

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

RB Adhuria, Inc., :
Appellant :
v. : No. 629 C.D. 2012
 : Argued: October 15, 2012
Pennsylvania Liquor Control Board :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: January 4, 2013

RB Adhuria, Inc. (Licensee) appeals from an order of the Court of Common Pleas of Philadelphia County (trial court) affirming the Pennsylvania Liquor Control Board's (LCB) denial of its application to renew its liquor license based on its accrual of 23 adjudicated citations since 2001 and late-filed renewal application.¹ For the reasons that follow, we affirm the trial court's order.

¹ Section 470(a.1) of the Liquor Code, Act of April 12, 1951, P.L. 90, *as amended*, 47 P.S. §4-470(a.1), grants the LCB the authority to refuse to renew a liquor license under the following circumstances:

- (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;

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Licensee is a beer distributorship located at 701-719 East Girard Avenue in Philadelphia, Pennsylvania. In November 2010, Licensee filed an untimely application for renewal of its liquor license, No. D-925, for the period effective November 1, 2010, through October 31, 2012. The LCB's Bureau of Licensing (Bureau) informed Licensee that it objected to the renewal of the license based on Licensee's citation history² and the late filing of the renewal application.

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(2) If the licensee, its shareholders, directors, officers, association members, servants, agents or employees 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;

(3) If the licensed premises no longer meets the requirements of this act or the board's regulations; or

(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 employees 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.

² Licensee accrued 23 adjudicated citations for violations of the Liquor Code and LCB regulations between March 7, 2001, and August 25, 2009. Seventeen of the citations involved issuing worthless checks in violation of Section 493(26) of the Liquor Code, 47 P.S. §4-493(26). Three of the citations involved furnishing alcoholic beverages to minors in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1). The remaining citations (some of which addressed multiple violations) involved purchasing and selling alcoholic beverages after the **(Footnote continued on next page...)**

Before the LCB hearing examiner, Rajendrakumar B. Adhuria (Adhuria), Licensee's owner, was the sole witness to testify. With respect to the three citations issued to Licensee for selling alcohol to minors, Adhuria testified that the first two incidents were the fault of a former employee, Amis Ahmed (Ahmed), who is the cousin of Adhuria's wife. Adhuria stated that he intended to fire Ahmed immediately following those incidents, but did not do so after facing resistance from his family.³ He also stated that after receiving the first citation, he purchased an identification scanner for the licensed premises, but admitted that it did not always function properly. With respect to the third citation for selling alcohol to a minor, Adhuria testified that his wife unsuccessfully attempted to scan the patron's identification three or four times, but proceeded to sell beer to the patron anyway because there were numerous other customers waiting in line at the time. He stated that he purchased a new identification scanner for \$1,200 "in the couple months after" that most recent violation. (March 18, 2011 Hearing Transcript at 40). He also indicated that based on advice he received at the Responsible Alcohol Management Program (RAMP), he purchased a light to check

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expiration of its license in violation of Sections 102, 492(3) and 493(16) of the Liquor Code, 47 P.S. §§1-102, 4-492(3) and 4-493(16); selling malt or brewed beverages in quantities of less than a case of 24 containers in violation of Section 441(b) of the Liquor Code, 47 P.S. §4-441(b); failing to conspicuously post a notice of suspension at the licensed premises in violation of 40 Pa. Code §15.62(a); failing to maintain an office for the purpose of record keeping on the licensed premises in violation of Section 468(a) of the Liquor Code, 47 P.S. §4-468(a); and operating another business on the licensed premises in violation of 40 Pa. Code §3.52(c).

³ Adhuria eventually fired Ahmed at the end of 2008, after allegedly discovering that Ahmed hid mail and other records from him.

identification cards and began checking the identification of all customers appearing to be under the age of 30.

Regarding the 17 citations for issuing worthless checks, Adhuria testified that he did not become aware of the problem until approximately February or March 2008 because up until that time, he neither received the mail nor handled Licensee's banking.⁴ He attributed those violations to "trouble" with money resulting from Ahmed's alleged mismanagement of the licensed premises. *Id.* at 41-42. He indicated that all of the worthless checks were eventually honored within four or five days of being issued, and that no importing distributor lost any money as a result of the worthless checks. Adhuria also testified that he did not foresee Licensee having any further problems with issuing worthless checks because he now ensures that all cash is deposited in the bank as soon as he issues checks and because he and his wife now handle all aspects of the operation of the licensed premises.

