

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Pennsylvania Liquor Control Board	:	
	:	No. 1156 C.D. 2012
v.	:	Submitted: December 10, 2012
	:	
Northwoods Tavern, Inc.,	:	
Appellant	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: January 8, 2013**

This appeal involves an application for renewal of a liquor license pursuant to the Liquor Code.<sup>1</sup> The Pennsylvania Liquor Control Board (PLCB) objected to the application filed by Northwoods Tavern, Inc. (Licensee) based on its citation history and incidents involving criminal activity by third-parties around the licensed premises. Licensee challenges the order of the Court of Common Pleas of Potter County (trial court),<sup>2</sup> which affirmed the PLCB's non-renewal. After hearing additional evidence, the trial court held Licensee abused its licensing privilege. Licensee appealed, arguing the trial court failed to undertake de novo review, erred in considering citations received by the prior owner, and erred in considering criminal activity allegedly unrelated to Licensee's operations. We affirm the trial court.

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<sup>1</sup> Act of April 12, 1951, P.L. 90, as amended, 47 P.S. §§1-101-10-1001.

<sup>2</sup> The Honorable Robert E. Dalton, Jr., President Judge in neighboring Tioga County, presided.

## **I. Background**

Licensee submitted an application for renewal of its restaurant liquor license No. R-17753 (License) for its operation of a restaurant at 431 Route 6 West, Coudersport, Potter County (Premises) for the two-year period effective October 1, 2011, and ending September 30, 2013. The License is held by a corporate entity, Licensee, that current owner Joy Osborne (Owner) purchased in 1999.

Upon receiving the renewal application, the PLCB Bureau of Licensing (Licensing Bureau) notified Licensee of its objections. The Licensing Bureau's objections were based on alleged violations of the Liquor Code issued in 13 citations, and four incidents involving criminal activity: two police-controlled drug buys, and two violent altercations in 2010 that resulted in criminal charges.

### **A. Evidence Submitted at the Administrative Hearing**

At an administrative hearing, Licensee and the PLCB presented evidence regarding the criminal activities and Licensee's operations generally.

#### 1. Citations

The hearing examiner admitted evidence as to all 13 adjudicated citations, including the five citations pre-dating Owner's purchase, over Licensee's objection. The 13 adjudicated citations date back to 1989. Since 1999, when Owner purchased the Premises, Licensee accrued eight citations comprised of 17 counts, resulting in fines of nearly \$5,000 and 22 days of license suspension. The citations involved a wide-range of conduct from serving alcohol to minors, to after-hours violations, amplified music, hiring an exotic dancer, and gambling. The suspensions in 2008 and 2009 resulted from selling liquor to visibly intoxicated persons.

## 2. Criminal Activity

The PLCB submitted testimony of Trooper Chad Savannah, who was dispatched to the Premises when two females were assaulted by another female, (Assailant), in April 2010 (First Assault). The bartender, Patrick Villaneuva, acknowledged he was aware of the altercation because one of the victims ran into the bar yelling for help. The bartender then exited the bar to find the other victim lying on the ground. As a result of the altercation, the female victims were sent to the hospital with bruises. When Trooper Savannah interviewed Owner regarding the Assailant, she stated the Assailant would be banned from the Premises.

One of the victims told employees of Licensee about the harassment she suffered, complaining to Owner's son (who performed security) on at least three prior occasions. PLCB Op., 2/3/12, Finding of Fact (F.F.) No. 34.

The PLCB also presented the testimony of Trooper Brandon Allis regarding an incident on October 31, 2010. He was dispatched to a fight in the Premises parking lot, where a male allegedly displayed a firearm (Second Assault). A gun was located on top of a cinder pile near the parking lot. One live round of ammunition was found on the ground of the parking lot near a vehicle. A few individuals suffered injuries. Several individuals were criminally charged. The charges included: aggravated assault, simple assault, harassment, disorderly conduct, ethnic intimidation and criminal mischief. Trooper Allis did not interview any of Licensee's employees about the Second Assault because they did not witness it. He concluded no one brandished a firearm in the Premises, and the firearm was never inside the Premises.

