

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

GEMSTAR ENTERPRISES, INC. :
T/A RUBYS SALOON, :
Plaintiff/Appellant :

Vs. :

No. 15-1016

PENNSYLVANIA LIQUOR CONTROL :
BOARD, :
Defendant/Appellee :

Frank C. Sluzis, Esquire
Melissa J. Noyes, Esquire

Counsel for Plaintiff/Appellant
Counsel for Defendant/Appellee

MEMORANDUM OPINION

Matika, J. - December 11, 2015

Gemstar Enterprises, Inc. T/A Ruby's Saloon (hereinafter "Gemstar") appeals from the Pennsylvania Liquor Control Board's (hereinafter "the Board") denial of its application to renew a Hotel Liquor License No. H-1182, Lid No. 56804 (hereinafter "Liquor License") at premises located at 298 Bridge Street, Lehighton, Pennsylvania. The primary issue is whether or not Ruby's is entitled to a renewal of this Liquor License, the request for which objections were imposed by the Pennsylvania Liquor Control Board, Bureau of Licensing (hereinafter "the Bureau") for a variety of reasons.

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period, to wit: September 1, 2010 through August 31, 2012. However, on or about August 20, 2012, the Bureau imposed objections to the renewal application for the Liquor License effective for the period beginning September 1, 2012. The basis for these objections were five (5) adjudicated citations⁴ and approximately fifteen (15) incidents of disturbance at or immediately adjacent to the licensed establishment.⁵ As a means of addressing concerns and issues of the Board *vis-à-vis* the operations of the licensed establishment by Gemstar going forward, on May 1, 2013, Gemstar and the Board entered into a Conditional Licensing Agreement (hereinafter "C.L.A."). This agreement would allow for Gemstar to continue operations for the licensing period of September 1, 2012 through August 31, 2014 if it followed and complied with previous conditions imposed by the Board along with additional conditions outlined in the agreement.⁶ In accordance with this agreement, should Gemstar

⁴ In addition to the citations referenced in footnote 3, two (2) additional citations were issued in 2011, namely 11-1692, and 11-1255. These citations also resulted in guilty adjudications for violations of: 1) 47 P.S. §4-493(1), sold alcohol to an individual under the age of twenty-one (21) on August 4, 2011, and 2) 40 Pa. Code §5.32(a), used loudspeakers or devices whereby music could be heard outside on May 28, 2011, June 24, 2011, and June 25, 2011.

⁵ See Respondent Exhibit #1, B3, pages 1 and 2.

⁶ These conditions, set forth in paragraph 6 of that agreement are as follows: a) Gemstar shall remain compliant with the responsible alcohol management provisions of the Liquor Code including, but not limited to: 1) New Employee Training; 2) Training for alcohol service personnel; 3) Manager/owner training; 4) Displaying of responsible alcohol service signage; and 5) Certification of compliance by the Board's Bureau of Alcohol Education;

fail "to adhere to this agreement", it could result in a non-renewal of Gemstar's License by the Board.

On or about June 30, 2014, Gemstar submitted a renewal application for the Liquor License for the period of September 1, 2014 through September 1, 2016. On or about September 2, 2014, after the Bureau received this application, it notified Gemstar that Gemstar had failed to file the required Tax Clearance Certificate from the Department of Revenue, failed to

