

ORIGINAL

IN THE COURT OF COMMON PLEAS
OF LEBANON COUNTY, PENNSYLVANIA

ENTERED & FILED
PROTHONOTARY OFFICE
LEBANON, PA

2025 JAN 14 P 2:47

CIVIL DIVISION

PENNSYLVANIA STATE POLICE,
BUREAU OF LIQUOR CONTROL
ENFORCEMENT,

Respondent/Appellee

v.

MT. GRETN A ENTERTAINMENT, INC.
t/a QUENTIN TAVERN,

Petitioner/Appellant

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Docket No. 2023-01627

ORDER OF COURT

AND NOW, to wit, this 14th day of January 2025, after careful consideration of the parties' briefs as well as the record in its entirety, the Court affirms the Pennsylvania Liquor Control Board's Order and Decision dated November 15, 2023, finding there was a violation of Section 471 of the Liquor Code, 47 P.S. §4-471, Section 521.20 of Pennsylvania's Disease Prevention and Control Law of 1955, 35 P.S. §521.20, and Section 1409 of the Administrative Code of 1929, 71 P.S. §1409.

For the forgoing reasons, Appellant's appeal is **DENIED**. A hearing to address the penalty has been scheduled for January 30, 2025, at 8:30 a.m. in Courtroom No. 2.

BY THE COURT:

 J.
CHARLES T. JONES, JR.

cc: Eric E. Winter, Esquire // 8500 Allentown Pike, Suite 3, Blandon, PA 19510 -Mailed
Jessica H. Lathrop, Esquire, 3655 Vartan Way, Harrisburg, PA 17110 -Mailed

Pursuant to Pa. R. Civil P. 236
All parties are hereby notified
this date: 01/15/2025 SR
Prothonotary, Lebanon PA

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Docket No. 2023-01627

APPEARANCES:

Eric E. Winter, Esquire

For Petitioner/Appellant

Jessica H. Lathrop, Esquire

For Respondent/Appellee

OPINION BY JONES, JR. J.:

Before this Court are the Briefs submitted on behalf of both parties regarding the Appellant's Appeal of the Pennsylvania Liquor Control Boards Order and Decision dated November 15, 2023, in relation to its liquor license and the citation charging Licensee with violations of the COVID-mitigation measures imposed by the Orders of the Governor of Pennsylvania and the Secretary of the Pennsylvania Department of Health.

FACTUAL/PROCEDURAL HISTORY

The underlying facts are not in dispute. On March 6, 2020, in response to the COVID-19 pandemic, Governor Wolf issued a Proclamation of Disaster Emergency pursuant to Section 7301(c) of the Emergency Services Management Code. Governor Wolf issued multiple periodic amendments to the Disaster Proclamation. On December 10, 2020, Governor Wolf issued an executive order imposing further

temporary restrictions that took effect at 12:01 a.m. on December 12, 2020, and expired at 8:00 a.m. on January 4, 2021. The Order temporarily prohibited all in-person dining for all businesses in the retail food service industry, which included restaurants. The Order permitted the continuation of outdoor dining, take-out food service and take-out alcohol sales.

License R-12095 was first issued on August 18, 2020, and is currently active. On December 23, 2020, Liquor Enforcement Officer (“LEO”) Skurkis conducted an investigation on behalf of the Bureau. LEO Skurkis entered the licensed premises and observed four employees rendering service to approximately twenty-three patrons. All employees were properly wearing facemasks. On December 23, 2020, another enforcement officer contacted the licensed business and spoke to manager, Lauren Borges, and advised her of the violations. Borges stated that the sole corporate officer, Alan Funck, was aware of the current COVID-19 mandates. The Bureau issued a Notice of Violation letter to Appellant on January 5, 2021. Subsequently, on January 21, 2021, the Bureau of issued Citation number 21-0055 against Appellant charging the following:

On December 23, 2020, you by your servants, agents or employees, failed to abide by the order and mandates of the Governor and/or the Secretary of Health, related to businesses in the restaurant and retail food service industry permitted to operate during the COVID-19 disaster emergency, in that you served or sold food and/or alcohol intended for the consumption inside the premises or allowed the consumption of food and/or alcohol inside the premises, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471, Section 521.20 of Pennsylvania’s Disease Prevention and Control Law of 1955, 35 P.S. §521.20, and Section 1409 of the Administrative Code of 1929, 71 P.S. §1409.