Jeremy Tucker, one of the patrons on the night of the Second Assault, testified he was drinking at the Premises. When he left around 2:00 a.m., he heard racial slurs. Then, “all of the sudden” a fight broke out. Reproduced Record (R.R.) at 87a-88a. Tucker acknowledged the fight occurred after Licensee stopped serving alcohol. He also testified that his only observation inside the tavern was “words being exchanged,” nothing physical, and nothing indicating anyone was armed. R.R. at 94a.

Brian Phelps, Chief of Police of Sweden Township and member of the East Drug Task Force, testified that he along with the police of Coudersport Borough detained some individuals involved in the Second Assault. Chief Phelps also explained how controlled drug buys are arranged. He testified that a controlled narcotics purchase was set up in the Premises parking lot on February 28, 2011. A prior controlled buy took place around October 28, 2010 in the same location (Drug Buys). He testified that the target of the investigation consistently chose the parking lot as the location for cocaine distribution. The Drug Buys occurred on the west side of the parking lot, which cannot be seen from inside the tavern because there are no windows on that side of the building.

Chief Phelps admitted that he knows Owner very well and that he never spoke with her about the drug activity in the parking lot. He testified he did not approach Owner because the Drug Buys had “nothing to do with the operations of the bar itself” and he “never linked them to [Owner,] her family or the bar.” R.R. at 109a.

### 3. Licensee Operations

Licensee presented testimony of Todd Williams, a bartender, cook and manager. At the time of the administrative hearing, Williams had been Licensee's employee for eight years. Williams testified about staff meetings that are conducted at least bi-weekly regarding business procedure and operations.

The Premises parking lot is shared with Diamond Auto Glass and the Township municipal building, with no barriers or boundary lines. R.R. at 108a. Williams walks around the Premises about once per night if he is not "swamped." R.R. at 116a. Also, the doormen and security are supposed to walk around the Premises. Williams testified that there are always doormen on Friday and Saturday nights, and that Owner has "two big sons that always come down too." R.R. at 121a. Only Owner's son Travis was identified as consistent security.

Owner testified that when she purchased Licensee (the corporation) on February 8, 1999, she also purchased the License. She was not involved in the citations issued prior to her ownership, including two citations issued in 1998, and citations issued in 1994, 1991, 1990 and 1989. R.R. at 122a-23a. As Owner did not reincorporate or transfer the License, the citations remained on Licensee's record.

Owner testified to the improvements she made: replacing 95% of the windows and doors; insulating the building; bracing the floors; replacing the heating and electronic systems; building a two-story addition; building a non-smoking dining area; building a patio; and, obtaining PLCB approval for same. R.R. at 126a.

As to security, Owner testified if she is awake, she does it herself. She employs security staff on Friday and Saturday nights only, and instructs them to walk around the parking lot. Owner instructed security to notify her immediately about any problems. When patrons do something inappropriate, they are kicked out of the establishment and asked not to return. Owner testified she maintains a banned patron list, R.R. at 130a, but she could not produce it.

Owner testified that when she first purchased Licensee, there was a fight every Thursday, Friday and Saturday “never failing,” and she has taken steps to remove problematic individuals. R.R. at 131a. Owner first utilized a one-week, then a one-month ban for patrons involved in fights, which then evolved into the current permanent ban.

She estimated 25-30 individuals are permanently barred from the Premises. However, Owner could not recall the names of persons on the banned list as a result of the Second Assault. Owner communicates the banned list to all employees.

Owner testified she has a good relationship with her neighbors and neither her neighbors nor the police have confronted her regarding any problems related to operations. She testified that she and her employees are always cooperative with the police.

Owner testified she does not condone drugs in the Premises or the parking lot. Police never confronted her about drug activity in the parking lot. She

testified lights on the corner of her building light up the parking lot. There is no light at the back of the building because people kept breaking it, and Owner's insurance company advised her to take it down due to faulty wiring. A light from the neighboring Township building illuminates part of the parking area.

With regard to the First Assault, Owner testified she was unaware of any issues between Assailant and the primary victim before she spoke with the victims after the incident. She noted the bartenders usually handle disputes between patrons. However, Owner acknowledged Assailant caused disturbances and picked fights on other occasions, but was not banned from the Premises.

