R. A. FLOYD, INC.,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Petitioner	:	
	:	
vs.	:	NO. 97-00,903
	:	
PENNSYLVANIA LIQUOR CONTROL BOARD,	:	
	:	
Respondent	:	

OPINION AND ORDER

This matter is presently before the Court on remand from the Commonwealth Court of Pennsylvania, pursuant to a Stipulated Order entered by that Court on April 12, 1999, received by this Court June 1, 1999. By Opinion and Order filed June 30, 1998, this Court had affirmed the decision of the Pennsylvania Liquor Control Board (hereinafter "the Board") that the liquor license of R.A. Floyd, Inc. (hereinafter "Petitioner") not be renewed. In that Opinion, we indicated our scope of review as being governed by §464 of the Liquor Code,[1] which prohibited this Court from reversing a Board decision absent a manifest abuse of discretion by the Board, or if our findings of fact varied from the Board's findings. Opinion, 6/30/98, p. 8.

However, during the pendency of the appeal, the Pennsylvania Supreme Court decided the case of ***P.L.C.B. v. Richard Craft American Legion***, 718 A.2d 276 (Pa. 1998). In that case, the Supreme Court cited the case of ***Pennsylvania State Police v. Cantina Gloria's Lounge,*** 639 A.2d 14, 16 (Pa. 1994) to reiterate:

[1] 47 Pa.C.S. §4-464.

> ". . .(T)he correct standard of review for a trial court's review of a P.L.C.B. refusal to grant a liquor license . . . (is) to make findings and conclusions . . . based upon its *de novo* review, to sustain, alter, change or modify a penalty imposed by the Board whether or not it makes findings which are materially different from those found by the Board.
>
> Clearly, pursuant to our holding in ***Cantina Gloria's Lounge***, the trial court may alter the decision of the PLCB even if its findings of fact are identical to those made by the PLCB. Thus, the trial court here correctly conducted a *de novo* hearing, made its own findings of fact and reached its own conclusion based on these findings.

P.L.C.B. v. Craft, *supra* at 278. Consequently, in light of this pronouncement, the parties agreed to request the case be remanded to this Court for a decision as to whether Petitioner's liquor license should be renewed, applying the standards enunciated by the Supreme Court in ***Craft.*** We will now proceed accordingly.

The procedural history of the case is as follows. On November 3, 1997, this matter came before the Court for hearing on the Petitioner=s appeal of the Opinion and Order of June 12, 1997, issued by the Board which held that Petitioner R. A. Floyd, Inc., owned 50% by Licensee Robert A. Floyd and 50% by Licensee Jerilyne Adams, Mr. Floyd's sister, had abused the licensing privilege. The Board refused to renew the License.

Petitioner (the corporation) operates a restaurant bar establishment known as AThe Avalon Lounge@ in the City of Williamsport. On July 11, 1996, Petitioner filed a timely application for renewal of its restaurant liquor license No. R-13222 for the license term effective September 1, 1996. *See*, PLCB Exhibit 4, Findings of Fact, Paragraph 2. The Bureau of Licensing of the Pennsylvania Liquor Control Board objected to renewal of the license. An

evidentiary hearing was held before a Hearing Examiner on the objections November 8, 1996.[2] The Board=s Opinion and Order denying renewal of the application was filed on June 12, 1997. *See*, PLCB Exhibit No. 4; R.[3] 7. Petitioner filed an appeal of that decision to this Court on June 16, 1997.

On November 3, 1997, a hearing was held before the undersigned Judge on the appeal, during which the Board chose not to present additional testimony but entered into the record the following evidence: (1) the full transcription (with exhibits) of the proceeding held on November 8, 1996; (2) the Hearing Examiner=s report to the Board; (3) the June 12, 1997 notice to Petitioner containing the Opinion denying renewal; (4) the Board=s Opinion and Order of June 12, 1997; and (5) the November 20, 1996 Opinion of the Board sustaining the Administrative Law Judge=s Citation no. 95-2464. *See*, pp. 411-419 attached to November 8, 1996 Notes of Testimony of the Hearing Examiner, R; 4-7. Petitioner presented testimony of three witnesses: the two Licensees and the Mayor of the City of Williamsport, Mr. Steven Cappelli.

This Court issued its original Opinion on June 30, 1998. A Motion to Stay the Proceedings pending an appeal was filed by Petitioner on July 1, 1998. This Motion was denied by Order entered July 17, 1998. A Notice of Appeal to the Commonwealth Court was filed July 9, 1998, by Petitioner. On August 17, 1998, an Opinion in support of the Order of June 30, 1998 was filed pursuant to Pa.R.App.P. 1925(a).

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[2]The Hearing Examiner=s report was admitted into evidence in proceedings before this Court solely for the purpose of making the record complete. The Court has not relied upon any of the Findings of Fact as contained in the Hearing Examiner=s undated, unsigned report. *See*, PLCB Exhibit 2; *see also*, transcript of proceedings held before this Court on November 3, 1997, pp. 4-6.

[3] "R" indicates reference to the Court record of the November 3, 1997 proceedings, filed February 18, 1998.

Upon receipt of the Commonwealth Court's remand Order (entered upon stipulation of the parties), a hearing was scheduled for purposes of introducing additional testimony, if any, and argument on July 28, 1999. Both parties submitted briefs at that time to this Court, which were essentially the same briefs submitted to the Commonwealth Court on appeal. No new testimony or evidence was submitted.

Accordingly, the record before this Court consists of the proceedings held initially before the Board on November 8, 1996,[4] the other documents submitted by the Board on November 3, 1997 and the testimony received on behalf of Petitioner on November 3, 1997.

Petitioner now argues this Court erred in its original decision in several respects and that the Board clearly erred in refusing to grant Petitioner the renewal of its liquor license. Following is a summary of the evidence presented to the Hearing Examiner and to this Court. It is not intended as a comprehensive recitation, but is offered to provide a context to the reader of this Opinion for the discussion of the Court=s legal analysis of the issues here presented.

Summary of Evidence Presented to Hearing Examiner

At the outset, certain of the Board=s documents offered in support of the underlying objection to renewal of the license were entered into evidence. Among these were certified records from the Office of the Administrative Law Judge pertaining to adjudications of PLCB Citation Nos. 94-0327 (employing a known criminal at the Avalon Lounge) and 95-2464 (Licensee Adams= disorderly conduct). *See,* R. 4.

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[4] References to the record before the Board on November 18, 1996 are designated as PLCB Exhibit 1.

Officer John McKenna of the Williamsport Police Department, also a member of the Lycoming County Drug Task Force, testified concerning the events surrounding a controlled drug buy in which he participated in the summer of 1996 at the Avalon Lounge.[5] He testified he participated with Officers Ungar and Hoover and Corporal Bailey in successfully sending a confidential informant into the Avalon Lounge to purchase controlled substances. PLCB Exhibit 1. The informant had come to him a week earlier stating that he knew as many as three people in the Avalon Lounge from whom he could make a buy. ***Id***., at 13. The suspect made a sale to the informant that night outside the bar and was immediately taken into custody. Officer McKenna further testified that while they were taking the suspect into custody, Licensee Adams and several other people exited the bar and observed the arrest taking place across the street. Because Officer McKenna had earlier observed the suspect go down an alley next to the Avalon Lounge and rummage through several garbage cans, he decided to go and check the area out after the suspect had been taken into custody. ***Id***. at 9-10. As the Officer proceeded past Adams, Adams became infuriated and accused the officer of not having seen a drug deal take place in the bar. She proceeded to follow Officer McKenna through the alley, Averbally accosting@ the Officer, using Aloud, boisterous statements@ and Aprofanity.@ ***Id***. at 10-11. She was warned and subsequently arrested for disorderly conduct.[6] ***Id.*** at 10-11.

