be drawn for the checks. Bernie's executed a Statement of Waiver, Admission, and Authorization in which it admitted the violation, authorized the ALJ to issue an adjudication and waived his right to appeal.

## **II. October 29, 2007, Revocation –Appealed to this Court.**

Bernie's also received a citation on February 1, 2005, for two counts of violating Section 471 of the Code, 47 P.S. §4-471, because Henderson had provided cocaine to his bartender to sell to a customer. In a decision mailed September 7, 2007, the ALJ concluded that the conduct violated the Code and ordered the revocation of the liquor license effective October 29, 2007. Henderson appealed to the Pennsylvania Liquor Control Board (Board) which dismissed his appeal as untimely. Bernie's, through Henderson, appealed to the common pleas court. The State Police moved to quash the appeal as moot because Bernie's had never timely appealed to the Board and Bernie's liquor license had otherwise been revoked in the December 10, 2007, revocation. The common pleas court quashed the appeal.

Henderson had appealed that revocation to this Court and contended that he was entitled to a remand to appeal *nunc pro tunc* from the ALJ's adjudication to the Board and that the common pleas court erred when it quashed his appeal as moot. This Court agreed with the common pleas court. Pennsylvania State Police Bureau of Liquor Control Enforcement v. Bernie's, Inc., Appeal of:

John A. Henderson, No. 856 C.D. 2008, filed February 18, 2009, (Bernie's I) at 6. On August 18, 2009, our Pennsylvania Supreme Court denied Henderson's petition for allowance of appeal. Pennsylvania State Police Bureau of Liquor Control Enforcement v. Bernie's, Inc., Appeal of: John A. Henderson, 603 Pa. 706, 983 A.2d 1250 (2009).

### **III. April 28, 2008, Revocation.**

On September 19, 2007, the State Police issued a citation (No. 07-2127) to Bernie's for use of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside the premises. The ALJ found that electronically amplified music from a jukebox could be heard up to seventy-five feet from Bernie's. The ALJ revoked Bernie's liquor license effective April 28, 2008. The Board affirmed.

### **IV. June 23, 2008, Revocation.**

On January 7, 2008, the State Police issued a citation (No. 07-2997X) to Bernie's for issuing checks or drafts dated September 14, 2007, in payment for purchases of malt or brewed beverages, when Bernie's had insufficient funds in, or credit with, the institution upon which payment was to be drawn. The ALJ found that Bernie's issued a check to Erie Beer Company on September 14, 2007, for \$504.55 which was dishonored by Bernie's bank due to insufficient funds. The ALJ revoked Bernie's liquor license effective June 23, 2008. The Board affirmed.

### **V. Appeals to the Common Pleas Court of April 28, 2008, and June 23, 2008, Revocations.**

Henderson appealed both the April 28, 2008, and the June 23, 2008, revocations to the common pleas court. The common pleas court consolidated the appeals. The State Police petitioned to quash the appeals as moot. By order dated November 6, 2009, the common pleas court dismissed the appeals as moot because the liquor license had already been revoked on other grounds.

## **VI. Appeal to this Court.**

Henderson contends that the ALJ lacked subject matter jurisdiction to adjudicate the two citations where the liquor license had already been revoked and that the adjudications were moot because the liquor license had been revoked and was no longer in existence.<sup>2</sup>

### **A. Subject Matter Jurisdiction.**

Initially, Henderson argues that the ALJ lacked subject matter jurisdiction to rule on the citations because once the license was revoked there was nothing before it.

Section 471 of the Code, 47 P.S. §4-471, provides:

(a) Upon learning of any violation of this act or any laws of this Commonwealth relating to liquor, alcohol, or malt or brewed beverages, or of any regulations of the board adopted pursuant to such laws, or any violation of any laws of this Commonwealth or of the Federal Government relating to the payment of taxes on liquor,

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<sup>2</sup> This Court's review is limited to a determination of whether the common pleas court committed an error of law or abused its discretion and whether the common pleas court's findings of fact are supported by substantial evidence. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Cantina Gloria's Lounge, Inc., 536 Pa. 254, 639 A.2d 14 (1994).

alcohol or malt or brewed beverages by any licensee within the scope of this article, his officers, servants, agents or employes, or upon any other sufficient cause shown, the enforcement bureau, may within one year from the date of such violation or cause appearing, cite such licensee to appear before an administrative law judge, not less than ten nor more than sixty days from the date of sending such licensee, by registered mail, a notice addressed to him at his licensed premises, to show cause why such license should not be suspended or revoked or a fine imposed, or both. . . .