With regard to the Second Assault involving a firearm, Owner testified the incident was not noticeable from inside, where "everything was great." R.R. at 162a. Owner went outside when she was advised there was a fight in the parking lot. She testified all the individuals involved in the incident are now permanently banned from the Premises.

After considering the testimony and other evidence, the PLCB refused Licensee's renewal application. Licensee appealed to the trial court.

### **B. Evidence Submitted to Trial Court**

The trial court scheduled a hearing de novo, at which time the entire administrative record and other evidence was presented. At the hearing, Licensee presented testimony of three long-time customers regarding the atmosphere and general safety of the Premises and parking lot.

The PLCB presented no rebuttal testimony.

The trial court reviewed the PLCB's findings and ruled the findings were uncontested at the de novo hearing. The trial court affirmed the PLCB, finding Licensee abused its licensing privilege. The trial court concluded that since Owner purchased Licensee, operational deficiencies have led to multiple citations and disturbances, which Licensee failed to address.

### **C. Appeal**

Licensee then appealed to this Court.<sup>3</sup> Shortly thereafter, Licensee filed an Application for Stay or Injunction pending appeal. After oral argument, the trial court reserved its decision, and denied the requested stay.

## **II. Discussion**

Licensee argues the trial court erred in: (1) applying an improper standard of review; (2) reviewing the full citation history; (3) finding a relationship between criminal activity and its operations; and, (4) failing to find it took substantial affirmative measures. We address each issue in turn.

### **A. Standard of Review**

Licensee first contends the trial court erred in failing to make its own findings when three additional witnesses testified on behalf of Licensee. Licensee

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<sup>3</sup> Our scope of review in a liquor license renewal case is limited to a determination of whether the trial court's findings of fact were supported by substantial evidence, whether it abused its discretion, or whether it committed an error of law. St. Nicholas Greek Catholic Russian Aid Soc'y v. Pa. Liquor Control Bd., 41 A.3d 953 (Pa. Cmwlth. 2012).



argues the trial court should have modified the PLCB's findings, or made its own determination based on the additional evidence presented.

The PLCB argues the trial court is not required to make new findings, despite de novo review. The PLCB notes the trial court acknowledged and applied the proper standard, evidenced by the fact that it held a hearing.

The trial court is required to review the evidence de novo pursuant to Section 464 of the Liquor Code, 47 P.S. §4-464. Specifically, Section 464 provides: "The court shall hear the application de novo on questions of fact, administrative discretion and such other matters as are involved ...." Id. 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. Two Sophia's, Inc. v. Pa. Liquor Control Bd., 799 A.2d 917 (Pa. Cmwlth. 2002).

In Two Sophia's we explained, "[d]e novo review contemplates an independent evaluation of the evidence, which has already been presented." Id. at 922. Neither the statute nor decisional law requires a trial court to modify the PLCB's findings of fact when it hears additional evidence. Licensee cites no case law holding that a trial court is precluded from adopting the PLCB's findings when it receives additional evidence. We note that while the additional evidence the trial court received was un rebutted, the evidence was not relevant to the citations or the criminal activities that form the basis for non-renewal. The trial court thus did not err in adopting the PLCB's uncontested findings.

## **B. Complete Citation History**

Licensee next asserts the PLCB did not consider “the manner in which [the] licensed premises was operated while the licensee ... [was] involved with that license.” Section 470(a.1)(4) of the Liquor Code,<sup>4</sup> 47 P.S. §4-470(a.1)(4) (emphasis added). Licensee contends the trial court should not have considered its complete citation history because five of the 13 citations occurred before Owner purchased the licensed corporation (Licensee) in 1999.

The PLCB counters that the named licensee, here a corporate entity, is held accountable under the Liquor Code for violations, not the shareholders or individual directors. Moreover, only five of the 13 citations occurred before Owner bought the Licensee, and the eight citations since included a wide-variety of violations resulting in \$4,850 in fines and 22 days of license suspension.