Adhuria also attributed Licensee's purchasing and selling alcohol after the expiration of its liquor license to Ahmed, stating that he was unaware of such violations because Ahmed hid records and mail from him. He testified that after

⁴ Adhuria testified that Ahmed was primarily responsible for many of the daily operations at the licensed premises, including purchases, sales, banking, bookkeeping, license renewal and opening and closing the store. Adhuria explained that he never personally reviewed the details of any bounced checks or Licensee's bank statements because he trusted Ahmed, and admitted that he sometimes did not even visit the licensed premises for two or three days at a time. Despite the significant responsibilities given to Ahmed, Adhuria testified that Ahmed was not Licensee's LCB-approved manager, and that he never attempted to notify the LCB regarding Ahmed serving as Licensee's manager.

being advised that the license had expired, he closed the premises for four or five days until he received the new license and did not sell beer during that time.⁵

The LCB refused to renew Licensee's liquor license because it had not taken timely and substantial corrective measures to address the problems which gave rise to its citations and did not establish reasonable cause for the late filing of its renewal application. In its Opinion, the LCB noted that it was particularly troubled by Licensee's three adjudicated citations involving sales to minors, all of which occurred during the most recent licensing period. The LCB explained that those violations demonstrate "a conscious disregard for Licensee's responsibility to safely distribute alcohol only to those persons who are of legal drinking age." (LCB's July 6, 2011 Opinion at 53). Moreover, the LCB stated that "Licensee's issuance of numerous bad checks demonstrates Licensee's inability to properly handle its finances and conduct its business in a responsible manner," and that the citations for purchasing and selling alcohol after the expiration of its liquor license "further demonstrate Licensee's disregard for its responsibilities as the holder of a distributor license." *Id.* at 55-56. The LCB further noted:

⁵ As for the remaining citations, with respect to the citation for failure to conspicuously post a notice of suspension at the licensed premises, Adhuria testified that he posted the suspension notice on the glass outside the door, but later closed the shutters over the glass which prevented the notice from being seen, and did not realize he needed to place the notice on top of the shutters after closing them. Adhuria acknowledged selling beer to a Bureau officer in a case of less than 24 containers. Adhuria stated that he does not currently operate any other businesses and can now devote his full time to operating the licensed premises, but he did not otherwise address the citations for failing to maintain an office at the licensed premises or operating another business at the licensed premises.

[M]any of the problems which gave rise to Licensee's adjudicated citations appear to have been the result of Mr. Adhuria's actions in placing Mr. Ahmed in charge of the licensed premises...However, instead of accepting responsibility for his actions, Mr. Adhuria continues to place the blame for Licensee's problems on Mr. Ahmed as well as others, including his wife. Given Mr. Adhuria's failure to accept responsibility for the problems at the licensed premises, the [LCB] is not convinced that he is fully committed to resolving the operational issues at the licensed premises. Further, the [LCB] notes that although Licensee has received thousands of dollars in fines and had its license suspended on numerous occasions, such penalties have not been effective in altering Licensee's course of behavior.

Id. at 57. Finally, with respect to the issue of the late-filed renewal application, the LCB explained that while it "would not have been inclined to deny this renewal based on Licensee's late filing...alone," the late filing lends further support to its decision. *Id.* at 59. Licensee appealed to the trial court which, after reviewing the record and making *de novo* findings the same as the Board, affirmed the LCB's decision. This appeal by Licensee followed.⁶

On appeal, Licensee argues that the citations it received were not sufficiently serious to warrant non-renewal of its license because the majority of its citations were for issuing worthless checks, most of which were eventually

⁶ Our scope of review in a liquor license renewal case is limited to a determination of whether the trial court's findings of fact are supported by substantial evidence, whether it abused its discretion, or whether it committed an error of law. *In re License Renewal Application of the Quippan Club*, 806 A.2d 491 (Pa. Cmwlth. 2002).

honored within 7 to 14 days, and only three of the citations were for selling alcoholic beverages to minors. It argues that we have only affirmed the LCB's denial of renewal of liquor licenses where there is additional misconduct at the licensed premises such as violence or drug activity.⁷ Alternatively, Licensee asserts that even if the violations were serious enough to warrant non-renewal of its license, it took substantial affirmative steps to ensure that no future violations would occur, therefore entitling it to renewal.

