

IN RE: : IN THE COURT OF COMMON
: PLEAS OF LYCOMING
PENNSYLVANIA LIQUOR CONTROL : COUNTY, PENNSYLVANIA
BOARD LICENSE NUMBER R-19011 :
: No: 09-03063

OPINION

This matter comes before the Court upon the Petition of Bake Malone, Inc. for review of an Order of the Pennsylvania Liquor Control Board refusing to renew Petitioner's liquor license.

Petitioner (also referred to as "Licensee") has been operating his establishment known as the Vineyard for eighteen (18) years. Petitioner filed an application with the Pennsylvania Liquor Control Board (hereinafter the "Board") for the renewal of Petitioner's Restaurant Liquor License for the licensing period ending August 31, 2010. The Board's Bureau of Licensing advised Licensee that it objected to its renewal application pursuant to 47 P.S. §4-470. A hearing was held on March 2, 2009 in Scranton before a Board Hearing Examiner. Despite the Hearing Examiner's recommendation to renew the license, the Liquor Control Board entered an order on December 16, 2009 refusing renewal. On December 23, 2009 the Petitioner filed its Petition for Review of the Board's order to this Court.

This Court's standard of review is as follows:

The court shall hear the application de novo on questions of fact, administrative discretion and such other matters as are involved, at such time as it shall fix, of which notice shall be given to the board. The court shall either sustain or over-rule the action of the board and either order or deny the

issuance of a new license or the renewal or transfer of the license or the renewal of an amusement permit to the applicant. 47 P.S. § 4-464.

47 P.S. § 4-470(a.1) provides:

The Director of the Bureau of Licensing may object to and the board may refuse a properly filed license application:

- (1) if the licensee, its shareholders, directors, officers, association members, servants, agents or employees have violated any of the laws of this Commonwealth or any of the regulations of the board;
- (2) if the licensee, its shareholders, directors, officers, association members, servants, agents or employees have one or more adjudicated citations under this or any other license issued by the board or were involved in a license whose renewal was objected to by the Bureau of Licensing under this section;
- (3) if the licensed premises no longer meet the requirements of this act or the board's regulations; or
- (4) due to the manner in which this or another licensed premises was operated while the licensee, its shareholders, directors, officers, association members, servants, agents or employees were involved with that license. When considering the manner in which this or another licensed premises was being operated, the board may consider activity that occurred on or about the licensed premises or in areas under the licensee's control if the activity occurred when the premises was open for operation and if there was a relationship between the activity outside and the premises and the manner in which the licensed premises was operated. The board may take into consideration whether any substantial steps were taken to address the activity occurring on or about the premises.

Following a *de novo* hearing in this matter, this Court makes the following Findings

of Fact:

1. Licensee filed an application for the renewal of Restaurant Liquor License No. R-19011 for its premises located at 410 East 2nd Avenue, South Williamsport, Pennsylvania (hereinafter the "Vineyard").
2. By letter dated August 20, 2008 Licensee was notified that the Board's Bureau of Licensing objected to the renewal of its license.

3. A hearing was held on March 2, 2009 in Scranton, Pennsylvania, for the purpose of taking testimony regarding the objections.
4. Following the hearing, the Hearing Examiner, Matthew Croslis, Esquire, concluded that the incidents or disturbances at or adjacent to the licensed establishment did not constitute egregious activity or an abuse of the Licensee's licensing privilege.
5. The Hearing Examiner found that the Licensee's citation history did not demonstrate a pattern of activity that would warrant non-renewal of the license.
6. The Examiner held that the Licensee had demonstrated that it had taken appropriate remedial measures to curtail conduct on or near the premises.
7. Following review and careful consideration of all of the evidence offered, the Hearing Examiner recommended renewal of the Licensee's liquor license.
8. Despite the recommendations of the Hearing Examiner, the Board issued an Order on December 16, 2009 refusing renewal.
9. The Board subsequently issued its Opinion relative to its December 16, 2009 holding.
10. In its Opinion, the Board stated that Licensing objected to Licensee's renewal "based upon four (4) prior adjudicated citations and approximately seven (7) incidents of disturbance at or immediately adjacent to the licensed premises." Opinion of the Pennsylvania Liquor Control Board, p. 35.

11. The four (4) adjudicated citations related to violations occurring in 1998, 2003, 2005 and 2008.
12. The seven (7) incidents referenced related to fights and alleged borough code violations.
13. The Board clearly stated that the Board would “not be inclined to deny” its renewal based upon the four (4) adjudicated citations alone. Id.
14. At the time of this Court’s hearing, counsel for the parties agreed that of the numerous Code violations alleged, the only Code violation which resulted in a penalty was one for snow removal which resulted in a \$10.00 fine.
15. This Court sustained Petitioner’s objection to the admissibility of the reports of Jennifer Moulthrop, a South Williamport Police Officer, relating to alleged code violations.
16. The Opinion of the Board in refusing to renew the Petitioner’s license was based, in part, upon alleged code violations which were dismissed or “thrown out” by the South Williamsport Borough.
17. With the exception of the police reports of Jennifer Moulthrop, police reports relative to other incidents were admitted into evidence at this Court’s February 22, 2010 hearing.¹
18. The remaining police reports document fights which occurred at the Vineyard property on October 29, 2006, March 11, 2007, July 13, 2007, January 6, 2008 and February 10, 2008.

