

IN RE: : IN THE COURT OF COMMON
 : PLEAS OF LYCOMING
PENNSYLVANIA LIQUOR CONTROL : COUNTY, PENNSYLVANIA
BOARD LICENSE NUMBER R-19311 :
 : No: 10-00201

OPINION

This matter comes before the Court upon the Petition of Dorff Associates, LLC, 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 her establishment known as the Flagstone Bar for six (6) years (hereinafter the "Flagstone"). 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. Additionally, Licensing rejected Petitioner's Renewal Application pursuant to 47 P.S. §4-470(b) because it was not timely filed. A hearing was held on July 17, 2009 in Scranton before a Board Hearing Examiner. On January 27, 2010, the Liquor Control Board entered an order refusing renewal. On January 29, 2010 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-19311 for its premises located at 680 Railway Street, Jersey Shore, Pennsylvania.
2. Following a hearing on July 17, 2009, the Liquor Control Board issued an Order on January 27, 2010 refusing renewal.

3. The Board subsequently issued its Opinion relative to its January 27, 2010 Order.
4. In its Opinion, the Board stated that Licensing objected to Licensee's renewal "based upon six (6) prior adjudicated citations from 2006 to 2008 and approximately sixteen (16) incidents of disturbance at or immediately adjacent to the licensed premises that occurred between August of 2004 and the date of the hearing." Opinion of the Pennsylvania Liquor Control Board, p. 29.
5. The six (6) adjudicated citations related to violations occurring in a three (3) year time period.
6. The citations received were for violations of law relating to sales to minors, sales to visibly intoxicated patrons, after hours service, improper off-premises service, and for the Licensee's continuous disregard of ALJ-mandated RAMP training.
7. Citation No. 06-1344 was issued for failure to require patrons to vacate the premises not later than one-half (1/2) hour after the required time period for the cessation of service of alcoholic beverages. Licensee was fined and served a one (1) day suspension as a result.
8. Relative to Citation No. 06-1577, Licensee admitted to serving alcoholic beverages to a visibly intoxicated patron. In addition to a fine, Licensee was ordered to obtain RAMP certification within ninety (90) days and to remain in compliance for a period of one (1) year from the date RAMP certification was issued.

9. Citation No. 07-0592 was received for the sale of malt or brewed beverages in excess of one hundred ninety-two (192) fluid ounces in a single sale to one (1) person for consumption off premises.
10. Citation No. 07-1347 was issued when Licensee failed to comply with the Order of the Administrative Law Judge at Citation No. 06-1577 mandating RAMP training and certification. Licensee was again ordered to obtain RAMP certification within ninety (90) days.
11. Relative to Citation No. 08-0366, Licensee admitted selling or furnishing alcoholic beverages to a nineteen (19) year old minor. In addition to a fine, Licensee was ordered to maintain RAMP certification for a period of one (1) year.
12. Citation No. 08-2031 was received when Licensee once again sold alcohol to a visibly intoxicated patron. Licensee was fined, served a one (1) day license suspension and was ordered to maintain RAMP certification until November 14, 2009.
13. In addition to its six (6) citations, the Board also objected to the renewal of the Flagstone's license based upon numerous incidents that occurred on or near the Flagstone's premises.
14. Of the sixteen alleged incidents, testimony was offered relative to ten (10) incidents at the July 17, 2009 hearing.
15. Police reports relative to the incidents were admitted into evidence as part of the record, at this Court's March 12, 2010 hearing.

16. The testimony of Kelly Overdorff, Dorff Associates, LLC's owner was submitted via transcript from the July 17, 2009 hearing. Ms. Overdorff provided additional testimony at this Court's hearing held on March 12, 2010.
17. According to the evidence presented, the incident of March 26, 2005 involved a dispatch for a report of a large fight in the parking lot at 2:10 a.m.
18. The January 5, 2006 incident involved a patron who was escorted outside of the bar. Following his removal, a fight occurred in the parking lot. The individual removed was injured and another bar patron came back into the bar with blood on his knuckles.
19. The September 12, 2006 incident involved a dispatch to the bar at 2:03 a.m. for a report of criminal mischief. The reporting party indicated that a window had been smashed out of his vehicle. Glass shards were located in the alley behind the Flagstone.
20. On October 8, 2006 the police were again dispatched for reports of fighting. This incident involved an altercation which occurred inside the bar between patrons. Upon escorting the patrons outside, one of the bartenders pushed, shoved, and apparently hit one of the patrons.
21. On December 17, 2006 the police were dispatched at 2:39 a.m. to the Flagstone on a report of criminal mischief for the slashing of a tire in the parking lot.

