

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

OPINION
Issued Pursuant to Pa.R.A.P. 1925(a)

On March 1, 2010 this Court entered an Order overruling and reversing the Pennsylvania Liquor Control Board's decision refusing renewal of a liquor license to Bake Malone, Inc (hereinafter "Licensee"). On March 24, 2010 the Liquor Control Board (hereinafter "Board") appealed this Court's order to the Commonwealth Court of Pennsylvania. The scope of review in liquor license renewal cases is limited to a determination of whether the trial court committed an error of law, abused its discretion, or made findings of fact unsupported by substantial evidence. Ball Park's Main Course, Inc. v. Pennsylvania Liquor Control Board, 641 A.2d 713, 715 (Pa.Cmmw. 1994).

On April 14, 2010 the Board filed its Concise Statement of Matters Complained of on Appeal. The Board erroneously argues that this Court erred by applying an incorrect standard regarding a licensee's responsibility for misconduct at or near the licensed premises. This Court's Order of March 1, 2010 included the following Conclusions of Law:

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” performance did not exhibit a causal relationship to the manner in which the premises were operated.

The Board contends that this Court applied an incorrect legal standard in reaching these conclusions pursuant to Commonwealth of Pennsylvania v. Graver, 334 A.2d 667 (Pa.1975) and Rosing, Inc. v. PLCB, 690 A.2d 758 (Pa.Cmwlth. 1997). This Court contends that neither of these cases supports the Board’s claim that an incorrect legal standard was applied.

In Graver, *supra*, the trial court granted the Commonwealth of Pennsylvania’s request for a preliminary injunction against a bar owner. The injunction was issued because the evidence established that neighbors had been subject to abhorrent conduct by patrons of the bar, and the bar had violated multiple Liquor Code violations, thus making it a nuisance. The Board relies upon Graver to assert that the proper standard for application by this Court was “whether there was a causal connection between the licensed premises and activity off the licensed premises.” In reaching its conclusion regarding the fights which occurred on the Licensee’s premises, this Court held, “[t]he fights that took place...**did not exhibit a causal relationship to the manner in which the premises were operated.**” (Emphasis added). Although this Court contends that the facts of Graver were factually dissimilar to those presented in the present action, this Court evaluated the conduct at issue in light of its causal connection to the premises.

In Rosings, *supra*, the Board challenged the trial court’s order reversing the Board’s decision to deny a renewal application. The renewal application was denied

pursuant to evidence regarding drug activity and drug arrests made near the licensee's bar. In affirming the trial court's order, the Commonwealth Court held:

[T]he owner of a licensed establishment is only liable in an enforcement action for criminal offenses that are not expressly included in the Liquor Code if (1) she knows or should have known of ongoing criminal activities, and (2) failed to take substantial affirmative steps to prevent such activities. Id. at 761.

In the case at bar, the evidence did not establish that the Licensee had knowledge of any ongoing criminal activities, such as drug related activity, occurring on their premises. The evidence at issue involved incidents of fights which occurred on the Licensee's premises. Most of the fights occurred when a local hotel establishment, the Quality Inn, held "rap" shows. Following the shows, patrons made their way to the Licensee's establishment based upon its proximity to the Quality Inn. Following one of these such incidents, the Licensee sought advice from the local police chief. Every recommendation made by the police chief, with the exception of changing the music format to country western, was employed by the Licensee. Following a review of this evidence, this Court made the following findings in its Order of March 1, 2010:

12. Licensee took substantial, immediate and effective measures to ensure that 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.

In so finding, the Court heard directly the testimony of the Licensee which was very credible. Accordingly, the Board's claim that this Court incorrectly applied the legal standard is incorrect, and this Court respectfully requests affirmance of its Order of March 1, 2010.

The Board's final contentions of error relate to this Court's finding that the Licensee took substantial steps to ensure future incidents of fights did not reoccur, and whether the trial court's decision was based upon substantial evidence of record.

As to these assertions, this Court relies upon its previous Opinion of March 1, 2010. Evidence regarding steps taken by Licensee to address any issues was thoroughly reviewed and outlined, and this Court's Order clearly establishes that substantial evidence existed to support this Court's reversal of the Board's decision to not renew the Licensee's liquor license. Accordingly, it is the opinion of this Court that the Board's appeal should be dismissed.

BY THE COURT,

Date

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