b) Gemstar shall employ, at a minimum, one (1) security person on Friday and Saturday nights. The security personnel will be present at the premises and working from 10:00 P.M. until one-half hour after the time when all patrons are required to vacate the premises. The security personnel shall monitor and maintain order of the exterior and interior of the licensed premises and shall be clothed to make their status readily apparent; c) Gemstar shall maintain a written barred patrons list on the licensed premises and shall prohibit persons on that list from entering or frequenting the premises. Such list shall be maintained by Gemstar as a business record, subject to section 493(12) of the Liquor Code, and shall be made available upon request to law enforcement officials, as well as Board employees and employees of the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"); d) Gemstar shall maintain, in good working order, a security/surveillance system at the licensed premises consisting of a minimum of sixteen (16) cameras. At least twelve (12) cameras shall be placed in the interior of the licensed premises and at least four (4) cameras shall be placed on the exterior of the licensed premises. All such cameras shall continuously record during all operating hours. Recordings shall be retained for not less than two (2) weeks, and all recordings from the system shall be available upon request by the Board, its employees, the Bureaus, its employees, or to any local, state or federal law enforcement officials; e) Gemstar shall purchase and use a "transaction scan device," as that term is defined in the Liquor Code, to scan the identification of all patrons thirty (30) years of age or under, purchasing alcoholic beverages, unless the patron's identification has been previously scanned and Gemstar has retained the data obtained from such scan. Information obtained from the transaction scan device shall be provided upon request of the Board, or any local, state, or federal law enforcement agency, as well as the Bureau; f) Gemstar shall initiate and maintain quarterly meetings with the chief or another designated officer of the Lehigh Township Police Department to discuss and solicit suggestions concerning the safe operation of the licensed premises. Such meetings shall continue until the chief of police or his designee indicates in writing that such meetings are no longer necessary, or less frequent meetings are desirable, in which case Gemstar shall adhere to meetings at the frequency desired by the Lehigh Township Police Department. A record of the date, time, and substance of such meetings shall be kept as a business record, subject to section 493(12) of the Liquor Code, by Gemstar.

pay the late filing fee of One Hundred Dollars (\$100.00), and failed to submit the application addendum.⁷

On August 20, 2014, for want of Gemstar to provide the above items, along with other reasons, the Bureau provided written notice to Gemstar that it was objecting to the next renewal of Gemstar's license.⁸ On August 21, 2014, the Bureau received these items and consequently issued an amended objection letter on August 27, 2014.⁹ This subsequent letter also advised Gemstar of its right to a hearing, which took place on October 10, 2014, before Hearing Officer Thomas Miller. After that hearing, the hearing officer found that Gemstar had in fact abused its licensing privilege, and recommended that additional conditions be added to the Conditional Licensing Agreement of May 1, 2013. Should Gemstar not agree, then the renewal should be refused. Any decision from the Board was held in abeyance to see if Gemstar and the Bureau could reach an agreement. On May 13, 2015, without any agreement on the additional conditions, the Board refused to renew the

⁷ McEvoy testified at the hearing before this Court that this was the date he submitted the renewal application; however, due to the fact that the Department of Revenue tax status was "not clear", the application was not accepted by the Bureau prompting the September 2, 2014 letter referenced above. Additionally, McEvoy was required to submit a copy of a lease for the subject premises which he apparently did along with an addendum to the lease application and a One Hundred Dollar (\$100.00) late filing fee. All of these items were received by the Bureau on August 21, 2014.

⁸ Respondent's Exhibit #1, B5.

⁹ Respondent's Exhibit #1, B6.

application for Hotel Liquor License No. H-1182. This timely appeal followed on May 15, 2015.

LEGAL DISCUSSION

"The renewal of a liquor license is discretionary." *S&B Restaurant, Inc. v. Pennsylvania Liquor Control Board*, 114 A.3d 1106, 1110 (Pa. Commw. Ct. 2015). Section 470(a.1)¹⁰ of the Liquor Code, allow the Board to refuse to renew a Liquor License:

- (1) if the licensee, its shareholders, directors, officers, association members, servants, agents or employees 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 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.

¹⁰ 47 P.S. §470(a.1)

When an appeal is taken from the Board's decision, the trial court hears the matter *de novo* and must make its own findings of fact and conclusions of law. *Two Sophia's, Inc. v. Pennsylvania Liquor Control Board*, 799 A.2d 917, 919 (Pa. Commw. Ct. 2002). Those findings and conclusions must be based upon the record of the proceedings below, if offered and introduced by the Board, together with any other evidence properly submitted at the *de novo* hearing. *Id.* at 921. "Under the scope of review for §464 Appeals, a trial court is prohibited from reversing a decision of the Board unless there has been a manifest abuse of discretion or the trial court makes findings of fact that vary from those made by the Board." *Pennsylvania Liquor Control Board v. Can, Inc.*, 664 A.2d 695, 698 (Pa. Commw. Ct. 1995), *appeal granted in part* 671 A.2d 1135 (Pa. 1996). "A trial court is not permitted to substitute its findings of fact for those of the Board, when the evidence before the two tribunals is substantially the same." *Id.* at 698, *citing Beach Lake United Methodist Church v. Pennsylvania Liquor Control Board*, 558 A.2d 611 (Pa. Commw. Ct. 1989). Further, while it is within the authority of the trial court to modify, sustain, or reverse a board decision to deny the renewal of the license even where there is substantial evidence to support the findings of the Board, the Trial Court may only do so where its findings are supported by substantial evidence in the record as a whole.