(b) Hearing on such citations shall be held in the same manner as provided herein for hearings on applications for license. Upon such hearing, if satisfied that any such violation has occurred or for other sufficient cause, the administrative law judge shall immediately suspend or revoke the license, or impose a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) or both, notifying the licensee by registered letter addressed to his licensed premises. . . . Any licensee whose license is revoked shall be ineligible to have a license under this act until the expiration of three years from the date such license was revoked. In the event a license is revoked, no license shall be granted for the premises or transferred to the premises in which the said license was conducted for a period of at least one year after the date of the revocation of the license conducted in the said premises, except in cases where the licensee or a member of his immediate family is not the owner of the premises, in which case the board may, in its discretion, issue or transfer a license within the said year. . . .

The General Assembly invested the ALJ with the authority to hear matters such as those involving Bernie's. The violations underlying the citations at issue here took place prior to the initial revocation of the license. Although at first glance it appears foolish for an ALJ to conduct a hearing focused on an entity which had already lost its liquor license, the State Police point out that it

encounters many situations where a liquor licensee appeals nunc pro tunc. If the ALJ did not conduct a hearing on citations because the license was revoked and licensee ultimately prevailed on a nunc pro tunc appeal, the licensee could retain a license, which, based upon improper conduct, should have been revoked.<sup>3</sup>

### **B. Mootness.**

Henderson next contends that the ALJ's adjudications and sanctions are moot rather than his appeals from those rulings.

The law is well settled that a case will be dismissed as moot "unless an actual case or controversy exists at all stages of the judicial or administrative process." Musheno v. Dep't of Pub. Welfare, 829 A.2d 1228, 1231 (Pa. Cmwlth. 2003) (citing Faust v. Cairns, 242 Pa. 15, 88 A. 786 (1913)). In In re D.A., 801 A.2d 614, 616 (Pa. Super. 2002), our Pennsylvania Superior Court stated:

An issue can become moot during the pendency of an appeal due to an intervening change in the facts of the case or due to an intervening change in the applicable law. In that case, an opinion of this Court is rendered advisory in nature. An issue before a court is moot if in ruling upon the issue the court cannot enter an order that has any legal force or effect. (quotations and citations omitted).

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<sup>3</sup> The common pleas court ruled that Henderson failed to raise the issue of subject matter jurisdiction before the ALJ, so the issue was waived. However, subject matter jurisdiction may not be waived. Mastrocola v. Southeastern Pennsylvania Transportation Authority, 941 A.2d 81 (Pa. Cmwlth. 2008). This Court may affirm on other grounds where grounds for affirmance exist. Belitkus v. Hamlin Township, 764 A.2d 669 (Pa. Cmwlth. 2000), *petition for allowance of appeal denied*, 565 Pa. 676, 775 A.2d 809 (2001).

A case becomes moot “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” U.S. Parole Comm’n v. Geraghty, 445 U.S. 388, 396 (1980) (citation omitted). Cases presenting mootness problems are those that involve litigants who clearly had standing to sue at the outset of the litigation. Then during the course of litigation, changes in the facts or in the law allegedly deprive the litigant of the necessary stake in the outcome. Pap’s A.M. v. City of Erie, 571 Pa. 375, 812 A.2d 591 (2002).

On rare occasions exceptions to this principle are made where the case involves issues important to the public interest, the conduct complained of is capable of repetition yet likely to evade review or a party will suffer some detriment without the court’s decision. Strax v. Dep’t of Transp., Bureau of Driver Licensing, 588 A.2d 87 (Pa. Cmwlth. 1991), aff’d per curiam, 530 Pa. 203, 607 A.2d 1075 (1992).

Henderson argues that “it is not just the appeals that are rendered moot – rather, it is the **citations** themselves and the subsequent **revocations** which are rendered moot; because the ALJ lacked subject matter jurisdiction to impose a revocation upon a liquor license which no longer existed.” (Emphasis in original). Henderson’s Brief at 13.

This Court is unpersuaded by Henderson’s argument. Although he accurately states that his liquor license had already been revoked when the State Police issued the two citations at issue, the question of mootness applies to a case

or controversy not to a citation. Henderson does not provide any statute or case law to support his argument. Also, this Court has determined that the ALJ did have jurisdiction to rule on the citations.

This Court agrees with the common pleas court. Henderson appealed the April 28, 2008, and June 23, 2008, revocations. However, the liquor license had already been revoked on December 10, 2007, and Henderson/Bernie's did not appeal. Because there is no longer a liquor license at issue, there is no case or controversy. This case is moot. As in Bernie's I, an order regarding the liquor license would have no legal force or affect because Bernie's has already lost the license

Accordingly, this Court affirms.<sup>4</sup>

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BERNARD L. MCGINLEY, Judge

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<sup>4</sup> Under Section 471 of the Code, 47 P.S. §4-471, a person whose license is revoked shall be ineligible to have a license for three years from the date of the revocation. Section 404 of the Code, 47 P.S. §4-404 provides that in order to obtain a license “an applicant is a person of good repute.”



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**ORDER**

AND NOW, this 18th day of August, 2010, the order of the Court of Common Pleas of Venango County in the above-captioned matters is affirmed.

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BERNARD L. McGINLEY, Judge