Renewal of a liquor license is not an automatic procedure. Generally, in the context of a non-renewal action, the finder of fact may consider all past adjudicated Liquor Code violations no matter when they occurred. *First Ward Republican Club of Philadelphia v. Pennsylvania Liquor Control Board*, 11 A.3d 38, 47 (Pa Cmwlth. 2010). *See also I.B.P.O.E. of West Mount Vernon Lodge 151 v. Pennsylvania Liquor Control Board*, 969 A.2d 642, 648 (Pa. Cmwlth. 2009) (“It is not improper for the [LCB] to look at a series of violations of the liquor laws that have already been the subject of a penalty when deciding whether to renew a license”). Even a single past citation or Liquor Code violation is sufficient to support a decision refusing to renew a license. *St. Nicholas Greek Catholic Russian Aid Society v. Pennsylvania Liquor Control Board*, 41 A.3d 953, 959 (Pa. Cmwlth. 2012). The trial court may also consider corrective measures taken by a

⁷ In support of that argument, Licensee cites to *U.S.A. Deli v. Pennsylvania Liquor Control Board*, 909 A.2d 24 (Pa. Cmwlth. 2006) and *Goodfellas, Inc. v. Pennsylvania Liquor Control Board*, 921 A.2d 559 (Pa. Cmwlth. 2007). In *U.S.A. Deli*, we affirmed the trial court's reversal of the LCB's denial of the licensee's renewal application despite the licensee's citations for serving alcohol to minors six times over a two-year period. In *Goodfellas, Inc.*, we affirmed the trial court's reversal of the LCB's denial of a renewal application despite the licensee's accrual of ten adjudicated citations over a three-year period.

licensee in response to adjudicated citations to determine whether those corrective measures warrant renewal of a liquor license. *I.B.P.O.E. of West Mount Vernon Lodge 151*, 969 A.2d at 649.

Licensee's extensive citation history and the manner in which the licensed premises was operated constituted substantial evidence to support the LCB and trial court's determinations that its license should not be renewed. Even if the trial court accepted Adhuria's contention that Licensee's citations were solely the result of the employee Ahmed's mismanagement and that it is not responsible for his actions, the three citations it has received since Ahmed's termination would alone constitute substantial evidence to justify the non-renewal of its license. Moreover, Licensee's argument that non-renewal was not warranted because there were not any incidents of violence or drug activity on the licensed premises is without merit. While non-renewals of licenses for retail liquor establishments – bars – usually involve some sort of disorderly conduct, that does not mean that is a requirement for non-renewal of licenses for retail establishments or beer distributors where such activity would not be expected to even take place.

Licensee's alternate argument that it was entitled to renewal because it took substantial affirmative measures to ensure that no future violations would occur also fails. Although Adhuria did implement a number of remedial measures, including purchasing identification scanners, enrolling in RAMP, firing the employee allegedly responsible for the majority of Licensee's misconduct, and taking a more active role in the daily operations of the licensed premises, there was nonetheless sufficient support for the LCB's and trial court's conclusions that these

steps were neither timely nor substantial enough to warrant renewal of the license. Notably, Adhuria did not purchase an identification scanner until two years after receiving the first citation for selling to a minor; did not purchase a functional identification scanner until at least two months after receiving the third citation for selling to a minor; and did not immediately terminate Ahmed's employment, despite his alleged knowledge that Ahmed was primarily responsible for Licensee's misconduct.

Accordingly, the order of the trial court is affirmed.

DAN PELLEGRINI, President Judge

what prompted the Board to put Adhuria out of business this time when its license came up for renewal. Further, the Board offers no explanation in its adjudication for its decision; this would have been helpful particularly because this is a case of first impression. There are no reported cases involving the non-renewal of a beer distributor's license.

In refusing to renew Adhuria's license for September 2010, the Board referred to "adjudicated citations" that were so old that they predated earlier license renewals. Although it does not matter in this case, I believe that only those citations adjudicated subsequent to Adhuria's most recent renewal should have been used as grounds to non-renew its license in 2010.

The statute teeters on ambiguity or vagueness because it gives the licensing agency the power to decide whether one or twenty adjudicated citations will tip the balance toward a non-renewal of a particular licensee. This is troublesome. No regulated business can guarantee perfect compliance with regulatory laws because compliance lies mainly in the hands of its employees. Regulated businesses can, and should, be held to a standard of reasonable compliance and be required to establish procedures to advance compliance by their employees. This may have been the problem with Adhuria, whose principal delayed discharging a problem employee because he was a relative.

My legal concerns were not raised or developed in this appeal and, thus, I will concur with the majority's decision.

MARY HANNAH LEAVITT, Judge