Paey Associates, Inc. v. Pennsylvania Liquor Control Board, 78 A.3d 1187 (Pa. Commw. Ct. 2013).

In the case *sub judice*, the Bureau objected to the renewal of the Gemstar License for four (4) separate and distinct reasons: 1) violations of the liquor code; 2) improper conduct of the licensed establishment; 3) a breach of the May 1, 2013 CLA; and 4) the late-filed renewal application. This Court will address these reasons *seriatim*.

1. Violations of the Liquor Code/Improper Conduct¹¹

Where the basis of the Bureau's objection to a license renewal included one or more adjudicated citations involving the licensee, the trial court "may" take this into consideration in determining whether that licensee should be renewed. *First Ward Republican Club of Philadelphia v. Pennsylvania Liquor Control Board*, 11 A.3d 38 (Pa. Commw. Ct. 2010). Even a single citation may be sufficient to decline this renewal. *Hyland Enterprises, Inc. v. Pennsylvania Liquor Control Board*, 631 A.2d 789 (Pa. Commw. Ct. 1993). The consideration of and weight given to these citations is within the discretion of the trial court. *Goodfellas, Inc. v. Pennsylvania Liquor Control Board*, 921 A.2d 559 (Pa. Commw. Ct. 2007). "It is not improper for the Board to

¹¹ As these two reasons, either separately or jointly may form the basis for an objection to the renewal of Gemstar's License and in light of the fact that they may be, in some respects interwoven, and collectively, the basis for the Conditional Licensing Agreement, this Court will address them together.

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." *I.B.P.O.E. of West Mount Vernon Lodge 151 v. Pennsylvania Liquor Control Board*, 969 A.2d 642, 648 (Pa. Commw. Ct. 2009).

In this case, the citation history of Gemstar consisted of five (5) guilty adjudications, the last of which occurred on April 24, 2012. Penalties were imposed by the Administrative Law Judge, the most recent of which included Responsible Alcohol Management Program (hereinafter "R.A.M.P.") Certification and Compliance. A licensee may be held accountable for a pattern of non-liquor code illicit conduct or violations, on the licensed premises of which the licensee knew or should have known and failed to take substantial steps to prevent such activity. *Philly Int'l Bar, Inc. v. Pennsylvania Liquor Control Board*, 973 A.2d 1,3 (Pa. Commw. Ct. 2008), *appeal denied*, 980 A.2d 609 (Pa. 2009). While *Pennsylvania Liquor Control Board v. TLK, Inc.*, was an enforcement case, the standard there is equally applicable to renewal cases. 544 A.2d 931 (Pa. 1988); (See *Rosing, Inc. v. Pennsylvania Liquor Control Board*, 690 A.2d 758 (Pa. Commw. Ct. 1997)). Additionally, a licensee may be held accountable for off-premises conduct if there is a connection between the licensed premises and that conduct. *St. Nicholas*

Creek Catholic Russian Aid Society v. Pennsylvania Liquor Control Board, 41 A.3d 953 (Pa. Commw. Ct. 2012).

A court may consider corrective measures taken by a licensee in response to adjudicated citations and to address a pattern of illicit criminal behavior in determining whether or not to renew a license. *Goodfellas*, 921 A.2d at 565. The Court has discretion to renew a license even though the licensee has several adjudicated violations and has also taken steps to insure compliance with the Liquor Code. *U.S.A. Deli, Inc. v. Pennsylvania Liquor Control Board*, 909 A.2d 24 (Pa. Commw. Ct. 2006).