[5] Specifically, August 5, 1996.

[6] As the result of this charge, under Lycoming County docket no. 96-11,613, on July 23, 1997, the Honorable J. Michael Williamson found Ms. Adams guilty of violating 18 Pa.C.S. §5503(e)(2), for making unreasonable noise in a public place, recklessly creating a risk of public inconvenience, annoyance or alarm. Judge Williamson specifically found that Ms. Adams used profane language, but indicated in his opinion that, pursuant to various federal decisions, use of such language against police officers was no longer prohibited. Accordingly, Judge Williamson acquitted Ms. Adams on the alleged violation of 18 Pa.C.S. §5503(a)(3).

Detective Todd Prough of the Lycoming County District Attorney's Office, the coordinator of the LCDTF, testified to at least three drug transactions at the bar. The first involved an undercover operation in which a suspect accompanying agents into the Avalon Lounge was arrested there for purchasing drugs in their presence on July 8, 1995. The second incident concerned the arrest of one Donald Ray (a/k/a Evans) on December 29, 1995, for defiant trespass at the Avalon Lounge. While booking the suspect, police discovered on his person 37 packets of cocaine and 4 packets of heroin. The third incident involved a controlled buy inside the Avalon Lounge on September 25, 1996.[7] Detective Prough further testified about two arrests effected after a controlled buy in the Avalon Lounge, of which he had knowledge but was not himself personally involved, in August of 1996. Finally, the Detective testified he was not aware of a surveillance system in the Avalon Lounge until the September 25, 1996 incident and did not recall ever seeing signs posted in the Avalon Lounge warning drug dealers of the surveillance cameras (testimony concerning signs of surveillance cameras was introduced as discussed *infra*).

The certified criminal records of one Khaleed Waheed (including an affidavit of probable cause), for an arrest at the Avalon Lounge on March 20, 1996 for drug-related crimes were admitted over Petitioner's objection. ***Id***. at 75.

Petitioner presented three witnesses: Patricia Knull, manager of the bar and the two Licensees themselves. Ms. Knull testified that at the time of the September 25, 1996 incident she told the arresting police officer about the surveillance cameras, but there was no

[7]In this case, involving Defendants Jessie and Sterling Brown, initial contact with the suspects occurred inside the Avalon Lounge and the arrest was effected just outside the establishment.

discussion of VCR taping capability. She also testified generally about signs posted prohibiting cellular phone usage in the bar and a Aticker@ sign over the bar for other notices, that the bar maintained a list of Abarred@ patrons in an effort to reduce crime, and that there were posted house rules prohibiting drug use. ***Id***. at 81-122.

Licensee Adams testified to letters written and personal visits to the Mayor, Police Chief, Inspector Dalton, and Police Officer Ungar in an effort to cooperate with the police in regard to the drug problem. ***Id***. at 130-131. She testified that a meeting took place in July of 1996, in which herself, her mother, Licensee Floyd, the Mayor, the Police Chief and Detective Schriner of the Lycoming County District Attorney=s Office took part. She stated that, at that meeting,

> [w]e explained about all of the video surveillance tapes. We offered to let them have any tape that they wanted, even tapes that we review because they might notice something being more trained than we are to pick up something suspicious or maybe they knew a person with a known record. We volunteered to give them any and all tapes at any time. We also offered to let them set surveillance people in our place like undercovers, confidential informant with -- we asked that the only thing be that if we did this voluntarily that these -- anything that they would -- that would help them in an arrest or -- that they wouldn=t use this against us, that we were trying to help them do their job and if they -- but that we didn=t want to be -- have our business jeopardized because we were doing it.

Id. at 133. She further testified that the area where the bar is located is a very bad area and that there are a lot of negative big city influences. ***Id***. at 133-34.

Adams also gave her version of events surrounding her arrest for the disorderly conduct incident between herself and Officer McKenna. In her version, she was polite and courteous to the Officer, and was placed under arrest without provocation for what Officer

McKenna told her was a loitering violation. ***Id***. at 142. After reading the citation written by the Officer, she realized the citation was for disorderly conduct. ***Id***. at 144.

Adams also testified that she had an ongoing lawsuit against the City, the District Attorney and the Police. ***Id***. at 146. She testified that Mayor Cappelli visited the bar, and that she, her brother and her mother showed him the exact locations of the video cameras and VCRs. ***Id***. at 149.

Lastly, Licensee Robert A. Floyd testified. He stated that the efforts made to control potential problems, as related by witnesses Adams and Knull, were started Aright after we opened@ and that the video cameras were installed Aabout a little over a year ago.@ ***Id***. at 154.[8] The list of barred patrons was started five or six months after the bar opened. ***Ibid.*** He related an incident where one ATouchie@ Cartwright was barred after he read in the newspaper that the Patron had been arrested with a large amount of marked money and drugs, even though no alleged illegal conduct occurred in or near the Avalon Lounge. He also testified that the police have asked him for tapes and he has provided them when requested. ***Id***. at 158-160.

Evidence was further presented to this Court concerning an adjudication, which included Findings of Fact, relating to activities of Licensee Jerilyne Floyd on September 7, 1995, resulting in the issuance of PLCB Citation No. 95-2464.[9] This citation charged Petitioner, through its agents, servants and employees, of engaging in Disorderly Conduct on

[8] The record would indicate Licensees opened the bar in November of 1993 (*see* PLCB Exhibit 1, p. 153); based on the date of the hearing, Licensee Floyd indicated the cameras were installed around November of 1995.

[9] The proceedings as to this citation are set forth in the record in PLCB Exhibits 1 and 5. The ALJ proceeding resulting in the citation was part of "Exhibit C-4" introduced at the original hearing before the Board on 11/8/86. As part of that record, the Exhibits are stamped at the bottom right-hand corner as pages 000411 through 000419. This enumeration will be utilized in the Court's discussion thereof.

the licensed premises. The citation was based upon the actions of Licensee Jerilyne Adams when she observed law enforcement officers in the premises. The officers were looking for a suspected drug seller. Based upon PLCB Exhibit 1, 000413-000415, the record reveals that the law enforcement officers, attached to the Bureau of Narcotics, Lycoming County Drug Task Force, were working with a confidential informant who purchased controlled substances from a seller outside the licensed premises. The officers searched the area outside the Avalon Lounge premises in an effort to find and arrest the seller, but they were unable to find him. A conversation with the confidential informant and an additional search of the area around the Avalon Lounge led the officers to believe that the seller had gone into the Avalon Lounge. Officer Marvin Miller of the Williamsport Police Department accompanied the task force officers. Officer Miller was in full uniform, while the members of the task force were in plain clothes. A determination was made that the members of the task force and Officer Miller would quickly enter the bar, attempt to locate and arrest the seller, and leave as quickly as possible. They did so, the officers in plain clothes visibly displaying their badges. There were between twenty and thirty patrons in the bar. Because the officers believed they were about to encounter a very dangerous situation, Deputy Debra Reed removed her Glock 9mm automatic pistol and carried it along her right leg pointed down, in order to have it readily available. The officers walked quietly around the interior of the bar, looking for the seller. Not finding the seller present after searching for approximately two minutes, they prepared to leave. As the officers began to leave, Licensee Adams came out from behind the bar and began yelling in profane language, which was directed mostly at Officer Miller and Deputy Reed. Among the remarks that she made repeatedly were the following: "Put the f---ing guns away!" "You f---