The Legislature granted the PLCB broad police powers for the protection of the public welfare, health, peace and morals of the citizens of the Commonwealth. U.S.A. Deli, Inc. v. Pa. Liquor Control Bd., 909 A.2d 24 (Pa. Cmwlth. 2006). Under the Liquor Code, renewal of a liquor license is not automatic. Section 470(a.1)(2) of the Liquor Code provides that the PLCB may, in its discretion, refuse to renew a liquor license for many reasons including “if the licensee ... has one or more adjudicated citations under this or any other license issued by the [PLCB].” 47 P.S. §4-470(a.1)(2).

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<sup>4</sup> Added by the Act of December 21, 1998, P.L. 1202.

Licensees are strictly liable for violations of the Liquor Code and PLCB regulations. Pa. Liquor Control Bd. v. TLK, Inc., 518 Pa. 500, 544 A.2d 931 (1988). All past citations adjudicated against a licensee may be considered by the PLCB or a reviewing court in a non-renewal action. Pa. Liquor Control Bd. v. Bartosh, 730 A.2d 1029 (Pa. Cmwlt. 1999). The PLCB has specific authority to refuse to renew a liquor license based on a single adjudicated citation. See Hyland Enters., Inc., v. Pa. Liquor Control Bd., 631 A.2d 789 (Pa. Cmwlt. 1993).

Here, there is no dispute that Licensee has several adjudicated citations. In fact, Licensee has 13 adjudicated citations, eight of which occurred after the current Owner took control in 1999. The eight citations under Owner involved varied violations including service to visibly intoxicated persons, after hours violations, amplified music heard off the Premises, impermissible sales, impermissible price discounting, lewd and immoral conduct, and gambling.

Licensee contends the citation history under the prior owner is irrelevant. However, the entire citation history for a licensee is properly reviewed because citations remain on a license regardless of a transfer in corporate ownership. 47 P.S. §4-470(a.1)(2). That Owner, unrepresented during the transfer, was unaware of this consequence when procuring an existing corporate license offers no grounds for excluding the earlier citations.

The trial court, like the PLCB before it, considered the five citations that occurred prior to Owner's purchase of the corporation, but the court appeared to give much less weight, if any, to them.

As to the citations amassed during Owner's tenure, the last four citations included multiple counts of violations of the Liquor Code. Specifically, in 2009, Licensee was cited for serving alcohol to a visibly intoxicated person. As a result, its license was suspended for 15 days. The adjudicator also required Licensee to comply with requirements set forth in the Liquor Code pertaining to the Responsible Alcohol Management Program (RAMP). Similarly, in 2008, Licensee received a citation consisting of six counts, including serving two visibly intoxicated patrons. As a result, Licensee's license was suspended for seven days, and again Licensee was required to receive RAMP certification.

The trial court may consider corrective measures taken by a licensee in response to adjudicated citations, not just a pattern of illicit, criminal behavior, to determine whether those corrective measures warrant renewal of a liquor license. Goodfellas, Inc. v. Pa. Liquor Control Bd., 921 A.2d 559, 566 (Pa. Cmwlth. 2007). The trial court was also capable of attributing less significance to the citation history as a whole under the circumstances, such as different ownership alleged here. Id.

The trial court concluded the eight citations since Owner purchased Licensee in 1999 constituted a significant citation history. Two of the most recent violations were of a sufficiently serious nature to necessitate suspensions, and requirements for RAMP certification, which Licensee did not maintain. The trial court reasoned that "[t]he fines and suspensions have not acted as a deterrent in the past and indicate a pattern of non-compliance with the Liquor [Code]." Tr. Ct., Slip Op., 6/1/12, at 5; R.R. at 472a. In the five years preceding the administrative

hearing, with the exception of 2007, Licensee received a citation every year, consisting of 13 separate chargeable violations. This evidences a pattern.

Licensee cites Goodfellas in support of its argument that its complete citation history should not be considered. In Goodfellas, seven of the 10 citations pertained to loud music. The licensee entered an agreement with the PLCB to address the citations. As part of the agreement, the licensee spent approximately \$300,000 to construct a new sound-proof facility, and it had no further citations related to noise after its completion. As a result, the trial court in Goodfellas did not hold the loud music citations against the licensee.

