

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

J.S.E. ENTERPRISES, INC. t/a	:	
J.P.'S SPORTS BAR & GRILL,	:	DOCKET NO. 15-01443
Licensee / Appellant,	:	CIVIL ACTION – LAW
	:	
vs.	:	
	:	
PENNSYLVANIA LIQUOR CONTROL BOARD,	:	
Respondent / Appellee	:	AGENCY APPEAL - PLCB

OPINION AND ORDER

This matter comes before the Court upon a petition for appeal from the Pennsylvania Liquor Control Board (“Board”)’s refusal to renew the liquor license of J.S.E. Enterprises, Inc. t/a J.P.’s Sports Bar & Grill (“Licensee”). For the reasons that follow, this Court overrules the Board’s decision and Orders that the license be renewed.

Findings of Fact

Following a de novo hearing in this matter, this Court makes the following Findings of Fact.

1. On July 6, 2011 the Board approved a Conditional Licensing Agreement (CLA) with the Licensee.
2. On April 11, 2012 the Board, upon request of the Licensee, agreed to modify the CLA.
3. On August 20, 2014 the Board’s Bureau of Licensing (“Licensing”) informed Licensee that it was objecting to the renewal of the license and a hearing on the renewal application would be held before an Administrative Law Judge.
4. The alleged basis by the Licensing was the following:
 - a. Violations of the Liquor Code relative to seven citations;
 - b. One incident of disturbance at or immediately adjacent to the Licensed establishment occurring after October 1, 2012;

- c. Breach of the CLA by failing to comply with the RAMP program; one security person attired so as to be easily identified and meet with the South Williamsport Police Department on a monthly basis.
5. Licensee filed a timely application for the renewal of Restaurant Liquor License. No R-10683 for the period of September 1, 2014 to August 31, 2016.
6. All of the citations issued to Licensee pre-dated the initial CLA. Since the execution of the initial CLA Licensee has not been cited for any violations of the Liquor Code. The latest citation (No. 10-2112) was for amplified music that was audible on the exterior of the premises. This incident occurred August 21, 2010.
7. Since August 21, 2010 Licensee has operated its establishment in compliance with the Liquor Code.
8. On March 9, 2014 an incident occurred down the street from the Licensee's premises.
9. A patron who was argumentative became unruly and was directed to leave the premises. Another person with the patron wanted to take an unfinished pitcher of beer with him was told he could not and the two left the premises.
10. Two other patrons (Chad Hawkins and John Snyder) left the premises shortly thereafter. These two patrons did not know the other two patrons and had not been with them at the premises.
11. About one-half block down the street a shoving match ensued and one person was pushed to the ground and may have hit his head. The incident lasted a couple of minutes and Hawkins and Snyder left. There was no sign of trouble foreshadowing the incident and the parties were not the same group.

12. Security did not observe arguments or interactions between the parties who fought outside later.
13. The South Williamsport police were called and eventually citations for disorderly conduct were issued.
14. The Licensee was contacted by the Police Chief regarding the surveillance video, however since the incident took place down the street, it was not recorded due to its being beyond the range of the cameras.
15. Licensee employed security personnel. They wore issued shirts with the word "Security" on the back of the shirt.
16. When Licensee was informed that this was not visible enough, the security personnel wore the shirts backward until new shirts could be ordered.
17. During the period of the CLA's, Licensee originally contacted the police chief on a monthly basis, after a period of time the contact was with various members of the police department. In August 2014, the contact was again with the chief and a log was maintained.
18. Police Chief Hetner, by correspondence dated November 6, 2014, advised the Board that he did not believe that there was a need to meet monthly with the Licensee.
19. Licensee's list of staff and their RAMP Certification lists under owner/manager, the date trained for Joseph Livorno, July 17, 2012 and August 12, 2014 and server/seller date trained July 6, 2011 and for Amy Harris, the same dates for owner/manager, and October 18, 2013 for server/seller.
20. Licensee received a RAMP Certification on July 20, 2011 and it was renewed August 26, 2014. Certifications are required to be renewed every two (2) years.

21. Livorno was under the impression so long as fifty percent of the employees were certified, the Licensee was in compliance. In addition the manager's server/seller training of October 18, 2013 was sufficient for the two year period.
22. When Livorno discovered the mistaken impression, he and the manager took the next available training offered for this area on August 12, 2014.
23. The RAMP lapse was accidental and the licensee and manager had been certified before the lapse and were recertified later.
24. Many substantive affirmative measures have been taken by Licensee in recent year, including the following measures:
 - a. All servers, managers and licensees RAMP certified;
 - b. Better noise control with locking sound system and vestibule to prevent noise going outside;
 - c. 21 high definition camera security system which can and has been used by local police;
 - d. Utilizes an updated ID scanner with respect to its patrons;
 - e. Uniformed security every night with only one entrance;
 - f. Improved parking lot lights;
 - g. Better relationship with police;
 - h. Reached out to neighbors and provided cell phone for them to report problems;
 - i. Hired liquor consultation for operations.
25. Credible testimony from patrons, including community leaders and law enforcement, established that business was a well-run establishment and not considered a nuisance within the community.

Conclusions of Law

Following a review of the evidence, this Court enters the following conclusions of law.

