

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Schneller, Save The :
Wayne ACME, :
Petitioners : No. 1853 C.D. 2010
v. :
Submitted: May 27, 2011
Pennsylvania Liquor Control Board, :
Respondent :

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: October 26, 2011

James D. Schneller (Schneller) petitions pro se for review of the August 6, 2010, order of the Pennsylvania Liquor Control Board (Board), which denied Schneller's petition to intervene in proceedings involving an application to transfer a restaurant liquor license to Anthony's Coal Fired Pizza of Wayne, LLC (Anthony's). We affirm.

Anthony's filed an application to transfer restaurant liquor license No. R-19593 from Mariner's Gallery Inn, located in Boothwyn, Pennsylvania, to Anthony's premises at 309 East Lancaster Avenue, Wayne, Pennsylvania. Anthony's planned to operate a full-service Italian restaurant on the premises, with indoor and outdoor seating. The restaurant would be part of a chain of twenty-three similar restaurants that specialize in preparing food in a coal-fired oven. The proposed restaurant was to be located in Wayne Town Center, a strip mall that contains an Acme grocery store, a pharmacy, a bank, and a convenience/gasoline station.

Schneller filed a timely petition to intervene in this matter, purportedly on behalf of himself and other neighborhood residents. In his 34-paragraph petition, Schneller objected to the transfer of the liquor license, asserting, *inter alia*, that the restaurant's location is a family-oriented community shopping area and that the serving of alcohol at the restaurant will ruin the location's character. Schneller also averred that the serving of alcohol at Anthony's will worsen the situation at an already unsafe, congested intersection. Schneller claimed that his individual interests will be harmed in that he travels by foot and bicycle, and he avers that neighboring citizens, including the elderly, families, and the morally inclined, will be deeply affected by the license application. Schneller specifically complained that the outdoor activity at the proposed premises would affect his moral comfort, particularly when he travels to his nearby church.

Petitions to intervene and protests also were filed by Douglas and Kathy Carroll; Mary Ann Linehan; Katherine Holden; John and Ruth Dorfman; Thomas, Cornelia, Moritz, and Richard Walther; Carolyn and Jack Breen; Joseph and Susan Thompson; Gene Maguire; and Annemarie Kuhn Carrasquillo on behalf of Nancy Kuhn. No petition to intervene or protest was filed on behalf of Save The Wayne ACME. The Board's Bureau of Licensing ordered a hearing to address seven specific objections concerning the merits of Anthony's application and the petitions to intervene and protests.

The Board conducted an evidentiary hearing on June 11, 2010. Schneller was the only individual to appear in opposition to the transfer application. Addressing whether Schneller was directly aggrieved by Anthony's liquor license application and had standing to intervene, the Board made the following relevant findings of fact:

38. James Schneller testified that he is a forty (40)-year resident of Wayne, Pennsylvania. Mr. Schneller has shopped at the Wayne Town Center mall since it was built. Mr. Schneller travels primarily by bicycle and on foot and passes by the mall daily or twice daily. The Acme grocery store is located within this mall. [The mall] contains a bank, a pharmacy, a grocery store and a convenience gasoline station. (N.T. 67, 88).

39. Mr. Schneller believes that Radnor Township is apathetic regarding land development and the number of liquor licenses in the downtown district of the Township. He was distressed by the Township's conduct in allowing "our last neighborhood shopping district to go the [way] of catering to outside citizens and folks who aren't in the neighborhood, who aren't in the town proper and who aren't in the Township." (N.T. 89-90).

40. Mr. Schneller utilizes sidewalks in the vicinity of the proposed licensed premises, particularly a sidewalk under a nearby railroad bridge, which is extremely narrow. "Trucks continually have to swerve to the center, and this is a safety issue for me in the daytime. This is a safety issue for me on a quiet Sunday afternoon. Mr. Schneller believes that the use of alcohol in the vicinity will also be an issue. (N.T. 100-101).

41. Mr. Schneller believes that lunch traffic from the proposed licensed premises, which would include people who have been imbibing, will severely affect him because the proposed premises is in proximity to a post office and pharmacy that he frequents. He feels that he would also be harmed while attending his nearby church if there were to be an outdoor operation at the proposed premises, because this operation would affect his "moral comfort." (N.T. 106-107).

42. There is a traffic light at the intersection of Lancaster Avenue and Aberdeen Street, in proximity to the licensed premises, which is quite busy. With the businesses and traffic in this area, Mr. Schneller believes that it is "an

accident waiting to happen. And I don't think that alcohol will help me be comfortable or safe as a citizen in this situation. Whether it be in congested rush hour or before or after." (N.T. 109-111).

43. According to Mr. Schneller, the sidewalk on Aberdeen Avenue is approximately twenty-two (22) inches in width and the underpass is narrow and antiquated. In traversing this area, Mr. Schneller is endangered by typical drivers, which he believes again could be worsened by individuals who have consumed alcohol at the proposed licensed premises. (N.T. 109-110).

44. Mr. Schneller also feels infringed upon by the fact that there will be a constant view of the licensed premises when he traverses from his neighborhood to any other, particularly when he strolls at night to, inter alia, his church. He believes there will be noise from the proposed operation "all the way to a number of car doors slamming until midnight, even without the claims of any rowdiness, things which are inevitable." (N.T. 118).

