

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mary Lou Nolter t/a Nolter's Café :  
 :  
 v. :  
 :  
 Pennsylvania Liquor Control Board, : No. 829 C.D. 2012  
 Appellant : Submitted: November 2, 2012

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
 HONORABLE PATRICIA A. McCULLOUGH, Judge  
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY JUDGE MCGINLEY

FILED: December 21, 2012

The Pennsylvania Liquor Control Board (LCB) challenges the order of the Court of Common Pleas of Northumberland County (trial court) that overruled the LCB's refusal to renew the restaurant liquor license of Mary Lou Nolter (Mrs. Nolter) t/a Nolter's Café (Nolter's) and ordered that Nolter's license be renewed.

Nolter's is a licensed location at 1732 East Tioga Street, Coal Township, Pennsylvania. On April 1, 2011, Mrs. Nolter filed an untimely application for the renewal of Restaurant Liquor License No. R-17377 (LID 54363) for the period beginning April 1, 2011, and ending March 31, 2013. By letter dated April 6, 2011, the LCB's Bureau of Licensing (Bureau) notified Mrs. Nolter that it objected to the renewal of her license because she was allegedly no longer eligible to hold a license based upon violations of the Liquor Code (Code),<sup>1</sup>

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

that the Bureau rejected the late filed renewal application pursuant to Section 470(a) of the Code, 47 P.S. §4-470(a), and that Mrs. Nolter had failed to submit the application addendum in proper order pursuant to the Bureau's letter dated April 5, 2011. By letter dated June 9, 2011, the Bureau notified Mrs. Nolter that a hearing was scheduled for June 27, 2011, to take evidence on the amended objections which did not include the objection about the addendum.

On June 27, 2011, a hearing on the license renewal was held before the hearing examiner. The Bureau presented the late filed renewal application, a copy of its objection letter dated April 6, 2011, and a copy of the adjudications and opinions that were issued with respect to the citations. The Bureau presented no other evidence.<sup>2</sup>

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<sup>2</sup> Citation No. 06-1896 was issued on August 17, 2006, and concerned Mrs. Nolter's violation of Section 493(26) of the Code, 47 P.S. §4-493(26), in that Mrs. Nolter by her servants, agents, or employees issued checks or drafts dated June 9 and 29, 2006, in payment for purchases of malt or brewed beverages when she had insufficient funds in, or credit with, the institution upon which the checks were written. Mrs. Nolter admitted the charge and was fined \$150.00. Citation No. 06-2163 was issued against Mrs. Nolter on September 21, 2006, again for issuing bad checks in payment of malt or brewed beverages on July 14, 2006. Mrs. Nolter admitted the charge and was fined \$250.00. Citation No. 06-2350 was issued against Mrs. Nolter on October 19, 2006, for more bad checks on July 27 and 28, 2006, and on August 4 and 10, 2006. Mrs. Nolter admitted the charge and was fined \$250.00.

Citation No. 08-0456 was issued against Mrs. Nolter on March 27, 2008, and contained eleven counts. In Count One, Mrs. Nolter was charged with violation Section 471 of the Code, 47 P.S. §4-471 and Section 5513 and/or Section 5514 of the Crimes Code, 18 Pa.C.S. §§5513 and/or 5514, in that on sixty-four separate dates in 2007, she, by her servants, agents or employees, possessed or operated gambling devices or paraphernalia or permitted gambling on the licensed premises. In Count Two, Mrs. Nolter was charged with violating Section 5.32(a) of the LCB's regulation, 40 Pa.Code §5.32(a) in that on October 5, 6, and December 23, 2007, Mrs. Nolter, by her servants, agents, or employees, used, or permitted to be used a loudspeaker or similar device which could be heard outside the licensed premises. In Count Three, Mrs. Nolter was charged with violating Sections 406(a)(2) and 493(16) of the Code, 47 P.S. §§4-406(a)(2), **(Footnote continued on next page...)**

