

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carl N. German, :
Appellant :
 :
v. : No. 374 C.D. 2009
 : Submitted: January 15, 2010
Pennsylvania Liquor Control Board :
and Latin Quarter Concepts, LLC :

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: April 30, 2010

Carl N. German appeals an order of the Court of Common Pleas of Philadelphia County (trial court) which, following *de novo* review of an order of the Pennsylvania Liquor Control Board (Board), granted the applications filed by Latin Quarter Concepts, LLC for a person-to-person transfer and extension of a restaurant liquor license. Discerning no error in the trial court's decision, we affirm.

The transfer application was made in order to effect a change in ownership of Tinto's Restaurant at 114 South 20th Street, Philadelphia. Tinto's Restaurant has operated for years under Restaurant Liquor License No. R-15664 (License), which license was acquired by its original owner, SCRRC, Inc. Latin Quarter also filed an application for an extension of the License to the neighboring premises at 116 South 20th Street, so that it could enlarge the restaurant. German, who lives near Tinto's Restaurant, filed a protest to the person-to-person transfer application, and the Board's Bureau of Licensing (Bureau) granted him limited intervention in the proceeding on the transfer. German also filed a timely protest

to the License extension application, which was accepted because he resides within 500 feet of Tinto's Restaurant. The Bureau scheduled a hearing on the applications of Latin Quarter and on German's objections thereto.

At the hearing, Charles Acker, a licensing analyst with the Board, testified, first, about the ownership of Latin Quarter, organized as a limited liability company. Its majority owner is Jose Garces, who holds seventy percent of the stock. In addition, James Sorokin holds eleven percent of the stock, and Spinner Family Holdings, LLC, holds nineteen percent of the stock. Spinner Family Holdings, LLC, is owned entirely by Thomas Spinner. SCRRC, Inc. is owned by Luigi Adamo, who serves on the corporation's board of directors and is the corporation's secretary and treasurer. Jose Garces serves as SCRRC, Inc.'s president. Robert Scully has been the manager of Tinto's Restaurant since its founding by SCRRC, Inc.

Acker testified that Tinto's Restaurant was fully operational and in compliance with all relevant Board requirements. Latin Quarter requested an extension of the License so that it could expand Tinto's Restaurant into the first floor and basement of the adjacent building at 116 South 20th Street. The restaurant would continue to operate during normal business hours and would not conduct take-out beer sales. Latin Quarter also planned to build an outside storage area between the buildings. Acker explained that all areas within the extension would be directly adjacent to and accessible from the currently licensed premises. Acker testified that the proposed extension of the License complied with Board requirements.

Acker testified that there was a citation currently pending against Tinto's Restaurant for its improper storage of alcoholic beverages in areas of the

restaurant not covered by the License. Acker also testified that Latin Quarter had failed to submit a financial disclosure affidavit; a current lease for 116 South 20th Street; and an affidavit that the License application had been posted on the property and the dates of the posting. Acker explained that the License would not be transferred from SCRRC, Inc. to Latin Quarter until the foregoing issues were addressed. SCRRC, Inc. paid the fine for the citation on January 24, 2008, and it provided the missing affidavits and lease.

With respect to the qualifications of Latin Quarter for licensure, Acker testified that all of its owners were financially responsible and had passed a background check. Acker testified that Garces, Sorkin and Spinner, who own Latin Quarter, operate another restaurant in Philadelphia that has a liquor license, and that restaurant has operated without incident or citation.

Acker confirmed that Tinto's Restaurant is located within 200 feet of five other licensed establishments, none of which filed a protest. Acker described the neighborhood as approximately ten percent residential and ninety percent commercial. German was the only objector to Latin Quarter's applications.