As a result of these accumulated citations, as well as approximately fifteen (15) incidents of disturbances at or somewhat adjacent to the licensed establishment, Gemstar and the Bureau entered into a Conditional Licensing Agreement. The agreement called for the Bureau to issue a renewal of the license subject to Gemstar meeting certain conditions.¹² These conditions were agreed to by and subsequently imposed upon Gemstar in response to these citations and the disturbances in and around the licensed establishment. They included: R.A.M.P. training and compliance, employment of security, maintaining of a barred patrons list, security/surveillance system, employment

¹² The compliance or lack thereof with this agreement as it relates to the Bureau's objection on the renewal of Gemstar's license will be discussed further in this opinion.

of a "transaction scan device" to check patron identification, and quarterly meeting with the Borough Police Department. Since this agreement was executed and entered into by the parties, there have been no new citations filed against Gemstar. Further, none of the various improper conduct allegations set forth by the Bureau as forming other reasons for objecting to this renewal application are sufficient to warrant filing of additional citations. It is also worth noting that, notwithstanding the fact that Gemstar was required to complete R.A.M.P. training twice as conditions of two (2) of the penalties imposed by the Administrative Law Judge, it was required to remain compliant with the R.A.M.P. provisions of the Liquor Code. R.A.M.P. training simply provides employees and owners with the mechanisms to understand, evaluate, and prevent the service of alcohol to minors and intoxicated individuals. 47 P.S. §4-471.1(d). Thus, since there have been no new citations filed relative to the issue that the R.A.M.P. training is designed to prevent, it follows that Gemstar has not only prevented this conduct from occurring, but has successfully implemented such training in its day-to-day operations.

This Court is mindful of the fact that the law mandates that it consider Gemstar's citation history in adjudicating this appeal, not unlike the requirement that a sentencing court must consider the prior criminal record of a defendant. However, the

weight and significance given to this history is discretionary and in light of the efforts taken by Gemstar to prevent them from occurring again, this Court substitutes its discretion for that of the Board and finds that the steps taken by Gemstar in response to its adjudicated citations should not stand as a basis for not renewing its license. *See Goodfellas*, 921 A.2d at 566.

Along with the consideration of Gemstar's citation history, the Board referenced six (6) incidents involving some type of disturbance or alcohol-related issues that were attributable to the operations of the licensed premises, and thus chargeable as a basis for the Bureau to object to the renewal of the license and found that Gemstar was not entitled to that renewal.¹³ The law is clear that Gemstar could be held accountable for these incidents; however, there must be a causal connection between the licensed premises and those activities. *Becker's Café, Inc. v. Pennsylvania Liquor Control Board*, 67 A.3d 885 (Pa. Commw. Ct. 2013). Additionally, the Liquor Code states that the Board, and now this Court on appeal, may refuse to renew a license if:

(4) due to the manner in which this . . . licensed premises was operated while the licensee, . . . [was] involved with that license. When considering the manner in which this or another licensed premises was

¹³ The Board, in its opinion, found that there were six (6) incidents taken into consideration by it in deciding that Gemstar's license should not be renewed. However, in reviewing the testimony, it appears that the incident of May 17, 2014 was testified to twice, once by Sergeant Lawrence and once by Officer Gulla; thus this Court has only five (5) incidents to consider.

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 relationship between the activity outside the premises and the manner in which the licensed premises was operated. 47 P.S. §4-471(a.1).

Accordingly, it is necessary to dissect the testimony regarding these incidents to determine what, if any, causal connections there may be.

a. September 30, 2012 Noise Complaint

Officer Joel Gulla first testified, after reviewing his incident report, that he was called to the area of Ruby's (Trade name for Gemstar) for a noise complaint. Upon arrival, he noticed a large crowd congregating outside the area of the back entrance on the licensed premises. He further testified that as he patrolled the streets near the establishment, his presence became visible, and as a result, those outside dispersed without incident. Due to this, the Officer was never required to exit his vehicle. He also testified that he could not recollect if any security was outside at this time. He testified that no citations of any sort were issued as a result of anything occurring at that time.

On cross-examination, Officer Gulla testified that, upon reviewing call logs for this date, while he patrolled the area around Ruby's, the large crowd was actually at Beer Goggles, a different establishment in the Borough, and not at Ruby's.