ing cops!@ AWhy the f-- are you in my building?@ AWhy the f-- don=t you leave?@ AYou people are always f--ing harassing me!@ AGet the f-- out of here!@ and AGet out of my business!@ PLCB Exhibit 1, 000414. As the officers proceeded to exit the premises, Officer Miller warned Adams at least four times to be quiet. As Adams raised her voice after each warning, Miller raised his voice so that he could be heard over her. Patrons of the bar began to join Adams in her verbal abuse of the officers. Two patrons stood up, and one of them approached Officer Miller and stood within several inches of him. The patron heeded Officer Miller=s warning to mind his own business and returned to his seat. The officers exited the premises and gathered on the adjacent sidewalk. Adams followed them out, continuing her verbal abuse with language of the type previously described. She asked for Officer Miller=s name and badge number. The profanities yelled by Adams attracted a crowd of people from the vicinity of the bar numbering twenty to thirty, who began to converge upon the officers. Officer Miller proceeded back to the entrance of the bar and again warned Adams to be quiet and to go inside. At this point Adams retreated inside. Officer Miller began to walk away from the door and as he did, Adams again emerged from the door and said AI=m telling you to get the f--- off my property.@ PLCB Exhibit 1, 000414. At this point, Officer Miller placed Adams under arrest for three counts of Misdemeanor disorderly conduct. Ultimately, Adams pleaded *nolo contendere* to one count of summary disorderly conduct in the Court of Common Pleas of Lycoming County. PLCB Exhibit 1, 000415.

The Board also had before it the adjudication of PLCB Citation No. 94-0327, in which the Citation was sustained and it was determined that Petitioner, by its servants, agents

or employees had employed a known criminal in its licensed establishment.[10] That adjudication was entered on January 11, 1995. That adjudication was based upon finding that the Licensees (particularly Jerilyne Adams) had employed her nephew Steven Floyd in 1994. At that time, Steven Floyd had been previously convicted of theft in 1987, burglary in 1987, harassment in 1992 and simple assault in January of 1994. It was found that Ms. Adams had knowledge of the 1987 offenses, but did not have knowledge of the 1992 and 1994 offenses. The 1994 offense was a conviction occurring at or about the same time of Steven Floyd's employment by Petitioner. *See*, PLCB Exhibit 1, p. 00091.

Petitioner also introduced into evidence before the Board a packet of correspondence which effectively demonstrated the history, in part, of the bad feelings between Petitioner and the City of Williamsport Police Department, which eventually culminated in the July 2, 1996 meeting with Mayor Cappelli. *See*, PLCB Exhibit 1, p 80, referencing Exhibit L-2. Of particular significance was that on June 19, 1996, William Miller, Chief of Police, wrote to Petitioner's legal counsel, acknowledging receipt of a complaint from Petitioner's counsel on June 13, 1996. The complaint centered on allegations by Petitioner that the police were again harassing Petitioner. This correspondence from Chief Miller also indicated that as of that date, Petitioner had done nothing to assist the City Police law enforcement efforts.

Based upon this evidence, the Board found that the two citations (one for having employed a known criminal, Steven Floyd, in the bar and the other for the disorderly conduct incident of September 7, 1995), together with the fact that Licensee Adams had been again charged with disorderly conduct resulting from the confrontation with Officer McKenna on

[10] *See*, PLCB Exhibit 1, enumerated at the bottom right-hand corner as pages 00085 through 00093.

August 5, 1996, constituted sufficient evidence to warrant non-renewal of the license. *See* PLCB Exhibit 4, Board=s Opinion and Order dated June 11, 1997, at p. 10. The Board also found that there were at least three separate occasions on which purchases of illegal drugs were made inside the premises, and another incident where a drug dealer was arrested on the licensed premises. As a distinct, alternate, basis for denying renewal of the license, the Board found that there was a pattern of illegal activity in and around the Avalon Lounge, and further that the Licensees knew or should have known about the activity and did not take substantial steps to prevent it. In so doing, the Board specifically found the testimony of Licensee Adams not credible. ***Id***., at pp. 11-12.

Summary of Evidence Presented to the Court

As noted, the Board presented only documentary evidence as follows:

(1) The record of the testimony of the proceedings held before its hearing examiner on November 8, 1996, entered without objection as PLCB Exhibit 1.

(2) The undated Findings of the board, Conclusions of Law and recommendations to not renew the license, made by Hearing Examiner Patrick J. Mellody, based upon the November 8, 1996 hearing. This was admitted as PLCB Exhibit 2,[11] solely for the purpose of making the record complete (based upon objections made by Petitioner and sustained by the Court so limiting its purpose). R. 4, 5.

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[11] At R.4, this is erroneously transcribed as "…a copy of the hearings, damage report. . ." .

(3) The Board Letter of June 12, 1997 to Petitioner, giving Notice of non-renewal of the license, admitted without objection as PLCB Exhibit 3. R. 6.

(4) The Board's Opinion and Order with Findings of Fact dated June 12, 1997, admitted without objection as PLCB Exhibit 4. R. 6, 7.

(5) The Board's November 20, 1996 Opinion affirming the decision of Administrative Law Judge Daniel T. Flaherty, sustaining the citation and imposing a fine against Petitioner under PLCB Citation No. 95-2464, finding that Licensee Adams engaged in disorderly conduct on the licensed premises on September 7, 1995, admitted as PLCB Exhibit 5, without objection. R. 7.

Testimony presented by Licensee Adams was substantially the same as presented to the Board (discussed *supra*), with the exception that added information was provided regarding renovation efforts undertaken inside the licensed premises in order to facilitate viewing of the premises by the owners and/or employees and assist in the prevention of illegal activities. R. 61-62.

Mayor Cappelli's testimony notably included an acknowledgment that the July, 1996 meeting, to which Licensee Adams testified, had indeed occurred and that the existence of the tapes, as Adams had testified to the Board, was known as of that date to City officials and members of the District Attorney=s Office. R. 8-9; 13. He also testified the City Police Department, prior to the July 1996 meeting, received and reviewed tapes from the Licensee's video camera, but he had no knowledge as to any receipt of or review of tapes after that meeting by the City Police. Further, he did know if the District Attorney's office had ever utilized the tapes. R. 21. He stated he did not meet again with the Licensees after that

meeting, but that he did phone Licensee Floyd once or twice Aregarding the progress that was being made.@ ***Ibid*** He stated that the ongoing lawsuit filed against the City and other officials by Adams was a Abone of contention@ and a Apoint of exasperation,@ suggesting that the City was reluctant to avail itself of any potential assistance from the Licensees to combat drug activities because of this friction. R. 15. His testimony further supported the existence of a significant drug problem in the area of the licensed premises existing well before the opening of the Avalon Lounge, and that the City=s successful efforts at closing down another pool hall/arcade in the same area had resulted in a significant reduction in narcotics related activities. R. 17-18.

Discussion

This Court finds the credible evidence before it upholds Conclusions of Law 3 and 4 as set forth in the Board=s Opinion and Order of June 12, 1997. They are:

> 3. The Licensee has abused the privilege of holding a liquor license because of Citation Nos. 94-0327 and 95-2464 and Ms. Adams= subsequent arrest in 1996. These incidents would in and of themselves be a basis for refusing to renew the liquor license in question.
>
> 4. There has been a pattern of drug activity on the licensed premises which Licensee [here, "Petitioner"] knew or should have known about, for which it failed to take substantial steps to prevent. This pattern of activity along with the citation history and other incidents is sufficient basis for the Board to refuse to renew Liquor License No. R-13222 for the term effective September 1, 1996.

In determining whether to grant or refuse renewal of the license, this Court will separately discuss the issues relating to the conduct of Licensee Jerilyne Adams and the issue of Petitioner's steps to deal with the pattern of illegal drug activity, which permeated its premises in 1995 and 1996.