Unlike Goodfellas, Licensee here does not provide a reason for discounting its significant citation history and points to no corrective measures taken to abate the repeated violations. The record undermines Licensee's claim to the contrary. There must be some evidence showing that 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). Tellingly, in 2009, Licensee served an intoxicated person despite having been cited and suspended for that same offense the prior year. Further, Licensee did not maintain RAMP certification to ensure proper serving practices. Given the significant and repeated violations committed, the trial court properly held that the citation history warrants non-renewal. Citations committed during Owner's tenure alone demonstrate a pattern of abusing the licensing privilege that justifies the trial court's decision here, regardless of any separate criminal activity.

### **C. Relationship of Criminal Activity to Operations**

Licensee also contends there is no relationship between its operations and the two Assaults and Drug Buys; therefore, it cannot be liable for them. Licensee asserts that the two Assaults occurred after business hours, and are not attributable to Licensee. Also, Licensee urges that the Drug Buys, which occurred in its parking lot during business hours, do not relate to operation of the Premises.

The PLCB responds that the trial court did not err in considering the criminal activities that occurred outside the tavern after closing because the altercations that escalated to physical violence began in the Premises. The PLCB asserts Licensee should have known about criminal activities occurring just outside the Premises, and should have taken steps to address its related operational deficiencies.

Section 470 of the Liquor Code provides in pertinent part:

(a.1) The Director of the Bureau of Licensing may object to and the board may refuse a properly filed license application:

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(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 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)(4) (emphasis added).

For non-Liquor Code related violations of law, including the Crimes Code,<sup>5</sup> the PCLB may refuse to renew a license where the licensee “(1) knows or should have known of ongoing criminal activities; and (2) [...] failed to take substantial affirmative steps to prevent such activities.” Rosing, Inc. v. Pa. Liquor Control Bd., 690 A.2d 758, 761 (Pa. Cmwlth. 1997) (citing TLK, 518 Pa. at 504, 544 A.2d at 933). As a two-pronged conjunctive standard, both elements must be present for a third-party crime to form the basis of non-renewal of a license. Id.

The criminal activities at issue here are two altercations that occurred inside the Premises, and escalated to violence, one involving a gun (Assaults), and two controlled Drug Buys as part of an investigation into a target dealing cocaine in the Premises parking lot. In considering the criminal incidents at issue, we analyze the Assaults resulting in criminal charges separately from the Drug Buys.

In the First Assault, the victim complained of the Assailant’s behavior to the bartender at about 11:30 p.m. on the date of the incident. F.F. No. 37. The victim also complained about the Assailant to Owner’s son, who served as security, on more than three prior occasions. F.F. No. 34. The Assailant was known to Owner as an instigator of fights prior to the date of the incident.

The Second Assault, involving a number of patrons, began with an argument inside the Premises. Shortly after closing time, a fight broke out between

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<sup>5</sup> 18 Pa. C.S. §§101-9352.

two individuals, growing into a brawl involving 10 people, one of whom brandished a gun, and one of whom used a knife. Until being warned by someone from the crowd, none of Licensee's staff noticed the fight. At that time, an employee called 911, and the police came to the scene by 3:00 a.m. They found the gun and live ammunition near a vehicle in the parking lot. However, as the participants disbursed by this time, the police did not interview employees.

Both Assaults involved patrons of Licensee, and both began as verbal exchanges inside the Premises. F.F. Nos. 33, 37 (First Assault), 55 (Second Assault). Both Assaults escalated into physical violence outside the Premises after the verbal exchanges inside. Victims of the Assaults required medical attention at a hospital. Assaultants in both Assaults were criminally charged for their conduct. The Assaultant in the First Assault pled guilty to simple assault requiring incarceration. Perpetrators of the Second Assault pled guilty to simple assault, harassment, disorderly conduct and ethnic intimidation. Thus, the Assaults necessitated police involvement and prosecutions.