Due to the conflicting nature of this Officer's testimony as to the September 26, 2012 incident, this Court does not find there is sufficient evidence or proof to establish a causal connection between the operation of the licensed premises and any activity that may or may not have occurred on this date. Further, the Officer's testimony, even if not contradictory, does not suggest anything more than patrons congregating outside the establishment after exiting and apparently leaving.

b. July 26, 2013 - Intoxicated Female

Chief Biechy testified from a report authored by Patrolman Derek Solt regarding an incident that is alleged to have occurred on July 26, 2013, near the licensed establishment. This report was identified as Exhibit B-9 attached to the notes of testimony from the October 10, 2014 proceeding before the Hearing Officer (Respondent's Exhibit 1 from this Court's de novo hearing). In this report, it was indicated that Officer Solt was dispatched to 393 S. 3rd Street in Lehighton Borough regarding an intoxicated female passed out at that address. The report goes on further to state that this woman claimed she was drinking at Ruby's and was waiting for a ride home. She was eventually cited for public drunkenness and taken home by Officer Solt.¹⁴

¹⁴ The Board erred in finding that this individual was found on the steps of the licensed establishment.

As this Court has stated, as have the Appellate Courts, in order to consider this conduct as being attributable to Gemstar for purposes of the non-renewal of its license, the Bureau must show a causal connection. In this instance, the only connection between the intoxicated individual and the licensed establishment was her statement that she was drinking there. There was no testimony by the Bureau to suggest that she was thrown out of the establishment due to either her intoxicated state or because of a problem she caused inside. Once a non-problem patron voluntarily leaves an establishment, that person's conduct should no longer be attributable to the licensee. If the patron had been removed by the employees, that would likely be a different story with a different result.¹⁵ Such is not the case here and therefore, the Court finds that this incident should not be attributable to the licensee either.

c. August 17, 2013 -Intoxicated Woman

Sergeant Joseph Lawrence testified as to his involvement with an intoxicated woman on the street near the licensed establishment on August 17, 2013. He testified that he received a call regarding an intoxicated woman near Ruby's. Upon approaching Ruby's, he observed a woman about a block away from

¹⁵ This Court agrees with the Board that, in following *Paey Associates, Inc. v. Pennsylvania Liquor Control Board*, 78 A.3d 1187 (Pa. Commw. Ct. 2013), a licensee is not permitted to simply push their problems out the front door and disregard them, but there is no evidence that this was the case with this individual.

him. After observing the police vehicle, she attempted to hide behind a bush. He located the woman and recognized her from previous dealings. The Sergeant was able to take this woman into custody, drive her back to the Police Station, and issue her a citation for public drunkenness. When asked on cross-examination, the Sergeant could not say where the woman was last drinking that night.

In his defense, Mr. McEvoy testified relative to this incident. He stated that it was actually an employee who called the police regarding this woman. The circumstances involving this woman were that she arrived at Ruby's, already intoxicated, at which point she was denied entrance and service. In fact, the only thing the employee of Gemstar did was to escort her off of the property and not allow her to remain on the premises. Again, there was nothing to indicate that this woman was creating a problem for this establishment that caused them to simply throw her out the front door. In fact, due diligence occurred when the employee called the police. This Court finds no causal connection between this incident and the licensed premises.

d. October 13, 2013 Noise Complaint

Officer Gabe Szozda testified as to an incident he was called to investigate on October 13, 2013. According to the Officer, this incident involved a male and his girlfriend, who

was upset with him because he supposedly spoke with another female patron in the bar. The people present upon the arrival of this Officer were both in the parking lot and in the street adjacent thereto.

Officer Szozda further testified that the two had initially argued inside the establishment and that argument continued outside.¹⁶ Based upon this Officer's investigation, no charges were filed and the crowd quietly and quickly dispersed upon the arrival of police backup.

Lastly, Officer Szozda testified that he did not see any security personnel employed by Gemstar outside in the parking lot area during this incident. Mr. McEvoy testified that the two arguing individuals were asked to leave the premises because of their conduct inside the establishment. McEvoy also testified that this argument, while significant enough to ask the participants to leave, was not so egregious as to place them on the establishment's barred patron list.

e. May 17, 2014 Parking Lot Incident

Both Sergeant Lawrence and Officer Gula testified as to their respective involvement in an incident at and near the licensed establishment on May 17, 2014. Sergeant Lawrence testified that at 2:09 A.M. on that date, he was dispatched to a disturbance call about loud patrons leaving Ruby's. Upon

¹⁶ The record is unclear as to whether the participants left voluntarily or were escorted out by employees.

arriving, the Sergeant noticed about ten (10) people in the parking lot area of the establishment. Upon the Officer's request, these individuals dispersed without incident. Sergeant Lawrence also testified that he could not recall if there were any security personnel outside in the parking area at that time, although they usually are. On cross, the Sergeant characterized this incident as people just being loud leaving the bar and nothing that would rise to the level necessitating further police involvement. Officer Gula testified that he was also at the premises shortly after 2:00 A.M. on May 17, 2014, and that the crowd disbanded without incident.