An Adjudication signed and dated February 17, 2023, by Administrative Law Judge (“ALJ”), sustained the Citation and imposed a \$1,000.00 fine against

Appellant. Appellant filed a timely appeal to the Pennsylvania Liquor Control Board. The Liquor Control Board issued its Opinion on November 15, 2023, affirming the decision of the ALJ. On December 13, 2023, Appellant filed a timely Notice of Appeal with this Court appealing the Pennsylvania Liquor Control Board's Order and Decision. The Bureau filed the certified record on February 15, 2024. Both parties submitted briefs to this Court on the legal issues raised by Appellant.

STANDARD OF REVIEW

The Supreme Court of Pennsylvania has determined that the Courts of Common Pleas are still required, under amended Section 471 of the Liquor Code to conduct *de novo* review on questions of law, fact, administrative discretion and such other matters as are involved and, in the exercise of its statutory discretion, to make its own findings and conclusions. *Pennsylvania State Police, Bureau of Liquor Control Enf't v. Cantina Gloria's Lounge, Inc.*, 536 Pa. 254, 639 A.2d 14 (1994). The Court of Common Pleas has a duty of receiving the record of proceedings below and then to make its own findings of fact, conclusions of law, and assess appropriate penalty, if any. *Pennsylvania State Police, Bureau of Liquor Enf't v. Kelly's Bar, Inc.*, 536 Pa. 310, 639 A.2d 440 (1994). Based upon its *de novo* review, the Court may sustain, alter, change, modify or amend the Board's action whether or not it makes findings which are materially different from those found by the Board or the Administrative Law Judge. *Pennsylvania State Police, Bureau of Liquor Control Enf't v. Cantina Gloria's Lounge, Inc.*, at 259.

DISCUSSION

Appellant raised three primary issues on appeal, each of which has several sub-issues. Appellant also raised a new issue on appeal related to the doctrine of unclean hands. This Court finds that this issue is waived as the legal standard is clear: where a party fails to raise an issue, even one of a constitutional dimension, in an

agency proceeding, the issue is waived and cannot be raised on appeal. *Retail Energy Supply Ass’n v. Pennsylvania Pub. Util. Comm’n*, 185 A.3d 1206, 1230 (Pa. Cmwlth. 2018) (citing *Pennsylvania Bankers Ass’n v. Pennsylvania Dep’t of Banking*, 962 A.2d 609, 621-22 (Pa. 2008)). Additionally, in Appellee’s response brief to Appellant’s issues raised on appeal, Appellee addressed a separate issue regarding penalties. As the Court has scheduled a separate hearing regarding the penalties in this matter, we will reserve addressing that issue.

I. Whether the applicable COVID-19 Orders of the Governor and the Secretary of Health are legally valid and should be afforded the force of law.

a. Equal Protection Clause

Appellant argued that the Orders/Mandates of the Governor and the Secretary of Health violate constitutional protections under the U.S. and Pennsylvania Constitutions, specifically, the fundamental right to operate a business, equal protection under the law, and freedom of assembly. Appellant argued that there was no rational basis to impose restrictions requiring or prohibiting “masking, sitting at a bar or ordering food with drinks.” Furthermore, Appellant argued that the Orders imposed different restrictions on licensed and unlicensed restaurants, which violated principles of equal protection. Appellant cites only to the case of *Cnty. of Butler v. Wolf*, 486 F.Supp.3d 883 (W.D. Pa 2020), opinion vacated, appeal dismissed sub nom. *Cnty. of Butler v. Governor of Pennsylvania*, 8 F.4th 226 (3d Cir. 2021). However, *Butler* involved only the initial stay-at-home mandates, business closure orders, and gather limits imposed in March 2020; the court in *Butler* specifically noted that the suit did not involve provisions which permitted businesses to remain open subject to certain restrictions.