German testified that he lives on the fifth floor of an apartment building located "about 300 feet or less" from Tinto's Restaurant. Reproduced Record at 209a (R.R. ___). German testified that after SCRRC, Inc. applied for the License in 2005, the Board kept the License in its safekeeping for two years because Tinto's Restaurant was not ready to open when the License was granted.¹

¹ Section 474.1 of the Liquor Code, Act of April 12, 1951, P.L. 90, *as amended*, added by the Act of December 9, 2002, P.L. 1653, 47 P.S. §4-474.1, provides that an establishment that is not operational for fifteen consecutive days must place its liquor license in safekeeping with the Board, where it may remain for up to three years. The license remains valid while in safekeeping; however, operations under the license must cease until the license is returned by the **(Footnote continued on the next page . . .)**

This was improper, according to German, because the License was required to be in use within six months of its grant. German also claimed that Latin Quarter, not SCRRC, Inc., was the true operator of Tinto's Restaurant. German expressed concerns about the reputation of Latin Quarter's principals and questioned the propriety of Garces serving as president of SCRRC, Inc. while he was also a stockholder of Latin Quarter.

German claimed that since the restaurant opened, it has been playing amplified music in violation of a 2005 conditional licensing agreement between SCRRC, Inc. and the Board.² German introduced into evidence pictures of speakers located in the restaurant. However, German admitted that he has never heard music coming from the restaurant while inside his apartment. He also admitted that he has dined at Tinto's Restaurant on two occasions and on neither occasion did he observe any live entertainment. German acknowledged it was he who notified the police that Tinto's Restaurant was improperly storing liquor on the second floor of the building.

Garces testified. He submitted photographs of Tinto's Restaurant and the surrounding area. He stated that lunch is served Monday through Friday and dinner is served every night. The restaurant's operating hours conform with the terms of the 2005 conditional licensing agreement. He explained that the first floor

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Board. *Pennsylvania State Police, Bureau of Liquor Control Enforcement v. D'Angio, Incorporated, T/A/D/B/A Sammy's Hide-A-Way*, 666 A.2d 1114, 1116 (Pa. Cmwlth. 1995).

² The conditional licensing agreement was the result of German's opposition to a prior application to transfer the License to SCRRC, Inc. The agreement provided that SCRRC, Inc. would not sell malt or brewed beverages for off-premises consumption; would limit outside seating to no more than eight patrons; would limit outside operations to certain hours; would limit entertainment to acoustical or unamplified music; and would close its windows at certain late-night hours.

of the restaurant provides seating for eighteen patrons at tables and eight patrons at the bar; the basement provides table seating for fifteen patrons. With the proposed extension of the License, Tinto's Restaurant would provide table seating for an additional forty patrons.

Garces testified about the citation for improperly storing liquor, the first he had ever received.³ He explained that he did not realize it was improper to store liquor on the second floor, which was not accessible to patrons, and he immediately ceased doing so when he learned it was a violation of the License. Garces acknowledged that there are speakers in the restaurant, but they are never used and live music is never played. Garces explained that he contacted German in an effort to understand and address German's concerns; German responded, simply, that he disliked restaurants.

The hearing examiner recommended approval of Latin Quarter's applications, and the Board accepted the recommendation. The Board found that the evidence established that the principals of Latin Quarter were persons of good character and that German failed to establish otherwise. The Board also held that the extension of the License would not be detrimental to the neighborhood. Because Section 474.1 of the Liquor Code, 47 P.S. §4-474.1, allows a restaurant license to remain "in safekeeping for a period not to exceed three consecutive years," the Board found no merit to German's contention that SCRRC, Inc. was required to have its License out of safekeeping within six months of issuance. Accordingly, the Board granted the person-to-person transfer of the License from SCRRC, Inc. to Latin Quarter and the extension of the License to 116 South 20th Street.

³ The License covered only the first floor and the basement of 114 South 20th Street.