Undoubtedly, there is a causal connection between individuals leaving the licensed establishment after the 2:00 A.M. closing and the operation of the establishment. However, in looking at this May 17, 2014 incident, this Court does not find anything in the conduct of these patrons which would jeopardize Gemstar's renewal. The most testimony can show is that the patrons were a bit loud; they were not fighting, arguing, or otherwise disruptive. It is unrealistic for the Board to expect patrons to act as quiet as church mice when exiting a licensed establishment after an evening of imbibing alcohol.

2. Breach of Conditional Licensing Agreement of May 1, 2013

In addition to the citation history and various claims of improper conduct, the Bureau also objected to the renewal of Gemstar's license on the basis that Gemstar failed to comply with the May 1, 2013 Conditional Licensing Agreement relative to initiating and maintaining quarterly meetings with the Chief or another designated officer of the Lehighton Police Department.¹⁷

It appears that the purpose of this Conditional Licensing Agreement was to impose various conditions on Gemstar for its continued operation of the license on the subject premises as a result of a history of adjudications of guilt on five (5) previous citations and the occurrences of approximately fifteen (15) incidents at or immediately adjacent to the licensed establishment.¹⁸ These conditions were: R.A.M.P training and compliance, employment of security personnel, maintenance of a barred patron list, maintenance of a security/surveillance system, use of a transaction scan device, and the aforesaid meetings with the Lehighton Police Department.

McEvoy testified that he and all employees have completed R.A.M.P. training and that Gemstar remains in compliance

¹⁷ Paragraph 6f of the Conditional Licensing Agreement identified as Exhibit B3 attached to the notes of testimony from the proceeding before the Hearing Officer held on October 10, 2014; the notes of testimony also being identified as Respondent's Exhibit 1.

¹⁸ But for the conduct outlined in the citations, the record is devoid of any specifics with regard to these other disturbances, save for some general labeling as: fighting, assault, disorderly operations, and loud music.

therewith, that he employs security as required, maintains a barred patron list and a security/surveillance system, and utilizes a transaction scan device as required by the Conditional Licensing Agreement. McEvoy also testified extensively regarding his meetings with the Lehigh Police Department. McEvoy admitted that in the period immediately after the execution of this agreement, he initiated phone calls to the Lehigh Police Department to discuss issues regarding the operation of the licensed premises, however, those calls were not returned. McEvoy further testified that beginning in February, 2014, he was finally able to actually meet with someone from the Police Department.¹⁹

Chief Biechy testified that he only had 2 meetings with McEvoy since he was named Chief in December 2013. Those meetings occurred on June 3, 2014 and September 8, 2014. Biechy did, however, indirectly commended McEvoy for his effort at improvements made at the licensed premises with testimony such as "probably problematic, but getting better" and "Ruby's (is now) number two" in terms of the worse bars in Lehigh (previously "ranked" as the worst)." Biechy also testified that there he was unaware of any incidents since May 2014 and most

¹⁹ Respondent's Exhibit 6 is a log of quarterly meetings McEvoy claims he had with representatives of the Lehigh Police Department. The meetings of June 3, 2014 and September 8, 2014 were confirmed by Chief Biechy as having taken place.

importantly, he (Biechy) found no reason to make any recommendations with regards to the operations of Ruby's.

Clearly, McEvoy did not fully comply with paragraph 6(f) of the Conditional Licensing Agreement. His explanation that he contacted the Police Department 3-4 times in 2013, even if believed, is not a sufficient initiation of these quarterly meetings. However, it should be noted that the purpose of these quarterly meetings is to allow for an open dialogue between Gemstar and the Police Department relative to the safe operations of the licensed establishment, such that those operations reduce or eliminate police involvement and also to receive recommendations from the Police Department to effectuate that goal.

It is evident based on the record, specifically the testimony of Chief Biechy, that all of the efforts made, money spent, and steps taken by Gemstar have in fact lead to the alleviation of problems such that no recommendations were made or even necessary as a result of the meetings in June and September, 2014. It reasons, therefore, that what has been in place has worked at the licensed premises, notwithstanding the lack of meetings with the Police Department.