1. The testimony of Joseph Livorno was credible and reliable.
2. The Licensee accepted responsibility for each citation and concern listed and took steps to ensure violations did not reoccur.
3. The citation history does not demonstrate a pattern of activity that would warrant the non-renewal of the Licensee's license.
4. The evidence indicated that the altercation cited by the Board occurred through no fault of the management or operation of the establishment.
5. Licensee maintains a good relationship with local police and community leaders.
6. Licensee took substantial, immediate and effective measure to ensure these incidents did not reoccur and that any requirements of the CLA were substantially met.
7. The Licensee has demonstrated that it has taken appropriate remedial measures, designed to curtail conduct at or immediately adjacent to the Licensee's licensed premises.
8. The incident immediately adjacent to the licensed establishment in March 2014 does not constitute egregious activity or an abuse of the licensing privilege.
9. The Licensee has not abused the privilege of holding a liquor license.
10. The trial court has broad discretion in conducting its de novo review of the Board's decision. Goodfellas, Inc. v. Pa. Liquor Control Board, 799 A.2d 917, 922 (Pa. Comwlth. 2002); Paey Assocs. v. Pa. Liquor Control Bd., 78 A.3d 1187 (Pa. Comwlth. 2013); Becker's Café, Inc. v. Pa. Liquor Control Bd., 67 A.3d 885 (Pa. Comwlth. 2013).

Discussion

This Court reviewed the evidence de novo as required by the Liquor Code, 47 P.S. §4-464.

“A trial court reviewing a decision of the PLCB not to renew a liquor license may sustain, alter, modify, or amend the PLCB's order.” Crocodile Rock Corp. v. Pa. Liquor Control Bd., 93 A.3d 535 (Pa. Cmwlth. 2014), *citing*, Todd's By The Bridge, Inc. v. Pa. Liquor Control Bd., 74 A.3d 287 (Pa. Cmwlth. 2013); Two Sophia's, Inc. v. Pa. Liquor Control Bd., 799 A.2d 917 (Pa. Cmwlth. 2002). "Under the Liquor Code, renewal of a liquor license is not automatic." Becker's Café, Inc., supra., 67 A.3d at 885 (Pa. Comwlth. 2013)(citation omitted)

Section 470(a.1) of the Liquor Code provides, in pertinent part, that the Board may refuse to renew a license:

(2) if the licensee, . . . [has] one or more adjudicated citations under this or any other license issued by the board or [was] involved in a license whose renewal was objected to by the Bureau of Licensing under this section; [or] . . .

(4) due to the manner in which this or another licensed premises was operated while the licensee, . . . [was] 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 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. 47 P.S. § 4-470(a.1)(2), (4).

"Licensees are held strictly liable for violations of the Liquor Code that occur on the licensed premises." St. Nicholas, 41 A.3d at 958. "Licensees are also held accountable for activity occurring off-premises where there is a causal connection between the licensed premises and the activity." *Id.* (*citing Commonwealth v. Graver*, 461 Pa. 131, 135, 334 A.2d 667, 669 (1975)). A licensee may be held "accountable for non-Liquor Code violations (like those under the Crimes Code), if it can be established that there was a pattern of illegal activity on the licensed premises about which the licensee knew or should have known, and the licensee failed to take substantial steps to prevent such activity." Philly International Bar, Inc. v. Pennsylvania Liquor Control Board, 973 A.2d 1, 3 (Pa. Cmwlth. 2009) (*citing Pennsylvania Liquor Control Board v. TLK, Inc.*, 518 Pa. 500, 502, 544 A.2d 931, 932 (1988)). Becker's Café, Inc., supra., 67 A.3d at 885

“The trial court has the same discretion over liquor license renewal cases as the PLCB.” Paey Assocs., supra, 78 A.3d at 1193, *citing*, U.S.A. Deli, Inc. v. Pennsylvania Liquor Control Bd., 909 A.2d 24 (Pa. Cmwlth. 2006). “The trial court may consider corrective measures taken by a licensee in response to adjudicated citations to determine whether those measures warrant renewal of a liquor license.” Id., *citing*, Goodfellas, Inc. v. Pa. Liquor Control Bd., 921 A.2d 559 (Pa. Cmwlth. 2007). However, there must be some evidence showing that a licensee took steps to quell the cited activities. I.B.P.O.E. of W. Mount Vernon Lodge 151 v. Pa. Liquor Control Bd., 969 A.2d 642 (Pa. Cmwlth. 2009).

In the present case, the Licensee took substantive affirmative measures, as described more fully above, and substantial steps to address the activity occurring on or about the premises and to remedy the citations and concerns of the PLCB. Evidence established that substantial improvements have been made. Local law enforcement, community leaders and public officials provided credible testimonial support that the Licensee provides a well-run establishment. As such, this Court concludes it was an error to refuse to renew the Licensee’s liquor license.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 23rd day of **October, 2015**, for all of the reasons set forth above, and specifically based upon this Court's finding that Mr. Livorno's testimony was credible and pursuant to corrective measures implemented by Mr. Livorno in response to incidents which occurred, this Court **OVERRULES** and therefore **REVERSES** the Board's decision and **ORDERS** the Bureau to renew the Licensee's liquor license for the licensing period effective September 1, 2014, subject to the provisions of the Conditional Licensing Agreement dated July 8, 2011, as modified on April 11, 2012.

BY THE COURT,

October 23, 2015
Date

Richard A. Gray, J.

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