On appeal to the trial court, German argued that the License should have been canceled, not transferred. German claimed that Latin Quarter, not SCRRC, Inc., had been operating Tinto's Restaurant long before the requested transfer. German also argued that it was improper for Latin Quarter to file an extension application at the same time it filed an application for a transfer.⁴

Concluding that a complete record had been made before the hearing examiner, the trial court held that further testimony was not necessary. The trial court heard oral argument on German's claims, following which it affirmed the Board. It held that Latin Quarter's evidence justified its application for a transfer and extension of the License, and German's evidence did not justify a denial of either application. German now appeals to this Court.⁵

Before this Court, the gravamen of German's appeal is that the trial court erred or abused its discretion. Most of German's arguments relate to the process by which SCRRC, Inc. obtained the License in 2005, a matter beyond our review. We are concerned only with the trial court's determination that Latin Quarters satisfied the statutory requirements, first, for a person-to-person license transfer and, second, for a license extension.

⁴ German made several other allegations in his brief to the trial court, *i.e.*, that the Board did not have a proper methodology for determining the commercial/residential mix of the area, that the restaurant plans approved by the Board in 2005 materially differed from the restaurant as built, and that Adamo did not submit the proper affidavit as to the appointment of a manager. However, these claims were not addressed at the *de novo* hearing.

⁵ Our scope and standard of review is "whether the trial court's findings are supported by substantial evidence and whether the trial court committed an error of law or abused its discretion." *Street Road Bar & Grille, Inc., v. Pennsylvania Liquor Control Board*, 583 Pa. 72, 83, 876 A.2d 346, 352 (2005). German's first two stated issues on appeal question whether the Board abused its discretion by granting Latin Quarter's person-to-person transfer and extension applications. We need not address these contentions separately since our scope of review concerns only the trial court's decision in this matter.

This case is governed by Section 404 of the Liquor Code, 47 P.S. §4-404, which sets the standards for a transfer and extension of any liquor license. It provides, in pertinent part, as follows:

[T]he applicant [must be] a person of good repute ... and ... in the case of any new license or the transfer of any license to a new location or the extension of an existing license to cover an additional area the board may, in its discretion, grant or refuse such new license, transfer or extension if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school, or public playground, or if such new license, transfer or extension is applied for a place which is within two hundred feet of any other premises which is licensed by the board ... And provided further, That the board shall refuse any application for a new license, the transfer of any license to a new location or the extension of an existing license to cover an additional area if, in the board's opinion, such new license, transfer or extension would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place proposed to be licensed....

47 P.S. §4-404. The operative question is whether Latin Quarter satisfied these statutory standards with respect to the License transfer and License extension.

We address, first, German's argument that the evidence of record does not support the trial court's decision. Specifically, German contends that the trial court did not adequately refer to the Board's opinion; that SCRRC, Inc. failed to retrieve its License from the Board's safekeeping in a timely manner; and that Latin Quarter has been acting, improperly, as the *de facto* owner of Tinto's Restaurant since its opening.⁶ Thus, the Board's approval of the License transfer

⁶ We note German does not challenge the transfer of the License based on any of the factors listed in Section 404 of the Liquor Code, with the exception of the claim that if Latin Quarter has **(Footnote continued on the next page . . .)**

should not have been affirmed by the trial court. We address German's claims *seriatim*.

German argues that the trial court failed to refer to the Board opinion and, instead, referred to the findings of fact and conclusions of law made by the hearing examiner. German reasons that the issue before the trial court was the merits of the Board's opinion, not the recommendation of the hearing examiner; thus, the trial court erred.

The trial court conducted a *de novo* review of the application submitted by Latin Quarter. The contours of a *de novo* review were explained by this Court in *Two Sophia's, Inc. t/a The Pub v. Pennsylvania Liquor Control Board*, 799 A.2d 917, 922 (Pa. Cmwlth. 2002). Essentially, the trial court must receive the record of the administrative proceeding into evidence. Then, it may base its findings on the administrative record alone or receive additional evidence. Regardless of whether or not additional evidence is heard, the trial court's proper scope of review remains *de novo*.⁷ In short, the trial court is under no obligation to refer to the opinion of the Board, and German's argument in this regard lacks any merit.

Next, German claims that the trial court's conclusion did not have sufficient support in the evidence because SCRRC, Inc. failed to retrieve the License from safekeeping within the time limit specified in the 2005 conditional

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always been the *de facto* owner of Tinto's Restaurant, then a fraud has been perpetrated on the community.