The Drug Buys also occurred during 2010 and 2011, before the target was charged with possession with intent to deliver a controlled substance. Two days before the Second Assault, a confidential informant purchased cocaine in the Premises parking lot from the target of an ongoing criminal investigation. F.F. No. 84. The target consistently selected the parking lot as the place to make the cocaine delivery. F.F. No. 82. Four months later, the informant again purchased cocaine from the target in the parking lot of the Premises. F.F. No. 85.



Although Owner was not aware of the Drug Buys and drug-related activities that occurred over several months in the parking lot, the question is whether she should have been.

Owner took no steps to increase security or monitoring of the parking lot. There is no evidence that Owner secured additional security personnel or monitoring in the form of cameras or the like. Nor is there evidence that Owner imposed additional training on existing staff to emphasize the importance of monitoring the immediate vicinity outside and to monitor behavior of patrons exiting the tavern.

Given that the Assaults involved patrons, and in both incidents began as verbal altercations inside the Premises, there is sufficient evidence of a relationship between the criminal activities and Licensee's operation. While the relationship is less clear regarding the Drug Buys, we acknowledge that Owner permitted the continuation of a favorable environment for criminal activities in its dimly-lit parking lot, free from any regular in-person or camera monitoring.

#### **D. Substantial Affirmative Measures**

Lastly, Licensee contends that it took affirmative measures to eliminate fights outside the Premises by permanently banning the individuals involved. Licensee also argues it had no forewarning of either of the altercations that devolved into the First and Second Assaults. With regard to the Drug Buys, Licensee asserts these crimes cannot be connected to it when Owner had no knowledge of them.

The PCLB contends that the trial court committed no error because Licensee knew or should have known about the criminal activities. The PLCB also notes that Licensee did not submit evidence of any remedial measures.

Licensee bears the burden of proving that the efforts it has undertaken are both substantial and affirmative. TLK. Whether measures are deemed “substantial and affirmative” depends in part on when the measures are instituted. I.B.P.O.E. Remedial measures must be taken at a time when the licensed establishment knows or should know that illicit or improper activity is occurring on the licensed premises. Id. (finding remedial measures, to include a metal detector, shirts with “SECURITY” written on them, and additional security, taken only a couple weeks before the hearing before the trial court are too late). Timeliness of the action is calculated from the time the licensee should have known of the illicit activity. Pa. Liquor Control Bd. v. Can, Inc., 651 A.2d 1160, 1166 (Pa. Cmwlth. 1994) (interpreting TLK).

In evaluating whether measures are substantial in nature, this Court considers how the measure is designed to prevent the illegal activity. See St. Nicholas Greek Catholic Russian Aid Soc’y v. Pa. Liquor Control Bd., 41 A.3d 953 (Pa. Cmwlth. 2012).

In Rosing, we explained the steps a licensee may take to meet its burden of showing substantial affirmative measures:

[T]he Owners here took substantial affirmative measures because they made a zealous effort and incurred a financial burden to prevent drug-related activities on the premises while

maintaining a reasonable zone of safety for themselves and their personnel. They installed exterior spotlights which were kept on all night. They hired a doorman to patrol the entrance, assess the patrons, and use a metal detector to inspect for weapons. They subsequently hired an armed security guard to assist. The Owners kept all entrances locked and recently installed a buzzer on the front entrance. The Owners disseminated letters to patrons indicating that suspicious or non-spending patrons would be removed. Finally, the ownership posted signs inside and outside the premises prohibiting the sale of drugs anywhere near the premises. The Owners ... are only required to take substantial affirmative measures to prevent the misconduct. Such measures were proven. This evidence, as a whole, is relevant evidence that a reasonable mind would accept as adequate to support the conclusion that the Owners of the licensed corporation took substantial steps to prevent criminal activity on their premises  
....

690 A.2d at 762-63.

This Court recently emphasized the following acts may constitute substantial affirmative measures if taken in advance of later criminal incidents: hiring additional security staff; using armed doormen; implementing a dress code and banned patron list; requiring a security uniform of T-shirts clearly marked “SECURITY;” issuing and using a metal detector wand at the door; patrolling and monitoring outside, including the parking area; installing additional outdoor cameras and lighting, etc. See White House Café v. Pa. Liquor Control Bd., (Pa. Cmwlth., No. 850 C.D. 2011, filed April 23, 2012) (unreported). In White House Café, we reasoned that these policies, while commendable, were not implemented in sufficient time to prepare the licensee for a violent incident the following year. Thus, we held the licensee did not meet its burden of proving substantial *affirmative* measures in that case. Id.