1. <u>The Conduct of Licensee Adams</u>

The Board entered two adjudications of violations of the Liquor Code by Petitioner as follows: Citation No. 94-0327, entered January 11, 1995, relating to employing a known criminal or person of ill repute and/or permitting a known criminal or person of ill repute to frequent the licensed premises on December 18, 1993 and January 16, 1994; and, Citation No. 95-2464, entered on July 15, 1996, relating to Licensee Jerilyne Adams= disorderly conduct conviction regarding an incident on the licensed premises which occurred September 7, 1995. In this regard, the Board unequivocally found that Petitioner had abused the privilege of holding a liquor license solely on the basis of the violations as reflected in these two citations, taken together with Ms. Adams= subsequent arrest for disorderly conduct in 1996. *See*, Board=s Conclusion of Law No. 3, Opinion and Order of June 12, 1997, p. 14. This Court agrees, based upon its own analysis of the testimony.

Regarding this first basis for refusal of the renewal of the license, the central issue is whether the two PLCB citations constitute legally sufficient grounds for the decision not to renew the license.

The law of Pennsylvania is such that the Court may base its decision to refuse renewal of a liquor license upon Petitioner's having committed a single violation of the Liquor Code. The Pennsylvania Commonwealth Court specifically stated, in the case of ***Hyland***

Enterprises, Inc. v. Pennsylvania Liquor Control Board, 158 Pa. Cmwlth. 283, 631 A.2d 789 (1993):

> This court has held that even a single Code violation can be sufficient grounds to revoke a license. ***Slovak-American Citizens Club v. Pennsylvania Liquor Control Board***, 120 Pa. Cmwlth. 528, 549 A.2d 251, 1988). Although ***Slovak-American Citizens Club*** involved revocation proceedings under section 471 of the Code, 47 P.S. section 4-471, rather than section 470 of the Code, the Board=s discretion is nonetheless similar under those two sections [footnote omitted].

Id., 631 A.2d at 791. In ***Slovak-American,*** the Commonwealth Court held that the Board=s Arevocation determination is legally sound solely upon the basis of citation no. 1526 [involving selling alcoholic beverages to non-members].@ ***Slovak-American***, 549 A.2d at 256.

In the instant case, there have been two PLCB adjudications against Petitioner separate and apart from the disorderly conduct criminal (summary offense) charge of August 5, 1996, which at the time of the Board proceeding in November 1996 was pending final determination. (The proceedings involving this charge are set forth in footnote 6, supra).

As previously discussed, the first adjudication involved a violation of the Liquor Code, when Petitioner employed a known criminal, Stephen Floyd, nephew of corporate shareholder Jerilyne Adams and brother of the other shareholder, Robert Floyd. R. 89. Under the ***Slovak-American*** decision as refined by ***Hyland Enterprises, Inc.***, this single violation of the Liquor Code could constitute sufficient grounds for the Board=s decision to refuse to renew the license. *See,* PLCB Exhibit 1, p. 000411.

The second violation was based upon Licensee Adams= conduct on September 7, 1995. This Court finds that the evidence before the Board established an appropriate basis for the conclusion that Ms. Adams= conduct, which led to her arrest, justifies non-renewal of the

license. A summary of the evidence upon which the Board found that Ms. Adams engaged in disorderly conduct at or near the licensed premises, charged in PLCB Citation No. 95-2464, as follows:

Under this Citation, originally adjudicated by Administrative Law Judge Flaherty, Licensee was found to have employed a known criminal or person of ill repute and/or permitted a known criminal or person of ill repute to frequent the licensed premises on December 18, 1993 and January 16, 1994. PLCB Exhibit 1, pp. 000084-000093. As appropriately stated by Judge Flaherty:

> In the case before us, Steven Floyd, nephew of "Licensee's" principle corporate officer was employed in 1994. He had been convicted of theft in July 1987; burglary in December of 1987, harassment in May of 1992 and simple assault in January of 1994.
>
> Had Floyd's criminal activity ceased with the convictions occurring in 1987, I would have been inclined to conclude that he would no longer be considered a known criminal. Further, had Floyd's criminal record consisted solely of the harassment charge in 1992 and the assault charge in 1994, a strong argument could be made that this conduct alone did not render him a known criminal. However, when his convictions in 1992 and 1994 are coupled with the earlier ones, a continuing pattern of behavior becomes apparent, which establishes that Floyd falls within the definition of a known criminal.
>
> The record indicates that Floyd was the nephew of "Licensee's" corporate officer who knew of his earlier convictions but was not aware of those in 1992 and 1994. Unfortunately, her lack of knowledge will not provide her with a defense. As the Supreme Court of Pennsylvania indicated in TLK, Inc. (supra), a violation of the Liquor Code or its attendant laws or regulations places a liquor license in jeopardy on the basis of strict liability, i.e., a license may be suspended or revoked for such violation regardless of whether the licensee knew or should have known of the misconduct.

> For the reasons indicated, I conclude that the Bureau of Enforcement has established a violation as charged in Count No. 2 of the citation, and that count will be sustained.

Id. at 000091.

Ms. Adams testified before this Court that Petitioner had employed her nephew in 1993, before the bar actually opened for business. R. 89, 109. He remained an employee until the end of January or February 1994, at a time after the PLCB citation for his employment had been received and Ms. Adams started to prepare to oppose the citation. R. 90. Ms. Adams claims that when she received the citation, she didn't know to whom the citation referred as the person of ill repute or criminal record employed by the bar until she was getting ready for the hearing; she then learned that it was her nephew, Steven Floyd. ***Ibid.*** Ms. Adams denied knowledge of Mr. Floyd's criminal convictions to this Court, as she had at the time of the citation hearing before ALJ Flaherty. Ms. Adams testified (on cross-examination before this Court) as follows:

> A. No. See what happened I lived in California and I didn't know, I believe—actually I believe his violation was in '85, like the end of '85. By the time you go to Court and so forth and get sentenced it was some time in '86 or '87. When I arrived here in '93, I didn't know anything about his, what he had done when I wasn't here. Steven's like a jack of all trades and he did some much of the remodeling things that it's a family business, he needed a job, I gave him a job. I didn't know that he had a record.
>
> Q. You didn't look into his record? You didn't ask him about his background?
>
> A. No, because he was family and I really didn't think about it, to be honest about it.

R. 109.

Mr. Robert Floyd testified before this Court, but was not asked at that time whether he too was unaware of Steven Floyd's criminal record. Additionally, the record is not clear as to the relationship of Robert Floyd to Steven Floyd. A question by Petitioner's counsel suggests Steven Floyd is Robert Floyd's brother (R. 89), but as Robert Floyd and Jerilyne Floyd are brother and sister it would appear that Steven, the nephew of Jerilyne, is either the nephew of or the son of Robert. Regardless of the exact relationship, there is nothing in the record to explain why Robert Floyd did not know of Steven Floyd's criminal history.

This Court finds, as did ALJ Flaherty, that Petitioner clearly knowingly employed a know criminal. Upon observing the testimony of Ms. Adams and giving consideration to all the circumstances surrounding her decision to employ her nephew, this Court finds her testimony of being unaware of her nephew's criminal record and activities to be not credible. In fact, contrary to ALJ Flaherty's determination that Ms. Adams was not aware of Steven Floyd's 1992 and 1994 criminal behavior, this Court believes Petitioner was aware of the background of Steven Floyd.