⁷ Hearings upon refusal of licenses, renewal, or transfers are governed by Section 464 of the Liquor Code, 47 P.S. §4-464, which provides that when appealing the order of the Board to the trial court, "[t]he [trial] court shall hear the application *de novo* on questions of fact, administrative discretion and such other matters as are involved...."

licensing agreement. Basically, German claims that SCRRC, Inc.'s License is not valid and, thus, there was nothing to transfer. Latin Quarter counters that German offered no evidence that SCRRC, Inc. was obligated to open Tinto's Restaurant within six months of license approval. Latin Quarter also argues that German's challenge to SCRRC, Inc.'s ability to retrieve the License from safekeeping is irrelevant. The question here relates to the transfer or extension of that License, not whether SCRRC, Inc. had any right to use the License.

German does not cite to any statutory or case law that would permit him to challenge the status of SCRRC, Inc.'s License. Indeed, any dispute about SCRRC, Inc.'s retrieval of the License was resolved by the 2005 conditional licensing agreement. In any case, German's claim is meritless.

On March 10, 2005, the Board's Director of Licensing sent a letter to Luigi Adamo, stating that SCRRC, Inc.'s License would be held in safekeeping until final inspection of the restaurant's construction, to be completed within six months. However, the letter did not prohibit SCRRC, Inc. from seeking extensions of time, which are permitted by statute. German asserts SCRCC, Inc. was required to finish construction in six months under the 2005 agreement. However, the letter itself, which outlines the conditions of the 2005 agreement, does not set a deadline for completion. Retrieval of the License is not one of the listed conditions.⁸

Finally, German argues that the trial court's conclusion lacks sufficient evidentiary support because SCRRC, Inc. never actually operated Tinto's Restaurant. German claims that Latin Quarter has been the *de facto* operator of the restaurant since its opening. German claims there has been a fraud perpetrated on

⁸ The agreement was entered into evidence in the case. Its terms are limited to issues involving outside seating, noise, hours of operation and the purchase of alcohol. R.R. 43a-44a.

the Board, which, itself, reflects adversely on the character of Latin Quarter's principals.

There are no facts of record that support German's allegation that Latin Quarter had *de facto* control of Tinto's Restaurant prior to the License transfer. German's claim is based upon the fact that Latin Quarter entered into a lease of the property before the License transfer was approved. However, the lease itself recites that it was contingent on the transfer of the License.⁹ The trial court concluded that German did not present sufficient evidence to show that the transfer application "failed to meet the statutory and regulatory standards for the approval." R.R. 483a. We agree and reject German's claim.

In his challenge to the extension of the License to 116 South 20th Street, German argues that the trial court abused its discretion. German does not contend that the extension of the License should have been denied for any substantive reason, such as failure to comply with the standards in Section 404 of the Liquor Code. He simply makes the bald assertion that Latin Quarter had to first obtain the transfer of the License before it could apply for the extension. The Board counters that neither the Liquor Code nor the Board's regulations prohibit it from concurrently deciding a license transfer application and an application to extend the same license. The Board argues that it has allowed this procedure for years and if it did not it would delay the process and impair an applicant's ability to delineate the boundaries of the premises it intends to license.

⁹ Attached to German's brief is a letter dated December 20, 2007, from Latin Quarter's counsel to the Board's Director of Licensing. The letter advises that the lease agreement, dated June 16, 2006, between Adamo and Latin Quarter will not become effective until the Board approves the transfer of the liquor license from SCRRC, Inc., to Latin Quarter.

Because German has failed to offer any authority, or even argument, to support his contention that an applicant may not simultaneously apply for a transfer and extension of a liquor license, we reject it. Accordingly, we hold that the trial court did not abuse its discretion in affirming the Board's approval of Latin Quarter's application to extend the License at the same time it approved the person-to-person transfer of the License.

For all these reasons, the order of the trial court is affirmed.