¹ Officer Moulthrop was not available to testify, and therefore the Court sustains those objections.

19. Testimony was received from Officer John Ottaviano at the February 22, 2010 hearing relative to two additional incidents which occurred on or near the Vineyard on March 7, 2009 and April 5, 2009.
20. The testimony of Darrel Bacorn, Bake Malone Inc.'s owner was submitted via transcript from the March 2, 2009 hearing. Mr. Bacorn provided additional testimony at this Court's hearing held on February 22, 2010.
21. The incident which occurred on October 29, 2006 involved a fight between the Licensee's DJ and his girlfriend over someone's purse. No one was injured as a result of the incident.
22. The incident of March 11, 2007 involved two women fighting over an individual they both dated.
23. The July 13, 2007 incident involved several individuals and resulted in Mr. Bacorn's son, Derrick, being hit in the head with a beer mug.
24. The January 6, 2008 and February 10, 2008 incidents involved large numbers of individuals fighting in and outside of the Licensee's bar.
25. According to Mr. Bacorn, the fights on July 13, 2007, January 6, 2008 and February 10, 2008 occurred when a local hotel establishment, the Quality Inn, held "rap" shows. Following the shows, patrons made their way to Licensee's establishment based upon its proximity to the Quality Inn.
26. Immediately following the January 6, 2008 fight, Mr. Bacorn sought the advice of Police Chief Rex Lowmiller.
27. As a result of his meeting with Chief Lowmiller, corrective measures were taken to curtail future incidents.

28. Following this meeting, a metal detecting wand was purchased, the security staff was issued pepper spray, the price at the door was raised, drink prices were raised, last call was moved to 1:30 a.m., no entry was permitted after 1:00 a.m., additional staff was placed at the door on Saturday nights, and DJs were no longer used on Saturday nights. The only suggestion from the Chief that was not implemented was changing the music entirely to a country/western format.
29. Mr. Bacorn was advised by Chief Lowmiller that in the future he was to isolate the main offenders, remove them from the bar and lock the doors to the establishment.
30. On February 10, 2008, two brothers got into a fight in the Licensee's establishment.
31. According to Mr. Bacorn, the area was immediately secured, the two brothers were removed from the facility, and the doors into the Vineyard were locked.
32. When the two brothers were removed, other individuals from the Quality Inn were attempting to enter the premises.
33. The March 7, 2009 incident involved an argument between two women over a man. No charges were brought relative to this incident.
34. The April 5, 2009 incident involved a woman who got into a fight with another patron. She was charged with harassment and has been barred from returning to the Vineyard.

Following a review of the evidence, this Court enters the following Conclusions of Law:

1. The testimony of Darrell Bacorn was credible and reliable.
2. The Petitioner has had four (4) adjudicated citations in its eighteen (18) year history.
3. The Petitioner accepted responsibility for each citation and took steps to ensure violations did not reoccur.
4. Each citation was an isolated event that did not reoccur.
5. The Citation history does not demonstrate a pattern of activity that would warrant the non-renewal of the Petitioner's license.
6. Alleged incidents relating to code violations appeared to be the result of some political feud and with the exception of one \$10.00 citation for snow removal, remaining code violations were dismissed.
7. The remaining incidents related to fights.
8. The evidence indicated that the fights were all incidents that occurred through no fault of the management or operation of the establishment.
9. The fights that took place, particularly those related to the Quality Inn "rap" performances did not exhibit a causal relationship to the manner in which the premises were operated.
10. Following the fight which took place on January 6, 2008 Petitioner sought the advice of local police.
11. Petitioner implemented all but one of the Police Chief's recommendations.

12. Licensee took substantial, immediate and effective measures to ensure these incidents did not reoccur.
13. The Licensee has demonstrated that it has taken appropriate remedial measures, designed to curtail conduct at or immediately adjacent to the Petitioner's licensed premises.
14. The incidents or disturbances at or immediately adjacent to the licensed establishment up to and including the most recent incident of April 5, 2009 do not constitute egregious activity or an abuse of the licensing privilege.
15. The Licensee has not abused the privilege of holding a liquor license.
16. The trial court has broad discretion in conducting its *de novo* review of the Board's decision. Goodfellas, Inc. v. PA Liquor Control Board, 921 A.2d 559, 566 (Pa.Comm.w. 2007).
17. The trial court is free to consider corrective measures taken by a Licensee and is free to substitute its discretion for that of the Board. Id.
18. The trial court "has the authority to sustain, alter, change, modify or amend a decision of the Board, even if the court does not make findings of fact that are materially different from those found by the Board." Id. at 565, *citing* Two Sophia's, Inc. v. Pennsylvania Liquor Control Board, 799 A.2d 917, 922 (Pa.Comm.w. 2002).

ORDER

AND NOW, this 1st day of March, 2010, for all of the reasons set forth above, and specifically based upon this Court's finding that Mr. Bacorn's testimony was credible and pursuant to corrective measures implemented by Mr. Bacorn in response to incidents which occurred at the Vineyard, this Court OVERRULES and therefore REVERSES the Board's decision and ORDERS the Bureau to renew the Licensee's liquor license.

BY THE COURT,

Richard A. Gray, J.

cc: Scott T. Williams, Esquire

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