Appellee noted that Appellant essentially makes a “class-of-one” equal protection argument by stating that licensed restaurants were treated unfairly

compared to unlicensed restaurants. Rational basis review is the standard used to evaluate such “class-of-one” equal protection arguments. Under that standard, Appellee asserted that there was a rational basis for distinctions in the Orders that were made for licensed restaurants. Appellee argued that the Orders limiting the dispensing and sale of alcohol were consistent with the Commonwealth’s public health and safety objectives during Covid to discourage people from lingering in an enclosed space to limit exposure to the virus. In addition, Appellee argued that the Orders were supported by preambles citing number of infections, deaths, symptoms, and the latest known scientific basis for the spread of Covid. Appellee also argued that the Orders in effect at the time of the violations had various sections, including provisions that related to all businesses and those that related to specific types of business (e.g. businesses in the entertainment industry, gyms and fitness facilities, personal care services, nightclubs, hospitals, and restaurants and bars).

This Court agrees with Appellee’s analysis and further finds that Appellant’s argument is unsupported and has no merit. The Governor was given statutory authority by the General Assembly during a declared emergency to “suspend/limit the sale, dispensing or transportation of alcoholic beverages during a declared emergency.” 35 Pa.C.S. 7301(f)(8). The Court finds that there was no violation of equal protection when all establishments in the retail food service industry, whether licensed or unlicensed, were required to abide by the Orders/Mandates. Furthermore, the Court finds that the temporary limitations on the dispensing and sale of alcohol were rationally related to the legitimate Commonwealth’s interest in limiting exposure to and the spread of COVID-19.

b. Governor’s Authority under Emergency Management Services Code

Appellant argued that the Governor’s Orders/Mandates were unenforceable under the U.S. Constitution and Pennsylvania Constitution as the Orders exceeded the scope of his emergency powers and were not narrowly tailored. In contrast,

Appellee argued that when disaster emergency is declared, the Governor gains broad powers, including the power to “suspend or limit the sale, dispensing, or transportation of alcoholic beverages” 35 Pa.C.S. 7301(f)(7)-(8). Appellee cited to the two-prong test used by federal courts to evaluate the appropriate use of the Governor’s police power during a disaster emergency. The two-prong test established that the court must consider (1) whether the interests of the public require government interference, and (2) whether the means used are reasonably necessary to accomplish that purpose and not unduly oppressive upon individuals. *Benner v. Wolf*, 461 F.Supp.3d 154 (M.D. Pa. 2020). Appellant did not challenge the first prong of this test. As for the second prong, Appellee argued that the contested Orders contained specific and targeted measures designed to limit and mitigate the spread of Covid.

The Court finds that COVID-19 qualified as a natural disaster, thus triggering applicability of Emergency Management Services Code and authorizing the Governor to take corresponding action. Furthermore, the Court finds that the Governor’s Orders did not exceed the scope of his emergency powers under Title 35 which provided the Governor express authority to regulate sale/service of alcohol during disaster emergencies. 35 Pa.C.S. 7301(f)(8). Lastly, the Court finds that the Orders were narrowly tailored as the Orders were not intended to limit the sale of alcohol, but rather to mitigate the risk of contracting Covid at licensed establishments

c. Secretary of the Department of Health’s Authority

Appellant argued that the Orders/Mandates of the Secretary of Health exceeded the statutory authority under 35 P.S. 521.20 and 71 P.S. 1409. Appellee argued that The Administrative Code, 71 P.S. 1 et seq., and the Disease Prevention and Control Law, 35 P.S. 521.1 et seq., provide specific additional powers to the Department of Health. Specifically, Appellee cites to 532(a) and 1403(a) of the

Administrative Code which delegates to the Department of Health the duty to protect the health of the people of the Commonwealth and to “determine and employ the most efficient and practical means for the prevention and suppression of disease”. Appellee also cites that the Disease Prevention and Control Law directs the Department of Health to carry out appropriate control measures and authorizes any disease control measure the Department considers appropriate for the surveillance of disease, when the control measure is necessary to protect the public from the spread of infectious agents.