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**(continued...)**

4-493(16), in that on October 6, and December 23, 2007, she, by her servants, agents, or employees, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m. In Count Four, Mrs. Nolter was charged with violating Section 499(a) of the Code, 47 P.S. §4-499(a), in that on October 6, and December 23, 2007, Mrs. Nolter, by her servants, agents, or employees, failed to require patrons to vacate that part of the premises normally used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of such service. In Count Five, Mrs. Nolter was charged with violating Section 499(a) of the Code, 47 P.S. §4-499(a), in that on October 6, and December 23, 2007, Mrs. Nolter, by her servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from the part of the premises normally used to serve alcoholic beverages after 2:30 a.m. In Count Six, Mrs. Nolter was charged with violating Section 5.41 of the LCB's regulation, 40 Pa.Code §5.41, in that on at least eighteen occasions in 2007, Nolter, by her servants, agents, or employees, operated her establishment without a valid health permit or license which had expired on August 31, 2007. In Count Seven, Mrs. Nolter was charged with violating Section 493(12) of the Code, 47 P.S. §4-493(12), in that Mrs. Nolter failed to keep records on the licensed premises. In Count Eight, Mrs. Nolter was charged with violating Section 493(12) of the Code, 47 P.S. § 4-493(12), in that she failed to maintain complete and truthful records covering the operation of the licensed premises for a period of two years immediately preceding January 1, 2008. In Count Nine, Mrs. Nolter was charged with violating Section 493(12) of the Code, 47 P.S. §4-493(12), in that on January 22, 2008, Mrs. Nolter by her servants, agents, or employees, refused an authorized employee of the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE) access to records covering the operations of the licensed business when the request was made during business hours. In Count Ten, Mrs. Nolter was charged with violating Section 493(12) of the Code, 47 P.S. §4-493(12), in that Mrs. Nolter, by her servants, agents, or employees, falsified records covering the operation of the business between January 1, 2007, and January 1, 2008. In Count Eleven, Mrs. Nolter was charged with violating Section 493(12) of the Code, 47 P.S. §4-493(12), in that on January 22, 2008, Mrs. Nolter, by her servants, agents, or employees, failed to keep records on the licensed premises and/or failed to provide an authorized employee of the BLCE access to the records. Mrs. Nolter admitted all the charges and was fined \$5,900.00.

Citation No. 09-0306 was issued against Mrs. Nolter on February 19, 2009. Count One was another violation of Section 5.32(a) of the LCB's regulation, 40 Pa.Code §5.32(a) on December 18, 2008, and January 2, 2009. In Count Two, Mrs. Nolter was charged with violating Section 499(a) of the Code, 47 P.S. §4-499(a), because on December 28, 2008, she did not require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of such service. In Count Three, Mrs. Nolter was charged with violating Section 493(12) of the Code, 47 P.S. §4-493(12), because she failed to maintain complete and truthful records for a period of two

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Kyle John Nolter (Nolter), the bartender at Nolter's and the son of Mrs. Nolter, testified that he disagreed with one of the citations for serving alcohol after hours or allowing the bar to remain open after hours. Nolter explained:

[W]e weren't there at the bar or drinking at the bar at all that day. Me [sic] and a few friends stopped at the house to get my truck to leave and we was [sic] changing vehicles, and I'm not going to lie I drink beer a lot . . . . We were going out to the mountain and I have a four wheel drive vehicle. We were switching vehicles to get my vehicle. The lights were on at the bar. They come [sic] in and stood at the front of the door with me. No alcohol was taken from the bar. We had all our alcohol ready. It was nothing to do with the bar other than changing my vehicle and we got fined for that.

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**(continued...)**

years immediately preceding December 28, 2008. Mrs. Nolter admitted to the charges and was fined \$950.00.