Ms. Adams asserts at various times the closeness of her family and that this establishment is a family business. R. 47, 48, 109. She came home from California to meet and be with family, including her mother (Steven Floyd's grandmother) and brother, perhaps as often as once per year but at least in 1986, 1988, 1989 and 1990. R. 47, 48. The conviction of Steven Floyd occurred on January 12, 1994,[12] yet Petitioner took no action to terminate his employment until after the citation was received, which citation was at least in part because the Board had learned

[12] As set forth in the Court record of Lycoming County Court of Common Pleas, #93-10,797, Criminal Division. As verified during Petitioner's January 1994 conviction on Citation No. 99-00,327, Steven Floyd was convicted by a jury of Simple Assault on January 12, 1994, for an incident occurring on May 31, 1993, on which date he was arrested and jailed until he posted bail on June 2, 1993.

of this conviction. The Licensee employs only five employees, including the two 50% owners, Robert Floyd and Jerilyne Adams, all who are like family. R. 82. Ms. Adams testified she knew Steven Floyd, he was family and therefore she didn't check into his record or ask him about his background. R. 109. She asserted, "No, because he was family and I really didn't think about it, to be honest about it." ***Ibid***. This Court finds Ms. Adams did not have to inquire as to Steven Floyd's criminal record because she already knew. The general awareness that would exist in the Williamsport community of a conviction of the nature of the January 12, 1994 incident was one which Petitioner knew of, yet no action was taken to discharge Steven Floyd.

Given the close family relationship of Petitioner's ownership, its limited number of employees, the relationship of Steven Floyd to the two principals of Petitioner, this Court believes Petitioner knew of all of the convictions of Steven Floyd. The testimony to the contrary is not credible. It is particularly incredulous that, upon receiving the citation, Ms. Adams called the Board demanding to know the identity of the undesirable employee. R. 90. This Court thinks the lady protested too much.

The second PLCB Citation upon which the Board based its refusal to renew the License was No. 95-2464, in which the Board found that Ms. Adams engaged in disorderly conduct at or near the licensed premises on September 7, 1995. A summary of the evidence upon which PLCB Citation No. 95-2464 was determined has been previously set forth, *supra*, in the Summary of Evidence presented to the Hearing Examiner.

In sustaining the PLCB adjudication against Licensee Adams, Administrative Law Judge Daniel T. Flaherty, Jr. stated:

> Her obscene language and unseemly behavior clearly made a situation which was, for the law enforcement officers, an extremely dangerous one even more volatile and dangerous. The officers were clearly in a public portion of the licensed premises with every right to be there. The fact that one (1) of the officers had a gun drawn in an effort to have it available if necessary during the course of the felony arrest was legitimate. Under these circumstances, the behavior of Ms. Adams was inexcusable.

Adjudication, July 15, 1996; PLCB Exhibit 1, p. 0000418. These Findings of Fact by Administrative law Judge Daniel T. Flaherty, dated July 15, 1996, are part of the evidence admitted before this Court without objection. PLCB Exhibit 1; R. 4. This Court accepts those findings. This Court also agrees that the learned ALJ=s evaluation of Licensee Adams was accurate and is justified by the testimony that was presented to him, amplified by that presented to this Court.

A somewhat similar factual scenario can be found in the case of: ***In Re: A-J-C, Inc.,*** 401 A.2d 421 (Pa.Cmwlth. 1979), in which the Pennsylvania Commonwealth Court had the occasion to consider the sufficiency of evidence supporting the Board=s revocation of the appellant=s license based upon proof of two charges: one concerning the noisy and disorderly conduct between the Licensee and his wife which also involved a scuffle between the Licensee and two police officers in the establishment, and also the Licensees' plea of *nolo contendere* to a charge of aggravated assault. The appellant there argued that the trial court had erred in upholding the revocation of its license because "proof of an isolated incidence of noisy and disorderly conduct is an insufficient ground upon which to base the revocation." ***Id.*** at 584.

The Commonwealth Court disagreed. The following narrative, taken from the opinion of the trial court, describes the facts surrounding the charge of disorderly conduct:

> '[O]n the evening of February 22, 1975, at about 10:40 p.m. officer Thomas Bennis and Officer Laurence Dugan of the Allentown Police were summoned to the licensee=s premises. As the officers entered the tavern they were met by the appellant who, using abusive language, told them they weren=t wanted at his establishment. It soon became apparent that the officers had entered upon a domestic squabble between the appellant and his wife, whom the officers found standing along side the bar with blood on the right side of her head. The appellant, described by Officer Bennis as >disheveled,= >belligerent,= and >repeating himself,= continued his invective against the policemen for approximately ten minutes when he said >I don=t want you f____ creeps in here.= At this point Officer Bennis attempted to arrest the appellant for disorderly conduct and public drunkenness. The appellant resisted, and a scuffle ensued during which the appellant attempted to strike Officer Bennis with a chair but was prevented from doing so by a patron; the appellant received a head wound when Officer Bennis struck him with a flashlight. During this incident there were approximately fifteen patrons in the dimly-lighted bar.'

Id., at 422. Upon this factual recitation and relying upon the case of ***Ciro's Lounge***, 42 Pa. Cmwlth. 589, 358 A.2d 141, 1976), the Commonwealth Court held:

> We believe that this noisy and disorderly conduct could be described as 'of a relatively continuous nature causing disturbance and effrontery to the public welfare, peace and morals. . . .'

Ibid.

Although Ms. Adams= conduct did not involve attempted physical violence against a police officer, it is clear that the nature of the disturbance and the affront to the public welfare, peace and morals provided a sufficient basis for denying the renewal of the license. Taking their lead from Ms. Adams, the patrons began to join Ms. Adams in the verbal abuse and one patron actually approached an Officer. When the Officers left the premises, as Ms.

Adams followed them out, continuing to make remarks, her yelled profanities attracted a crowd of people and approximately twenty (20) to thirty (30) people began to converge upon the Officers. Ms. Adams was then arrested and charged with three (3) counts of misdemeanor Disorderly Conduct. Ms. Adams ultimately pled *nolo contendere* to one count of summary disorderly conduct

In addition to these two substantial Board citation offenses, this Court also has to consider the conduct of Jerilyne Adams, which occurred on August 5, 1996. Officer McKenna's testimony before the Board (*see* previous discussion, *supra*) sufficiently describes a second incident where Ms. Adams engaged in disorderly conduct on or near the licensed premises and also consists of a second incident wherein Ms. Adams yet again confronted a police officer engaged in a narcotics investigation. On August 5, 1996, police sent a confidential informant into the Avalon Lounge to purchase cocaine from a suspected drug dealer. After the purchase was made and the dealer emerged from the bar, the officers took him into custody, across the street from the bar. Shortly before the arrest occurred, however, one Officer had observed the suspect go around the east side of the bar before crossing the street, where he apparently placed something or removed something from the corner of the establishment. After the arrest, the Officer crossed the street towards the bar to see if the suspect had left anything in the area near the building where he had been observed. Ms. Adams then chose to involve herself in the situation by following the Officer into the adjacent alley, swearing at the Officer and denying any drug deal happened in her bar. PLCB Exhibit 1, pp. 10-11. Ms. Adams refused to stop shouting at the Officer and return to the bar as he ordered her to do. A crowd began to gather, although luckily they did not follow Ms. Adams and the

Officer into the alley. The Officer completed his search and then placed Ms. Adams under arrest for Summary Disorderly Conduct. Ms. Adams was found guilty at the District Justice level. She appealed to the trial court. By Order of Court dated July 23, 1997, filed to Lycoming County Court of Common Pleas docket number 96-11,613, Ms. Adams was found guilty and sentenced. She then appealed to the Superior Court, which affirmed the trial court's decision on July 15, 1998. ***Commonwealth of Pennsylvania v. Jerilyne D. Adams***, No. 791 Harrisburg 1997.