This Court finds substantial compliance with the CLA as a whole and specifically with regard to paragraph 6f, the purpose of which would be to correct or confirm the appropriate

operations of the licensed premises, which seemingly was occurring throughout. The *de minimis* violation of not having two (2) meetings during a span of time where the bar was no longer problematic is an insufficient reason along with the other alleged objections of the Bureau to not renew Gemstar's license. While paragraph 7 of the Conditional Licensing Agreement indicates that "failure to adhere to this agreement may result in . . . non-renewal of this license by the Board", the Court does not agree that it should here. The Court finds that, in the exercise of our *de novo* authority and discretion, it does not afford this evidence much weight in our ultimate decision.

3. Late Filing of Renewal Application

The last objection of the Bureau to the renewal of Gemstar's license dealt with Gemstar's late filing of the renewal application. 47 P.S. §4-470(a) requires that a renewal application must be filed within sixty (60) days of the expiration date of the license and that tax clearances from both the Department of Revenue and Department of Labor and Industry must accompany that application. Clearly, Gemstar did not timely or properly file the renewal application as its initial attempt failed to include the tax clearance certificate from the Department of Revenue. Gemstar eventually, albeit untimely, filed the appropriate document with the Bureau on August 21,

2014, and was charged a late filing fee. Notwithstanding the fact that this late filing may be a reason to object to a renewal of a license, the Bureau acknowledged that this reason alone should not stand to form an objection to the renewal; however, only because there are other reasons to object, sufficiently proven, did the Board consider this late filing. The Court agrees with the Board's determination that discretion affects the weight given to the late filing, but the Court disagrees with the impact such a late filing should have on the renewal of Gemstar's license.

§4-470(a), in relevant parts reads:

That the board, in its discretion, may accept *nunc pro tunc* a renewal application filed less than sixty days before the expiration date of the license with the required fees, upon reasonable cause shown and the payment of an additional filing fee of one hundred dollars (\$100.00) for late filing.

The burden would fall upon the licensee to show reasonable cause. McEvoy testified at the hearing, claiming that the addendum was filed on or about August 21, 2014. The reason was not only the lack of a tax clearance certificate from the Department of Revenue, but also the need for Gemstar to provide the lease between McEvoy and Gemstar evidencing the right to operate on the licensed premises. There is nothing else in the record to establish any reason to not accept the renewal application, *nunc pro tunc*, based upon the reasonable cause

shown by McEvoy. The Bureau has proffered no reason for rejecting the license application once filed. In the absence of evidence to the contrary, the exercise of the discretion in rejecting the licensee's renewal application by the Bureau was improper. The statute allows the late filing, with an additional fee, and upon good cause shown. Therefore, the Court finds that Gemstar complied with the filing of the application for the renewal process; thus, this should not form a basis to object to the renewal of the license. It is patently unfair to a licensee, when given the chance to file a renewal application late if it pays an additional fee and explains the reason for that untimeliness, to still have this held against it in the renewal process.

CONCLUSION

Based upon the Court's *de novo* review of the decision of the Pennsylvania Liquor Control Board and the record in this case, with the authority to exercise our discretion, the Court finds that the Board erred in not renewing Hotel Liquor License No. H-1182 effective September 1, 2014. Accordingly, the Court enters the following Order:

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CIVIL DIVISION

GEMSTAR ENTERPRISES, INC. :
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Frank C. Sluzis, Esquire
Melissa J. Noyes, Esquire

Counsel for Plaintiff
Pennsylvania Liquor Control
Board

ORDER OF COURT

AND NOW, this 11TH day of December, 2015, upon consideration of the Appeal of Gemstar Enterprises, Inc. T/A Ruby's Saloon, and an exhaustive review of the record in this matter, it is hereby ORDERED and DECREED that the Appeal is SUSTAINED. The Pennsylvania Liquor Control Board, Bureau of Licensing shall, in accordance with this Opinion and Order, issue to Gemstar Enterprises, Inc. Hotel Liquor License H-1182 effective with the period commencing September 1, 2014.

BY THE COURT:


Joseph J. Matika, J.

BY:

CARBON COUNTY
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