Citation No. 09-1692 was issued against Mrs. Nolter on July 23, 2009. In Count One, Mrs. Nolter was charged with violating Section 493(1) of the Code, 47 P.S. §4-493(1), in that on June 20, 2009, Mrs. Nolter, by her servants, agents, or employees, sold or provided alcoholic beverages to a twenty year old minor. In Count Two, Mrs. Nolter was charged with violating Section 471 of the Code and Section 6(a)(2) of the Clean Indoor Air Act (Act), Act of June 13, 2008, P.L. 182, 35 P.S. §637.6(a)(2), because she permitted smoking in a public place where smoking was not permitted on April 11, 2009. In Count Three, Mrs. Nolter was charged with violating Section 471 of the Code, 47 P.S. §4-471, and Section 6(a)(1) of the Act, 35 P.S. §637.6(a)(1), in that on April 8 and 11, 2009, she failed to post signage required by the Act. Mrs. Nolter admitted to the charges and was fined \$1,450.00 and was ordered to comply with Section 471.1 of the Code, 47 P.S. §4-471.1, which pertained to the LCB's Responsible Alcohol Management Program (RAMP) by becoming RAMP certified within ninety days of the mailing date of the adjudication. Mrs. Nolter requested a suspension in lieu of a fine due to financial hardship. A suspension of the license for four days was imposed in lieu of the fine. Completion of the RAMP certification was also deferred pending reactivation of the license. In a supplemental order dated June 23, 2010, the office of the administrative law judge took notice that the suspension was set to commence August 9, 2010, and end August 13, 2010. Mrs. Nolter was directed to obtain RAMP certification within ninety days of the June 23, 2010, mailing date of the adjudication.

Notes of Testimony, June 27, 2011, (N.T.) at 10-11; Reproduced Record (R.R.) at 89a-90a.

Nolter also testified that the bartender who served an underage patron was fired as a result. N.T. at 15; R.R. at 94a. Nolter admitted that the noise from the jukebox could be heard outside the establishment but that “everywhere I go you can hear noise.” N.T. at 15; R.R. at 94a. Nolter admitted that neither he nor his mother had taken RAMP training. N.T. at 17; R.R. at 96a. With respect to the citation for permitting smoking on the premises, Nolter thought that since there were not many food sales the bar was not required to be a non-smoking facility. N.T. at 19; R.R. at 98a. Nolter testified that he and his mother had tried to control the noise since they received the citation. N.T. at 22; R.R. at 101a. Nolter admitted that there was a machine for gambling and that football pools were held at the bar. N.T. at 31-32; R.R. at 110a-111a. With regard to bad checks, Nolter explained, “because I did some running and stuff. We just got backed up and didn’t put money in when we should have.” N.T. at 33; R.R. at 113a. Since the citation, Nolter stated that the bar pays for alcohol with a money order. N.T. at 35-36; R.R. at 114a-115a.

With respect to the citation for the failure to maintain proper records at the premises, Mrs. Nolter testified that she kept the records in the apartment upstairs from the bar where she maintained her residence. N.T. at 41; R.R. at 120a. On cross-examination, Mrs. Nolter admitted that she still allowed smoking. Mrs. Nolter also admitted that her filing for the renewal of the license was late due to financial problems and obtaining tax clearance. N.T. at 61; R.R. at 140a.

The hearing examiner determined that though reasonable cause existed for Mrs. Nolter's untimely filing of the renewal application, Mrs. Nolter had abused her licensing privilege. The hearing examiner recommended that the renewal of the license be refused.

On September 14, 2011, the LCB refused the application for the renewal of the license:

Licensee's [Mrs. Nolter] actions, or more accurately, inactions, clearly demonstrate irresponsibility, apathy, and an abuse of her licensing privileges. These types of citations are reflective of a situation where Licensee [Mrs. Nolter] is just not interested or, perhaps more applicable here, able, to operate in a lawful manner.