Petitioner asserts the Board previously renewed Petitioner's license although aware of the two violations adjudicated by the Board citations. Petitioner's Brief pp. 14-15. Petitioner argues: "Clearly, the cases mandate that a violation and/or citation occur within the preceding renewal period." ***Id***. at 15. Curiously, Petitioner offers no cases to support this contention. Petitioner argues that a determination by the Board or this Court that these two citations can now constitute an independent basis for non-renewal, in light of the prior renewals, "begs logic and is contrary to case law. With all due respect to the PLCB and the lower Court, the decision is clearly result oriented." ***Ibid.***

Renewals of liquor licenses are obtained on a yearly basis. This renewal application was filed July 11, 1996 for a license year beginning in September 1997. The Board's denial was filed June 12, 1997. Although petitioner did not provide the Court with the prior date of renewal; we will assume, *arguendo that* it was in July or August 1995. The conduct pursuant to Citation No. 94-0327, employing a known criminal, was for conduct observed on December 18, 1993 and January 16, 1994. Arguably, the Board may have had awareness of this violation before granting the prior 1995 renewal. However, Citation No. 95-

2464 involved Ms. Adams' disorderly conduct September 7, 1995. The subsequent Board adjudication did not occur until July 15, 1996. It is unlikely the acts relevant to this second Board citation were available for consideration by the Board prior to its decision regarding the 1995 renewal application.[13]

The discretion of this Court in determining whether to renew the license cannot be exercised in a vacuum, but rather utilizes a comprehensive evaluation of Petitioner=s fitness as a holder of the privilege, weighing the various citations against the backdrop of the entire history of the establishment=s track record of operation. Petitioner argues that because the Board did not exercise its discretion to revoke the license immediately after the first violation (choosing to renew in 1995) nor singularly revoke based upon the second violation (renewing in 1996), this Court is somehow estopped from considering those violations in their totality in making the instant decision. The exercise of the Court=s discretion (and the Board's) is not a math quiz, a matter of numbers, or a *quid pro quo* retributive exercise, but rather represents a complex exercise of judgment regarding whether a licensee has abused the privilege the Commonwealth has granted it to engage in an activity of high public concern and regulation. *See, **Hyland,** supra,* 631 A.2d at 792 (A[t]his Court has held that the Board can consider all of a Licensee=s past Code violations regardless of when the violations occurred@) (citation omitted).

Petitioner provided this Court with the case of ***Commonwealth v. Hock***, 728 A.2d 943 (Pa. 1999). ***Hock*** held that a defendant's arrest for disorderly conduct was unlawful when the defendant made a single profane remark to a police officer in a normal tone of voice, audible only to the police officer. ***Hock*** does not justify a holding that Ms. Adams was

[13] *See* Opinion and Order of June 30, 1998, pp. 15-16.

unlawfully arrested for disorderly conduct on either the August 5, 1996 or the September 7, 1995 occasions. On both occasions, she persisted in yelling a series of profane abuse at the police officers, which were in fact overheard and observed by many, particularly patrons, with the intention of discrediting the police.

It is also of no merit that Ms. Adams pled no contest to the September 5, 1995 incident, rather than to fully admit her actions that were the basis of the criminal court conviction. In ***Krystal Jeep Eagle v. Bureau of Professional Affairs***, 725 A.2d 846 (Pa.Cmwlth. 1999), a petitioner appealed a decision by the Board of Vehicle Manufacturers, Dealers and Salespersons, upheld by the trial court, which revoked an automobile dealership license after the petitioner pled *nolo contendere* to a charge of theft by deception. The plea was negotiated by a trustee-in-bankruptcy; as part of the plea agreement the petitioner dealership was substituted as defendant in place of the licensee, Harry C. Pappas. The licensee contended the plea was entered over his strenuous objection; he wanted instead to have his day in court to clear his name. *Id.* at 848. Therefore, argued the licensee, the *nolo contendere* plea did not constitute a violation of the Act, which resulted in the revocation. On appeal, the Commonwealth Court stated:

> This argument amounts to nothing more than an impermissible collateral attack on a criminal conviction in a subsequent civil proceeding. The Vehicle Board was bound by Petitioner's plea to the underlying criminal conviction given the well settled rule that said convictions may not be challenged in subsequent civil license suspension proceedings. Trustee, not Pappas, had the authority to enter into the plea agreement on behalf of Petitioner. Petitioner may not now present mitigating evidence in an effort to explain away the nolo contendere plea, and we therefore, decline

> Petitioner's invitation to re-examine this conviction in the context of this civil proceeding.

Id. at 850 (citation omitted). Similarly, **in *State Dental Council and Examining Board v. Friedman***, 367 A.2d 363 (Pa.Cmwlth. 1976), a dentist pled *nolo contendere* to mail fraud and his license to practice dentistry was suspended for three months as a result of the plea. The dentist appealed; the Commonwealth Court affirmed the decision. The appellate Court framed the issue as a question of first impression involving the use of a *nolo contendere* plea in a subsequent administrative proceeding. The Court noted that a guilty plea is conclusive in subsequent civil cases concerning the same act, while a plea of *nolo contendere*, when accompanied by a protestation of innocence, does not preclude a defendant in a civil action from contesting the facts charged in the indictment. Further, the Court noted that case law supports the exclusion of *nolo contendere* pleas in subsequent civil actions to vindicate individual rights. Nevertheless, the Court continued:

> However, we are not here dealing with a civil suit to enforce individual rights. Rather, we are dealing with an administrative agency of the sovereign, which seeks to carry out its duty to protect the citizens of the Commonwealth by regulating the conduct of its licensees. It is the interests of many rather than the interest of few which impels the Board…

Id. at 366. The Court determined that a *nolo contendere* plea is properly considered in a subsequent licensing case. Accordingly, Ms. Adams' *nolo contendere* plea is appropriately considered in this case.

Thus, the Court bases the ruling on the instant appeal, in part, upon its belief that this Court (as well as the Board) properly concluded the license should not be renewed on the

basis of the actions of the Licensee, Ms. Adams, as determined in the two Board citations and her actions on September 7, 1995.

2. ***Licensees' Steps to Prevent Illegal Drug Activity on its Premises.***

This Court also agrees with the Board that an alternate basis and/or cumulative basis for denial of the renewal of the liquor license arises from "a pattern of drug activity on the licensed premises which Licensee knew or should have known about, for which it failed to take substantial steps to prevent." Board=s Conclusion of Law, No. 4. The testimony presented to the Board, establishing a pattern of illegal drug activity near and on the premises was unrebutted before the Board. This Court received no contrary evidence respecting the series of illegal drug transactions occurring on or involving the licensed premises, which have been summarized above. Petitioner does not seriously contest the appropriateness of a finding that such a pattern existed, but rather its argument relates to the sufficiency of its efforts taken to prevent that activity. Specifically, Petitioner argues that creating a barred patron list, changing the interior design, putting up signs and outside lights and most significantly installing video surveillance cameras and recording equipment, coupled with cooperation by Petitioner with law enforcement efforts to curb illegal drug activity, constituted measures which were "substantial" steps taken toward preventing drug activity on the premises. As to cooperation, Petitioner asserts it provided accessibility by the Williamsport Police Department to its surveillance camera video tapes the police anti-drug enforcement efforts. The Licensee also argues that it has always cooperated with the police in its efforts to deal with the drug problem in the area.