Here, the testimony from Licensee's three patrons presented at the de novo trial does not describe anything resembling substantial remedial measures. The changes Owner undertook since 1999 in improving the facility by replacing doors and windows and increasing capacity are cosmetic changes that do not address any of the operational deficiencies demonstrated by Licensee's citation history or by the criminal activities. Further, to qualify as remedial, the measures must be directed to abate the violation or complained of harm. See, e.g., Goodfellas (sound-proofing facility reduced noise, and prevented future citations for loud music).

The record evidence reflects the two altercations started inside the Premises. The second incident occurred more than six months after the first, but there is no evidence that Licensee attempted to improve security. In both incidents, the police did not notice any differentiating clothing for security. It was also unclear in both incidents who served as security on the nights in question because "no one was able to testify that security was present." PLCB Op., 2/3/12 at 44.

According to the testimony of the victim of the First Assault, she advised Owner's son, who worked security, about the harassment she suffered from Assailant on at least three prior occasions. F.F. Nos. 33-34. Owner admitted that Assailant was a trouble-maker as "she had previously tried to pick fights." F.F. No. 49. The only affirmative measure Owner took was to ultimately ban Assailant from the Premises. There is no evidence that Owner increased security,

lighting or monitoring of the parking lot where both incidents escalated into violence.

In the Second Assault, the parking lot was so dark at the time of the investigation the police needed to use spotlights to light up the area. F.F. No. 79. Owner did not indicate any increase in security, monitoring of the parking lot, or training of personnel to address altercations or fights since the Second Assault.

Banning individuals involved in the assaults after the fact does not constitute substantial remedial measures. This is particularly true when Owner had prior knowledge about the first Assailant's tendency to pick fights and characterized her as a trouble-maker.

Licensee argues that because it did not *cause* either assault, it remains blameless of any wrongdoing. We disagree. As to the First Assault, Licensee made liquor available to a known trouble-maker, which resulted in her assailing two other patrons right outside the doorway to the tavern. F.F. No. 49. Licensee knew about a threat and could have taken action to prevent it, yet failed to do so.

Notably, the Second Assault occurred little more than six months after the First Assault. There is no evidence that Licensee undertook any efforts to better monitor outside the Premises, including the dark parking lot. While the Second Assault occurred around 2:00 a.m., when Licensee ceases serving alcohol, the altercation involved a number of patrons and began as a verbal exchange inside the Premises. F.F. No. 55. That Owner did not notice anything about the Second

Assault until one of the perpetrators began brandishing a gun does not distance Licensee from the incident. Instead, it illustrates Licensee's operational deficiency in failing to monitor patrons who are leaving but remain near the building and in failing to ensure the safety of its patrons outside the building.

What is perhaps most troubling is that after a series of criminal activities outside the Premises, Licensee and Owner maintain a casual, if not cavalier, attitude toward the safety and security of the Premises and immediately adjacent vicinity. Owner's descriptions of safety and security measures are wholly inadequate and vague as there are no specific security personnel or training in security or monitoring for existing personnel. The PLCB and trial court were not satisfied. Neither are we.

### **III. Conclusion**

Licensee's citation history alone constitutes sufficient grounds to refuse renewal to this Licensee. In combination with the criminal activity outside the establishment and Owner's neglect to increase security or monitoring of the dark parking lot, we see no basis upon which Licensee should be entrusted with the licensing privilege. Accordingly, we affirm the trial court.

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ROBERT SIMPSON, Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Pennsylvania Liquor Control Board	:	
	:	No. 1156 C.D. 2012
v.	:	
	:	
Northwoods Tavern, Inc.,	:	
Appellant	:	

**ORDER**

**AND NOW**, this 8<sup>th</sup> day of January, 2013, the order of the Court of Common Pleas of Potter County is **AFFIRMED**.

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ROBERT SIMPSON, Judge