The Board is troubled by Licensee's [Mrs. Nolter] failure to provide sufficient detailed corrective measures to address her service to minor citation that occurred in June 2009, Licensee's son, Kyle Nolter, testified that Licensee fired the bartender who served the minor and Licensee's employees card patrons who the employees do not know. Unfortunately, this limited information does not rise to the level of sufficient corrective measures to address a service to minor citation. The Board is disappointed that Licensee appears to not be utilizing other measures, such as checking for fraudulent identification and utilizing Declaration of Age Cards, to ensure that minors are not frequenting the establishment.

The Board is very concerned by Licensee's blatant disregard to implement measures to address her citations for amplified music, smoking inside the licensed establishment, and not having her business records on the licensed premises. Although Mr. Nolter testified that Licensee has a regulator on her jukebox to ensure that the volume is never higher than sixty percent (60%) of the maximum volume, both he and Licensee testified that music can still be heard off the licensed premises. As to

Licensee's smoking citation, Licensee has taken no corrective measures in response to her violation of the Clean Indoor Air Act, and still permits her patrons to smoke inside the licensed establishment. With regard to Licensee's business records, Licensee testified that she is aware that her operational records for the preceding two (2) years must be kept on the licensed premises, but she still keeps the records in her apartment, which is not part of the licensed premises. Licensee's unwillingness to adhere to the Liquor Code and Board's Regulations provides further evidence of why the Board decided to not renew Licensee's renewal application.

The Board is also very troubled that Licensee has not completed the mandated RAMP training that was ordered to be completed by September 2010. Mr. Nolter testified that he was aware RAMP certification was part of Citation No. 09-1692's penalty, and that he and licensee were 'going to do it, going to do it, and then just couldn't do it.' Licensee's unwillingness to adhere to an order of an administrative law judge is very disconcerting to the Board, and only serves to reinforce the Board's decision to not renew Licensee's license.

LCB Opinion, October 19, 2011, at 22-24; R.R. at 73a-75a.

Mrs. Nolter appealed to the trial court. The trial court heard the matter on December 8, 2011. The parties agreed to submit the entire record from the LCB proceeding.

At the hearing before the trial court, Dennis Nolter (D. Nolter), the son of Mrs. Nolter and brother of Kyle Nolter, testified that he was a case manager for the Pennsylvania Department of Welfare and "help wherever I can" at Nolter's Café. Notes of Testimony, December 8, 2011, (N.T. 12/8/11) at 5; R.R. at 233a. D. Nolter presented a list of corrective steps that have been taken to put Nolter's in

compliance with the Code and the Board regulations and to prevent future violations. N.T. 12/8/11 at 5; R.R. at 233a.<sup>3</sup>

D. Nolter introduced related exhibits such as RAMP identification cards for his brother and him, testimonial letters from patrons, and the house rules of Nolter's. D. Nolter testified that the house rules were in place since his father,

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<sup>3</sup> In the list of corrective measures with respect to serving alcohol to a minor, Nolter's stated it had had no violations since June 20, 2009, had received a notice of compliance/commendation from the BLCE for refusal to sell an underage buyer alcoholic beverages on January 15, 2011, and a compliance check from the BLCE on December 2, 2011, where two patrons were checked for identification and found to be over twenty-one. Additionally, the bartender who served the underage patron was fired for the incident. All patrons entering the bar who appear to be under the age of thirty are asked to show identification. On busier nights, a "door man" is placed at the entrance to check for identification. Minors are not permitted in the bar without the proper supervision of a parent or guardian, and no minors are allowed in the bar after 8:00 p.m. Nolter's also posted RAMP signage which stated that no one under the age of twenty-one would be served alcohol. Also, a digital camera had been placed behind the bar to provide proof that a patron was carded along with the 2011 United States and Canadian Identification checking guide with reference material on acceptable and unacceptable forms of identification.