As noted above, the parties really do not take issue with the finding of the Board that the evidence presented substantiates a finding of a pattern of illegal drug activity in and

around the premises, essentially during the entire duration of its existence since November of 1993. Indeed the testimony of Officer McKenna and Detective Prough regarding the dates and circumstances of various controlled drug buys on the premises and other uncontested evidence clearly establish the regular occurrence of drug activity on the premises or closely connected to activities carried out on the premises. Similarly, the incidents of September 7, 1995 and August 5, 1996, involving Licensee Adams' arrests, were related to illegal drug transactions by Petitioner's patrons or those frequenting the premises. Licensee Adams chose to have direct and personal involvement with these two drug related incidents.

Lycoming County Detective Todd Prough testified that a drug-related arrest occurred in the bar. PLCB Exhibit 1, pp. 33-34. Asked if any owners or staff were present, the detective indicated a person seated in the courtroom in a green blazer whom he thought was named "Betty." ***Id***. at 34. Unfortunately, this was not clarified for the record. The Index to Witnesses reveals only two female witnesses: Jerilyne Adams and bar manager Patricia Knull. ***Id.*** at 2. Ms. Knull testified she witnessed the arrest Detective Prough had described. ***Id***. at 82. She observed "suspected" police officers physically arrest two individuals. ***Id***. at 85. Ms. Knull was asked: "What do the employees' rules say about drug usage if you observe drug usage?" She replied:

> Well, first of all the camera is on. My brother's instructed me how to work the camera. Like if it would be an area there is a button that would take off the quad and make the whole screen pick up the picture so it would be better. Basically to - - usually if I'm there in the daytime my brother's usually there. We *usually* try to - - if we would see something like that we would try to - - as a matter of the fact the day that that happened I did have the camera on because I was alert that something wasn't very kosher. And I do believe my brother turned that tape over.

Id. at 97-98 (emphasis added). The questioning continued:

> Q. Okay. You believe that tape was subsequently turned over?
>
> A. Yes, I know it was.
>
> Q. All right.
>
> A. *And that's why we taped it*.

Id. at 98 (emphasis added). Finally, Ms. Adams testified that, although she never actually saw a drug deal, she had seen "suspicious activity." ***Id***. at 130.

Therefore, regardless whether either owner ever actually *witnessed* a drug deal in their bar, based upon the testimony of Detective Prough, Officer McKenna, Ms. Knull and even Ms. Adams, coupled with the steps taken to curb drug activity, as alleged by Petitioner, this Court finds it impossible to accept the owners were oblivious to the fact that drug activity was occurring in their establishment. The testimony from Licensee Adams regarding a general awareness of the Abad neighborhood@ in which the establishment was located, the negative effect of big city influences, and the drug problem in general in the City of Williamsport (*see, e.g.*, PLCB Exhibit 1, pp. 133-34; R. 50-54), buttresses the conclusion of this Court that the nature and extent of the pattern of illegal activity was such that Petitioner knew or should have known about its existence. The question, therefore, is whether substantial steps were taken to prevent that activity.

The evidence presented establishes Petitioner's owners knew or should have known about the covert illegal activities, i.e., the drug sales, occurring in the bar. Accordingly, we must decide whether Petitioner took substantial steps to prevent the illegal drug activity. ***Rosing, Inc. v. Liquor Control Board***, 690 A.2d 758 (Pa.Cmwlth. 1997). We are mindful that

some of the steps which Petitioner alleges were taken are similar to those in ***Rosing, Inc***.; namely, installation of exterior spotlights, use of a metal detector and posting of signs prohibiting the sale of drugs anywhere near the premises. ***Id***. at 762. However, in ***Rosing*** the owners also hired a doorman and later an armed security guard and kept all entrances locked; an entryway buzzer was installed. ***Ibid***. Most significantly, one owner testified she contacted the police to request they come and "clean up" people loitering outside of the premises. ***Ibid***. The ***Rosing*** Court found that failure to contact police on particular occasions cannot rationally support a finding that the licensees failed to contact or help police; any lack of cooperation was the fault of the police, not licensee. ***Ibid***. Here, unlike ***Rosing***, Ms. Adams asserted her willingness to cooperate with the police. The Court has found that the record before us does not support this contention.

On this issue, as noted in the Board=s Opinion, there was a "conflict in the testimony" offered to the Board. Petitioner indicated through its witnesses that it took such steps as using surveillance cameras and making itself available and helpful to the police. Letters were introduced from Petitioner=s counsel to Williamsport=s Police Chief in support of its position that it was cooperative with the police. Signs were posted inside the bar warning that drug activity would not be tolerated. A list of Abarred@ patrons of the bar was submitted, together with evidence to the effect that the bar actively undertook to exclude persons who engaged in illegal drug activity. One such person was excluded from the bar on Licensee Floyd=s learning in the newspaper that he had been charged with drug offenses, even though the alleged conduct did not occur at the Avalon Lounge. Licensee Adams testified that she personally would take anyone suspected of illegal drug activity to the back room and privately

instruct them to leave or she would call the police. PLCB Exhibit 1, p. 130. She also testified she attempted to enlist the help of the District Attorney and set up a meeting in July 1996 with the detective from that office, the Mayor, the Chief of Police, her mother (Ann Floyd) and co-Licensee Robert Floyd to promote an anti-drug program. ***Id***. at 131-133. At that meeting, Petitioner agreed to provide the police access to its video surveillance tapes and to permit the police to place undercover investigators on the premises. ***Id***. at 133. Conversely, as previously summarized, the Board heard evidence of Petitioner's noncooperation with police investigations, including letters from the police to Petitioner's counsel. ***Id***. at 80, referencing Exhibit L-2. The Board heard evidence from police investigators, specifically Officer McKenna, that he was unaware of the availability of the surveillance camera accessibility when he did his investigation of August 6, 1996. ***Id***. at 18.

The Board found ". . . the officers more credible." PLCB Exhibit 4 at p. 12. The Board, having resolved the conflict in the testimony against Petitioner, also found

> . . .(T)he Licensee had not originally attempted to cooperate with the police, but has been in an antagonistic relationship with the police on this matter. . .whatever cooperation the licensee now claims it will engage is of recent origin and is not substantial in nature. . .while there are surveillance cameras on now at the premises, they are of recent origin and such videotapes are not available to the police. . .the cameras themselves are not a substantial step to prevent the illegal activity.

Id. at pp. 12, 13.

The additional evidence offered to this Court, and not offered to the Board, would include testimony of Licensee Adams regarding a renovation of the interior of the establishment to remove sight obstructions and facilitate the employees= observation of the activity of patrons of the bar. *See,* R. 61-62. The additional testimony of Mayor Cappelli was

also offered to this Court, and the Court found that testimony credible. *See,* R. 7-22. It tended to prove that the Mayor did have knowledge of the existence of the taping system and the availability of tapes to his police force as early as six months prior to the July, 1996 meeting, attended by the Mayor, Licensees Adams and Floyd, Chief of Police William Miller and Detective Schriner of the Lycoming County District Attorney=s Office.

Petitioner contends substantial steps were taken to address the illegal drug activity occurring within the establishment, pursuant to ***Rosing, Inc***., *supra*, and thus Petitioner should not be held liable for those activities. Petitioner points to the additional testimony of Licensee Jerilyne Adams presented to this Court, regarding renovation of the bar to reduce criminal activity and installation of a video camera with recording capability, coupled with letters from the Williamsport Bureau of Police indicating Petitioner was cooperative. Petitioner also relies upon the testimony of Williamsport Mayor Steven Cappelli, which supported Ms. Adams' testimony with respect to the surveillance video camera, and the fact that Petitioner had offered the tapes made by the surveillance camera to the Williamsport Police Department for their investigative use. The Court must find, however, that the additional testimony of Mayor Cappelli does not change the substantial character of the evidence presented to the Board for purposes of this Court=s appellate review, nor does it compel this Court to reach a different conclusion than did the Board. The case law is clear that it is immaterial that the actual witnesses differ, if the testimony offered is Asubstantially the same.@ ***Beach Lake United Methodist Church v. PLCB,*** 558 A.2d 611, 614 (Pa.Cmwlth. 1989). In this case, the Mayor=s testimony substantially mirrors and supports the testimony of Licensee Adams that the City was aware of and had access to the tapes. Mayor Cappelli=s testimony may, in all candor, have

a greater weight than the Licensees' in establishing that the video tapes were available to law enforcement, but the testimony of the Mayor acknowledged reticence of City officials to utilize those resources, given the awareness of an ongoing lawsuit which had been filed by Licensee Adams against the City of Williamsport, the Police Department and the District Attorney=s Office. R. 14.

