

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dorff Associates, LLC, :
Appellant :
v. : No. 756 C.D. 2010
Submitted: November 5, 2010
Pennsylvania Liquor Control Board :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: December 16, 2010

Dorff Associates, LLC, (Licensee) petitions for review of the April 8, 2010, order of the Court of Common Pleas of Lycoming County (trial court), which affirmed the Pennsylvania Liquor Control Board's (Board) order refusing to renew Licensee's liquor license. We affirm.

Licensee filed an application with the Board for renewal of its restaurant liquor license for an establishment known as the Flagstone Bar in Jersey Shore, Pennsylvania. The Board refused to grant Licensee's application based on six adjudicated citations for Liquor Code¹ violations and approximately sixteen incidents of disturbance at or immediately adjacent to the licensed premises. Licensee appealed to the trial court, which, after a *de novo* hearing, affirmed the Board.

¹ Act of April 12, 1951, P.L. 90, *as amended*, 47 P.S. §§1-101 – 10-1001.

Licensee had received the six citations for serving alcohol to a minor, two instances of serving alcohol to visibly intoxicated patrons, after-hours service, improper off-premises service, and for failure to obtain Responsible Alcohol Management Program (RAMP) training. (Trial Court's Findings of Fact, No. 6.) The "disturbances" included several fights both inside the Flagstone Bar and in Licensee's parking lot, a smashed car window in Licensee's parking lot, a slashed tire in Licensee's parking lot, and a patron being burned when someone flung a cigarette butt in her face. (Trial Court's Findings of Fact, Nos. 17-24.)

The testimony of Kelly Overdorff, Licensee's president, was submitted to the trial court via a transcript from the hearing before the Board's hearing examiner, as well as additional testimony she provided at the hearing before the trial court. (Trial Court's Findings of Fact, No. 16.) Overdorff testified that she had taken various measures to curtail fights and other disturbances from occurring at the Flagstone Bar. These measures included installing cameras in the parking lot, placing "no fighting" and "no drugs" signs in the bar, maintaining a list of barred patrons, removing heavy metal music from the jukebox, firing employees who did not pay fines assessed for their Liquor Code violations, and shortening the Flagstone Bar's hours of operation. (Trial Court's Findings of Fact, Nos. 27-30.) Overdorff testified that she tries to spend more time in the bar than she did in the past but admitted that she is usually not present between 12:30 a.m. and 2:30 a.m., which is when most of the disturbances occur. (Trial Court's Findings of Fact, Nos. 30-34.) Overdorff also admitted that on typical nights only one bartender, a female, would be at the bar during this time period. (Trial Court's Findings of Fact, Nos. 31, 33.) Overdorff testified that she was not RAMP certified at the time of the hearing because the class

she was scheduled to take had been cancelled. (Trial Court’s Findings of Fact, Nos. 39-42.)

The trial court affirmed the Board, finding that Licensee had not made “sincere efforts to address the real underlying issues of its operation with regard to security problems” and that Licensee’s “failure to timely file for renewal^[2] and failure to comply with RAMP training suggest a lack of concern for the Board’s rules and regulations.” (Trial Court’s Conclusions of Law, Nos. 7, 10.) Accordingly, the trial court determined that Licensee had “abused its privilege of holding a license” and that the “Board’s refusal to renew is consistent with [section 470(a.1) of the Liquor Code].”³ (Trial Court’s Conclusions of Law, Nos. 11-12.)

² Licensee’s original application to renew its liquor license was filed late.

³Section 470(a.1) of the Liquor Code, *added by* Act of December 21, 1998, P.L. 1202, 47 P.S. §4-470(a.1), allows the Board to refuse a license renewal application:

(1) if the licensee, its shareholders, directors, officers, association members, servants, agents or employes have violated any of the laws of this Commonwealth or any of the regulations of the board;

(2) if the licensee, its shareholders, directors, officers, association members, servants, agents or employes have one or more adjudicated citations under this or any other license issued by the board or were involved in a license whose renewal was objected to by the Bureau of Licensing under this section;

...

(4) due to the manner in which this or another licensed premises was operated while the licensee, its shareholders, directors, officers, association members, servants, agents or employes were 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

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On appeal to this court,⁴ Licensee argues that the trial court abused its discretion by finding that Licensee did not take substantial steps to address the activity occurring at the licensed premises.⁵ We disagree.

In a situation where a licensee has had previous Liquor Code violations, the Board or the trial court may, in its discretion, grant a renewal application if the licensee has taken substantial steps to ensure that the establishment would be operated in accordance with the Liquor Code in the future. *U.S.A. Deli, Inc. v. Pennsylvania Liquor Control Board*, 909 A.2d 24, 28 (Pa. Cmwlth. 2006). Abuse of discretion by the trial court is defined as manifest unreasonableness, partiality, prejudice, bias, ill-will, or such lack of support as to be clearly erroneous. *Snyderman v. Pennsylvania Liquor Control Board*, 682 A.2d 1322, 1325 (Pa. Cmwlth 1996).

In the case now before us, Licensee has never disputed any of the adjudicated citations. Overdorff testified that she had taken measures to prevent disturbances, but she admitted that she usually was not present at the bar during the

(continued...)

operated. The board may take into consideration whether any substantial steps were taken to address the activity occurring on or about the premises.

⁴ Our scope of review is limited to determining whether the trial court committed an error of law, abused its discretion or made findings of fact which are unsupported by substantial evidence. *U.S.A. Deli, Inc. v. Pennsylvania Liquor Control Board*, 909 A.2d 24, 27 n.4 (Pa. Cmwlth. 2006).

⁵ The Board contends that all of Licensee’s arguments have been waived because Licensee’s brief does not develop the six issues listed in its “Statements of Questions Involved.” However, the argument portion of Licensee’s brief does assert that the trial court abused its discretion by not recognizing the Licensee’s efforts to increase security at the Flagstone Bar as “substantial steps” to address the activity occurring on or about its premises. Therefore, we will address this argument.

time periods when disturbances were most likely to occur and that there was only one female bartender present during these time periods. One bartender cannot serve patrons, maintain order inside the building, and oversee activity in the parking lot at the same time. This state of affairs, combined with a long history of adjudicated citations and failure to maintain RAMP certification, is more than sufficient for the trial court to conclude that Licensee had not taken substantial steps toward addressing the problems at the Flagstone Bar, and we can find no abuse of discretion.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