With respect to the violation for writing checks to pay for alcoholic beverages for insufficient funds, Nolter's stated it now paid by cash or money order. With respect to violations for gambling, Nolter's represented that no gambling was permitted on the premises. With respect to noise violations, the jukebox was regulated so that it was kept at sixty percent or lower of volume capacity, noise levels were monitored from the outside, and the closest neighbor, a police officer, had never complained about the noise. With respect to violations for smoking, smoking was now prohibited in the establishment with no smoking signs, and a bucket of sand was placed outside the door to allow patrons to smoke there and dispose of cigarette butts. With respect to the failure to keep records for the business at the premises, Nolter's asserted that records were now kept there. With respect to the violation for failure to vacate the premises used for serving alcoholic beverages after the required time, Nolter's represented that no alcohol was served after 2:00 a.m. and all patrons were required to leave by 2:30 a.m. With respect to the violation for failure to complete RAMP training, Nolter's represented that Mrs. Nolter, Nolter, and D. Nolter had all completed RAMP training. List of Corrective Measures at 1-3; R.R. at 267a-269a.



who died in 1995, ran Nolter's. N.T. 12/8/11 at 15; R.R. at 243a. D. Nolter admitted that the house rules were put in writing the day before the hearing. N.T. 12/8/11 at 15; R.R. at 243a. On cross-examination, D. Nolter admitted that he, his mother, and his brother did not become RAMP certified until after the LCB denied the renewal of the license. N.T. 12/8/11 at 26; R.R. at 254a.

By order dated April 5, 2012, the trial court overruled the renewal of the license and ordered that the license be renewed:

Based on the evidence presented, the Board [LCB] noted in its opinion a number of times that it was 'troubled' and 'concerned' by Appellant's [Mrs. Nolter] lack of sincere efforts to correct the issues raised by the citation. However, this Court was presented with new evidence that demonstrated Appellant's [Mrs. Nolter] efforts, if not somewhat delayed, to rectify the concerns raised by the Board [LCB]. At the hearing before this Court, Appellant [Mrs. Nolter] presented a comprehensive plan that outlined steps to correct and ensure compliance with all of the noted issues in the citation history. The Appellant [Mrs. Nolter] also presented evidence to show these measures were in place and being implemented by her employees.

If this Court only considered the evidence presented to the Board [LCB], specifically the lack of any action plan or proposed corrective measures, the determination of the Board [LCB] was sound. However, this Court's reversal of the Board's [LCB] determination is based on the new evidence presented at the *de novo* hearing which demonstrated the significant corrective steps undertaken by Appellant [Mrs. Nolter] since the Board's [LCB] determination. Viewing the record as a whole, this Court finds that there is substantial evidence to support the reversal of the Board's [LCB] decision. . . .(Citation omitted).

Trial Court Opinion, April 5, 2012, at 5; R.R. at 36a.

The LCB contends that the trial court erred when it determined that remedial measures taken by Mrs. Nolter after the Board's decision were timely and substantial.<sup>4</sup>

Under the Code, the renewal of a liquor license is not automatic. Section 470(a.1) of the Code, 47 P.S. §4-470(a.1), provides that the LCB may refuse to renew a liquor license for several reasons.<sup>5</sup> The LCB may consider the

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<sup>4</sup> This Court's review is limited to a determination of whether the trial court's findings are supported by substantial evidence and whether the trial court abused its discretion or committed an error of law. Pennsylvania Liquor Control Board v. Bartosh, 730 A.2d 1029 (Pa. Cmwlth. 1999).