Nonetheless, this Court reaches the same conclusions as did the Board on the issues. This Court finds that the additional evidence presented is not of such significance that this Court could find differently and in favor of Petitioner on the issue of whether substantial steps were taken to prevent the illegal drug activity.

The only aspect of the Board=s Opinion which this Court could possibly find facially incorrect is its statement that:

> ...the Board finds that while there are surveillance cameras now at the premises, they are of recent origin and such videotapes are not accessible to the police. This lack of timeliness and accessibility means that the cameras themselves are not a substantial step to prevent the illegal activity.

PLCB Exhibit 4, p. 13. The Court finds that there is an ambiguity in the Board=s statement that the measures were of "recent origin." Petitioner first considered video cameras in 1994 and signs were put up stating the premises were under video surveillance. R. 107. The cameras were installed sometime in 1995. R. 106. This was some two to three years after the bar went into operation in November of 1993. It was also in the months shortly preceding July 1996 that Petitioner offered the use of the cameras to the police. This offer was coupled with continuing difficulties between Petitioner, City officials and the Police over civil litigation matters. It was also after at least three of the drug-related transactions had occurred. Viewed from this

perspective, together with the explicit statement of the Board that it found Licensee Adams lacking in credibility on the issue of cooperation with the police, this Court cannot say that the Board abused its discretion in finding against Petitioner on the issue of cooperation. Though not essential to the Court=s decision, we would also note that this Court similarly found Ms. Adams testimony wholly lacking in credibility. This Court is not convinced that Petitioner installed lights or removed partitions to cooperate with the police in preventing drug activities on or near the licensed premises. For example, Ms. Adams' testimony about the outside security lights was initially presented in a concern about the general nature of the neighborhood and safety of employees putting trash in the alley way. R. 50-54, 60-61.

This Court acknowledges that the testimony concerning partition removal seems to express a desire of Petitioner to prevent illegal activity on its premises. However, there is also testimony that this removal of partitions was part of a $65,000 renovation made before the bar opened, which included the installation of a $6,000 marble floor. R. 81. The fact that this removal generally facilitated the bar increasing its floor space and otherwise was good for business is also confirmed by Petitioner's Exhibits, particularly photograph L-6. *See*, R. 62. The removal of partitions also gave the bar needed storage space. R. 63. Thus, there were reasons, other than cooperating with the police to prevent drug activity behind these improvements.

Petitioner argues it defies logic for this Court to find the testimony of Ms. Adams "wholly lacking in credibility" while finding Mayor Cappelli's testimony credible. Petitioner's Brief p. 13. Petitioner mischaracterizes our finding. We actually said: "In this case, the Mayor's testimony *substantially* mirrors and supports the testimony of Licensee

Adams below *that the City was aware of and had access to the tapes*." Opinion p. 19 (emphasis supplied). That is, Mayor Cappelli's testimony supported the testimony of Ms. Adams with respect to the video camera and tapes. However, we agreed with the Board's finding that Ms. Adams' testimony lacked credibility on the issue of cooperation with the police. ***Ibid***. One need only look to the behavior of Ms. Adams towards police, as set forth in the Opinion at pages 11-14, to understand why the Court would doubt the level of cooperation with law enforcement as claimed by Ms. Adams. The incidents speak volumes with respect to the authenticity of Ms. Adams' sincerity when she professes her desire to work with the police. In ***Rosing***, *supra*, the Pennsylvania Liquor Control Board argued that steps taken by the licensee to curb drug activity were negated by lack of cooperation with the police. The ***Rosing*** Court disagreed, as they found it was the police, not licensee, who were uncooperative. In the instant case, despite Ms. Adams' claims, it is clear the police were not welcome in or near the establishment. It is clear that, in this case, any steps taken to curb drug activity were in fact negated by the actions of Ms. Adams.

Conclusion

This Court has reviewed the record in light of the standard of review as clarified in ***P.L.C.B. v. Richard Craft American Legion,*** *supra***.** Having engaged in a full *de novo* review, we find there is no substantial evidence to support findings that would be contrary to those made by the Board. ***Commonwealth v. Bartosh,*** No. 620 C.D. 1998, decided May 12, 1999, 1999 WL 292206 (Pa.Cmwlth. 1999) (where a trial court modifies a Board decision, the decision must be supported by substantial evidence in the record).

Petitioner's application to renew its liquor license is denied, based upon the two Board Citations, 95-2464 and 94-0322, and the actions of Licensee Jerilyne Adams on August 5, 1996 resulting in her conviction for disorderly conduct. We further find that an independent, alternate rationale for refusing the renewal of the license exists because there was a pattern of illegal drug activities in and around the licensed premises of which Petitioner knew or should have known and that it did not take substantial steps to prevent it.

Findings

Based upon the evidence presented, this Court makes the following relevant findings.

1. Findings of Fact as found by the Pennsylvania Liquor Control Board in its written Opinion of June 11, 1997, PLCB Exhibit No. 4, Findings of Fact Nos. 1-29 inclusive, are adopted by this Court as its Findings.

2. Licensee Jerilyne Adams committed at least two violations of the Liquor Code, resulting in appropriate adjudications against her of two PLCB Citations. Citation Nos. 94-0327 and 95-2464.

3. Licensee Jerilyne Adams also committed the summary law offense of disorderly conduct involving a confrontation with a City of Williamsport Police Officer on September 25, 1996, again engaging in disorderly conduct at or near a licensed premises in violation of the Liquor Code.

4. A pattern of illegal drug activity occurred at, on or near the premises, which activity Petitioner knew or should have known about and which Petitioner failed to take substantial steps to prevent.

Conclusions of Law

The manner in which Petitioner has conducted the licensed establishment constitutes an abuse of licensing privilege and Petitioner is not eligible for renewal of the license. This conclusion is authorized under §470 of the Liquor Code.

This conclusion is based upon any one or all of the following:

a. Appropriate adjudication of PLCB Citation No. 94-0327.

b. Appropriate adjudication of PLCB Citation No. 95-2464.

c. The conviction of Licensee Adams for disorderly conduct for activity on or near the licensed premises, involving confrontation with City of Williamsport Police Officer on the date of September 25, 1996.

d. The existence of a pattern of illegal drug activity on the licensed premises which Petitioner knew or should have known about and for which it failed sufficient substantial steps to prevent.

O R D E R

AND NOW, this 8th day of November 1999, for the above stated reasons, Petitioner's request for the renewal application for the liquor license by R. A. Floyd, Inc., t/a Avalon Lounge, for restaurant and liquor license No. R-13222, for the licensing period effective September 1, 1996 is DENIED. The appeal of the denial for the renewal of the license by the PLCB by its Order dated June 11, 1997 is DISMISSED.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator
Marc F. Lovecchio, Esquire
Michael L. Plumley, Esquire
Deputy Chief Counsel, PLCB
401 Northwest Office Building; Harrisburg, PA 17124-0001
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

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