22. On May 6, 2007, a disturbance in the parking lot was observed at 12:06 a.m. by an officer while on patrol. A large group of individuals in the parking lot were arguing and creating a disturbance and three individuals reported that they had been struck by someone.
23. On January 26, 2008 the police were dispatched to the Flagstone at 2:27 a.m. pursuant to a fight occurring on the premises. Upon arrival, the officer observed an individual with a swollen cheek and dried blood around his mouth. According to information received, a fight occurred inside the premises at closing time.
24. On February 16, 2008 the police were dispatched to the Flagstone at 12:31 a.m. for an incident in which a patron flung a lit cigarette butt at another patron, burning her face.
25. While investigating the incident on February 16, 2008 the police arrested another individual in the Flagstone parking lot for an outstanding bench warrant and pursuant to a firearm he had in his possession.
26. Based upon this history, the Flagstone has exhibited a pattern of fights and disturbances over a substantial period of time.
27. According to Ms. Overdorff, steps were taken to curtail fights and other incidents from occurring at the Flagstone.
28. Ms. Overdorff testified that she installed cameras in the parking lot, placed "No fighting" signs in the bar, hung "No drug" policy signs, maintained a list of barred patrons, took the heavy metal music out of her

jukebox, and fired employees if they failed to pay assessed fines for liquor control board violations.

29. Ms. Overdorff testified that she has cut down bar hours and that her usual hours of operation are now as follows:

Monday/Tuesday 3:00 p.m. – 1:30 a.m.

Wednesday – Sunday 11:00 p.m. – 2:00 a.m.

30. Ms. Overdorff also testified that she now attempts to spend more time in the bar and that she is regularly at the bar as follows:

Monday/Tuesday 3:00 p.m. – 10:00 p.m.

Wednesday – Sunday – 9:00 a.m. – 7:00 p.m.; 10:00 p.m. – 12:00 a.m.

31. Ms. Overdorff testified that on typical nights one female bartender is at the bar at closing time.

32. This Court's review of the evidence reveals Licensee's lack of sincere efforts to address the real underlying issues of its operation with regard to security problems and unwillingness to apply corrective measures.

33. Although the evidence shows that most of the incidents occurred between the hours of 12:30 a.m. and 2:30 a.m., Ms. Overdorff testified that most nights one female bartender is at the bar during this time period.

34. Although Ms. Overdorff indicated that she now spends more time in the bar to help with situations that may arise, by her own admission, Ms. Overdorff is not present at the bar during the hours in which incidents have typically occurred.

35. The Licensee failed to utilize appropriate security measures to prevent injury to its patrons and employees.
36. Although Ms. Overdorf testified that she attempted to contact the local police for advice, she failed to follow up in any meaningful way.
37. Moreover, Licensee's efforts to curtail conduct on or near her premises were not substantial.
38. The Bureau of Licensing originally rejected Licensee's application because it was not timely filed.
39. In connection with one of the citations received for service to a visibly intoxicated patron, Licensee was ordered to obtain RAMP certification within ninety (90) days and to remain in compliance for a period of one (1) year from the date RAMP certification was issued.
40. Another citation was received by Licensee for failure to comply with the order mandating RAMP training and certification.
41. Despite the fact that the Licensee received a citation for failing to comply with the order mandating RAMP certification, the Licensee testified that she is currently not certified because training which was apparently scheduled to take place right before the deadline, was canceled.
42. Licensee's failure to timely file for renewal and failure to comply with orders regarding RAMP training and certification suggest a lack of concern for the Board's rules and regulations.

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

1. The Petitioner has had six (6) adjudicated citations in its six (6) year history.
2. Several of the violations were recurring.
3. Recurring citations were for weighted or enhanced violations such as service to minors and service to visibly intoxicated persons.
4. For these violations, Licensee paid substantial fines, had its license suspended for two (2) days, and was ordered to become RAMP-compliant and/or maintain RAMP compliance on multiple occasions.
5. In addition to citations received, the evidence reveals numerous incidents have occurred on or near the licensed premises, and the record shows that the Licensee failed to appropriately address the repeated disruptive behavior.
6. The Licensee failed to utilize appropriate security measures to prevent injury to its patrons and employees.
7. This Court's review of the evidence reveals Licensee's lack of sincere efforts to address the real underlying issues of its operation with regard to security problems and unwillingness to apply corrective measures.
8. Moreover, Licensee's efforts to curtail conduct on or near her premises were not substantial.
9. Although Licensee asserts that the incidents of disturbance have occurred pursuant to the type of clientele that enter her bar, there is no exception in the regulations for the type of establishment that is operated. Moreover, everyone

that is granted the privilege of having a license must comply with the regulations.

10. Licensee's failure to timely file for renewal and failure to comply with orders regarding RAMP training and certification suggest a lack of concern for the Board's rules and regulations.

11. For all of these reasons, this Court finds that the Licensee has abused its privilege of holding a license.

12. The Board's refusal to renew is consistent with 47 P.S. § 4-470(a.1)(1)(2) and (4).

ORDER

AND NOW, this ____ day of April, 2010, for all of the reasons set forth above, this Court AFFIRMS the Board's Order of January 27, 2010 refusing renewal of the Licensee's liquor license.

BY THE COURT,

Richard A. Gray, J.

cc: Scott T. Williams, Esquire

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