<sup>5</sup> Section 470(a.1) of the Code, 47 P.S. §4-470(a.1), provides:

The Director of the Bureau of Licensing may object to and the board may refuse a properly filed license 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 removal 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 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

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licensee's record of violations when it decides whether to renew a liquor license and even a single violation may be sufficient to decline to renew a license. Hyland Enterprises, Inc. v. Pennsylvania Liquor Control Board, 631 A.2d 789 (Pa. Cmwlth. 1993). The LCB may examine a pattern of violations for which penalties have already been paid in deciding whether to renew a license. Atiyeh v. Pennsylvania Liquor Control Board, 629 A.2d 182 (Pa. Cmwlth. 1993), *petition for allowance of appeal denied*, 536 Pa. 649, 639 A.2d 35 (1994). This Court has determined that "regardless of when they occur the Board [LCB] may consider all code violations committed by a licensee in determining whether to renew a liquor license." Bartosh, 730 A.2d at 1033.

When a party appeals an LCB decision, the trial court hears the appeal *de novo* and makes its own findings of fact and conclusions of law. The trial court must receive the record of the proceedings before the Board, if it is offered, and is permitted to take new evidence. The trial court may sustain, alter, change, modify or amend a decision by the LCB, even if the trial court does not make findings of fact that are materially different from those found by the LCB. Two Sophia's Inc. v. Pennsylvania Liquor Control Board, 799 A.2d 917 (Pa. Cmwlth. 2002).

In determining whether to renew a license on appeal, the trial court is permitted to consider substantial steps taken by a licensee to remediate the violations. U.S.A. Deli, Inc. v. Pennsylvania Liquor Control Board, 909 A.2d 24

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**(continued...)**

were taken to address the activity occurring on or about the premises.

(Pa. Cmwlth. 2006), *petition for allowance of appeal denied*, 593 Pa. 736, 929 A.2d 647 (2007).

Here, the trial court determined that Mrs. Nolter took significant corrective steps to remediate the conditions for which she was cited. The LCB asserts that the trial court's determination that Mrs. Nolter took timely substantial measures was unsupported by substantial evidence and constituted an error of law.

Specifically, the LCB argues that after she admitted to the violations in Citation No. 09-1692, Mrs. Nolter was ordered by the administrative law judge to become RAMP compliant on or before September 21, 2010. At the time of the hearing before the LCB on June 27, 2011, or nine months after the deadline imposed by the administrative law judge, Mrs. Nolter still had not complied with Section 470(d) of the Code, 47 P.S. §4-470(d). The LCB further argues that at the time of the hearing before the trial court, while there was evidence that Nolter and D. Nolter had become RAMP compliant there was no evidence that Mrs. Nolter had completed RAMP training as required under Section 471.1(d)(2) of the Code, 47 P.S. §4-471.(d)(2).

However, a review of the record reveals that D. Nolter testified on cross-examination that his mother, Mrs. Nolter, became RAMP compliant on November 29, 2011, though she had yet to receive her certification as of the date of the hearing on December 8, 2011. N.T. 12/8/11 at 25; R.R. at 253a. Additionally, the list of corrective measures indicated that Mrs. Nolter was RAMP compliant.

There was sufficient evidence presented for the trial court to conclude that Mrs. Nolter was RAMP compliant.

Next, the LCB asserts that the “house rules” referred to by D. Nolter before the trial court consisted of rules made when D. Nolter’s father ran Nolter’s. D. Nolter’s father died in 1995. As a result, the LCB asserts that these “house rules” do not constitute remedial measures because they were in place at the time the citations were issued. However, while D. Nolter did testify as to the existence of the “house rules,” a review of the trial court’s opinion reveals no mention of the “house rules.” The trial court opinion focuses on the corrective measures taken in regard to the citations that were submitted into evidence at the trial court hearing. There is nothing in the record to indicate that the trial court relied on the “house rules” evidence when it rendered its decision.

Further, the LCB asserts that the attempt to become RAMP compliant was not timely since the administrative law judge ordered RAMP compliance by September 21, 2010, and Mrs. Nolter did not become RAMP compliant until November 2011. Similarly, the LCB asserts that Mrs. Nolter acknowledged the violation of the Act on March 15, 2010, but, as of the hearing before the LCB on June 27, 2011, she still permitted smoking within Nolter’s. It was not until after the LCB did not renew the license that Nolter’s became a nonsmoking facility.