45. Mr. Schneller reiterated his concerns that he wants to keep his neighborhood as a livable place without the intrusion of outsiders, as it has been for twenty (20) to forty (40) years. He is particularly sensitive to the fact that traffic is inconsiderate because he is on foot and on bicycle frequently. He is affected by insensitive drivers and insensitive people in parking lots. (N.T. 119).

46. Mr. Schneller believes that the proposed licensed premises being located in a shopping center which he described as the last family shopping area in the Township, hurts him. (N.T.121).

47. Mr. Schneller traverses Lancaster Avenue and there are no guards for pedestrians. (N.T. 124).

(Board's Findings of Fact Nos. 38-47.)

The Board determined that Schneller failed to show that the transfer of the liquor license to Anthony's would directly result in legally cognizable injury to him. The Board explained as follows:

Mr. Schneller failed to present evidence that immediate substantial harm will befall him if the application is granted. Mr. Schneller failed to present evidence concerning the specific manner in which the proposed premises will be operated, let alone that such operation would directly result in a legally cognizable injury to him. He presented no specific evidence that Applicant, by reputation, prior or acknowledged business practice, or admission, will serve its patrons to the point of impairment, create hazardous traffic conditions, or conduct a disruptive operation. Mr. Schneller's complaints amount to unsubstantiated fears, or at best, concerns for the general welfare of the community and potentialities of harm, which pursuant to [Tacony Civic Association v. Pennsylvania Liquor Control Board, 668 A.2d 584 (Pa. Cmwlth. 1995)] will not sustain a finding of aggravement.

(Board's decision at 32-33.) In addition, the Board observed that Schneller's concerns about traffic, noise, unsafe driving, and his general aversion to licensed establishments amounted to mere speculation and personal preference. Accordingly, the Board denied Schneller standing to intervene.

The Board next addressed petitions to intervene or protests filed by other individuals. Noting that none of those individuals appeared or testified at the Board's hearing, the Board concluded that it was unable to grant any of them standing as intervenors or protestants. The Board issued numerous findings concerning Anthony's application for the liquor license transfer and concluded that the application would not affect the health, welfare, peace, and morals of the community. Accordingly, the Board approved the transfer.

On appeal to this Court,¹ Schneller contends that the Board erred or abused its discretion by denying him and other individuals standing to intervene. We disagree.

The Board's regulations provide that a person who can demonstrate a direct interest in a liquor license application and who can further demonstrate that a Board decision contrary to the person's direct interest will cause the person to be aggrieved may file a petition to intervene. 40 Pa. Code §17.12(a). A person seeking to intervene must have a substantial interest, that is, there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law. Malt Beverages Distribution Association v. Pennsylvania Liquor Control Board, 965 A.2d 1254, 1261-62 (Pa. Cmwlth. 2009), aff'd, 607 Pa. 560, 8 A.3d 885 (2010). Also, the person's interest must be direct, which means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains. Id. Further, the interest must be immediate and not a remote consequence of the judgment. Id.

Expressions of general concern for the welfare of the community are insufficient to demonstrate the likelihood of immediate harm necessary to confer standing. Tacony Civic Association v. Pennsylvania Liquor Control Board, 668 A.2d 584 (Pa. Cmwlth. 1995). As we stated in Tacony,

[Here], Protestants failed to present any evidence at the PLCB hearing that the grant of a license to Applicant would

¹ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; Malt Beverages Distributors Association v. Pennsylvania Liquor Control Board, 881 A.2d 37 (Pa. Cmwlth. 2005).

directly affect their substantial interests. They merely expressed general concern for the welfare of the community without presenting evidence of specific harmful consequences that would immediately affect them, either personally or in their capacity as community representatives. Thus, Protestants asserted only the potentiality of harm; they have failed to demonstrate the likelihood of immediate harm, as is prescribed by the case law. See Wm. Penn Parking Garage^[2] and Family Style Restaurant.^[3]

Id. at 589.

In this case, in support of his petition to intervene, Schneller expressed general concerns regarding traffic safety; his desire to walk and bicycle without interference from motor vehicle drivers; the proposed establishment's proximity to the post office, pharmacy, and church; his moral comfort and the moral character of the area; his desire to preserve a family shopping area; and his desire to preserve his neighborhood as a livable place free from the intrusion of outsiders. After careful review of the record, we agree with the Board that Schneller's assertions of harm express general concerns for the welfare of the community, are speculative in nature, and are otherwise insufficient to show that Schneller would be directly and substantially harmed by the liquor license transfer. Tacony. Therefore, we conclude that the Board correctly determined that Schneller was not aggrieved and lacked standing to participate in the license transfer proceedings.⁴

² William Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975).

³ Application of Family Style Restaurant, Inc., 503 Pa. 109, 468 A.2d 1088 (1983).

⁴ To the extent that Schneller attempts to raise arguments on behalf of Save The Wayne Acme and other individuals who filed petitions to intervene or protests, we note that Save The Wayne Acme never filed a petition to intervene in the liquor license proceeding; only Schneller's signature appears on the petition to intervene and he did not sign on behalf of any named **(Footnote continued on next page...)**

Accordingly, the Board's order is affirmed.

(continued...)

association. Furthermore, all of the protestors and intervenors filed petitions individually, did not appear at the Board's hearing, and did not appeal to this Court.

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Wayne ACME,	:	
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v.	:	
	:	
Pennsylvania Liquor Control Board,	:	
Respondent	:	

PER CURIAM

ORDER

AND NOW, this 26th day of October, 2011, the August 6, 2010, order of the Pennsylvania Liquor Control Board is affirmed.