For support, the LCB cites Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Can, Inc., 651 A.2d 1160 (Pa. Cmwlth. 1994), *petition for allowance of appeal denied*, 541 Pa. 655, 664 A.2d 544 (1995).<sup>6</sup>

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<sup>6</sup> In Can, Can, Inc. (Can) operated a bar known as Johnnie's Café in East Pennsboro Township, Cumberland County. Pennsylvania State Trooper Diane Stackhouse (Trooper Stackhouse) began an undercover operation and frequented Johnnie's Café several times per week in order to become known as a "regular." Trooper Stackhouse initiated approximately thirty drug transactions either in or on the licensed premises of Johnnie's Café over the course of approximately nine and one-half months. At least seven of the transactions involved employees whether on or off duty. Trooper Stackhouse also observed an unusually high number of telephone calls involving the pay phone and the phone under the bar. She also observed individuals exiting the bar and smoking marijuana along the side of the building or in the parking lot. The BLCE issued a two count citation to Can and essentially accused it of aiding, abetting, or engaging in drug-related activities both on and contiguous to the licensed premises. After a hearing, the administrative law judge ordered Can to pay a \$1,000.00 fine and suspended the liquor license for one hundred twenty days. The Board affirmed. Can appealed to the Court of Common Pleas of Cumberland County (common pleas court) which also affirmed. The common pleas court discounted Can's argument that it had taken efforts to prevent illegal drug activity once it had learned of its existence. Can, 651 A.2d at 1162-1163. The common pleas court determined:

Given the fact that there was evidence presented that [Richard] Nott [the owner of Can] should have known illegal drug activities were occurring prior to being issued the citation and that he took no remedial measures, the trial court concluded that the tribunals did not abuse their discretion in determining that Nott's efforts after learning of the activity did not constitute 'substantial remedial measures.'

Can, 651 A.2d at 1163.

Can appealed to this Court which affirmed. On the issue of whether Can took substantial affirmative steps to guard against the drug-related activity, this Court determined that once it became apparent that Can should have known of the drug activity, it should have taken steps and not waited until it actually became aware when there was a drug raid at the premises. Can, 651 A.2d at 1166.

This Court does not agree with the LCB that Can controls here. First, the LCB asserted that Can stood for the proposition that remedial measures taken more than a year after the incidents they were intended to address were not timely. While this Court in Can did determine that the remedial measures were untimely, that determination hinged on whether Can undertook corrective measures to correct and/or prevent illegal drug activity when it learned of them, it did not announce a specific time limit by which remedial measures must be undertaken to be timely. Second, Can differs procedurally from the present case because it involved a suspension of a license rather than a renewal. Third, in Can, the common pleas court reviewed the decision of the LCB and did not conduct a *de novo* hearing. The common pleas court did not accept new evidence. In the present matter the trial court was authorized to conduct a *de novo* review, and received new evidence, and issued its own findings of facts and conclusions of law. Under this standard the trial court was authorized to consider evidence which may not have been presented before the hearing examiner. Such evidence included evidence of remedial measures that had not taken place before the LCB hearing. While this Court agrees that it would have been better for Mrs. Nolter to adopt the remedial measures earlier than she did, the trial court's determination that Mrs. Nolter took steps to correct the infractions was supported by substantial evidence. The trial court did not err when it considered her corrective measures.

Accordingly, this Court affirms.

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BERNARD L. MCGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mary Lou Nolter t/a Nolter's Café	:	
	:	
v.	:	
	:	
Pennsylvania Liquor Control Board,	:	No. 829 C.D. 2012
Appellant	:	

**ORDER**

AND NOW, this 21<sup>st</sup> day of December, 2012, the order of the Court of Common Pleas of Northumberland County in the above-captioned matter is affirmed.

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BERNARD L. McGINLEY, Judge