The Orders were given during a time of emergency, specifically the COVID-19 pandemic. As the Appellee stated, the Department of Health has the duty to protect the health of the people of the Commonwealth and was given the authority to employ efficient safeguards to combat the spread of the disease. For those reasons, this Court finds that the Orders were rationally related to the legitimate government interest of protecting citizens from the spread of COVID-19. The Court also finds that the Orders were valid exercises of the Secretary of Health’s statutory authority for that same reason as they were issued to protect the public from a potentially deadly and highly contagious virus and represented the most efficient and practical means of suppressing the virus.

d. Non-Delegation Doctrine and Separation of Powers Doctrine

Appellant argued that the Orders/Mandates were legally impermissible because they violated the separation of powers doctrine. Appellant argued that the Orders of the Governor and Secretary of Health involved areas that are controlled by statute via the Pennsylvania General Assembly. Appellant argued that Article II, Section 1, of the PA Constitution embodies the fundamental concept that only the General Assembly may make laws and cannot delegate that power to any other branch of government, or any other body or authority. Appellant further argued that the Governor’s and Secretary of Health’s actions constitute legislation because they

created substantive restrictions on the authority of liquor licensees to operate without any authority from the General Assembly.

Appellee argued that the Governor and Secretary of Health were authorized to issue the Orders and Mandates, and such Orders were therefore legally enforceable. Appellee argued that the Legislature may delegate authority and discretion in connection with the execution and administration of a law to an independent agency/executive branch agency if: (1) General Assembly makes the basic policy choices, and (2) Legislature includes adequate standards which will guide and restrain the exercise of the delegated administrative functions.

Appellee argued that in this instant case, the General Assembly made the basic policy choices when it enacted the Emergency Management Services Code. Appellee further argued that the Supreme Court has held that the General Assembly provided “adequate standards which will guide and restrain” Governors’ powers in disaster emergencies and gave the Governor specific guidance about his authority. Specifically, the General Assembly authorized the Governor to “suspend or limit the sale, dispensing or transportation of alcoholic beverages.” Pa.C.S. 7301(f)(7)-(8). Thus, mitigation measures at licensed establishments clearly fell within the authority granted to the Governor during a declared emergency.

Appellee also argued that the General Assembly tasked the Secretary of Health with protecting the health of the people of the Commonwealth by determining and employing the most efficient, practical means for the prevention and suppression of disease. 71 P.S. 532(a) and 1403(a). Appellee further argued that the Department of Health is directed to carry out appropriate control measures under 35 P.S. 521.5. Inherent in this authority is the Secretary’s power to enact measures necessary to combat the spread of disease.

Under the non-delegation doctrine, “the Legislature cannot constitutionally delegate the power to make law to any other branch of government or to any other

body or authority.” *Blackwell v. State Ethics Commission*, 523 Pa. 347, 567 A.2d 630, 636 (1989) (citations omitted). However, “the Legislature may delegate policy making authority to an administrative agency, so long as the Legislature makes the ‘basic policy choices’ and establishes ‘adequate standards which will guide and restrain the exercise of the delegated administrative functions.’” *Whitlatch v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 552 Pa. 298, 715 A.2d 387, 389 (1998). The Court finds that Appellee accurately acknowledged and applied that two-prong test under the non-delegation doctrine and therefore there was no violation of non-delegation or separation of powers doctrine.

e. Enforceability of Inconsistent and Vague Orders

Appellant argued that the Orders of the Governor and the Secretary of Health are unenforceable as being inconsistent and vague. Appellant argued that multiple terms in the Orders were not recognized as legal terms and caused confusion such as “meals” and “face coverings”. Appellee disagreed and argued that the Orders were neither facially vague nor vague as applies to Appellant’s specific conduct. Appellee further argued that the Orders contained clear and consistent language which is evidenced by the overwhelming majority of licensees who successfully complied with such Orders.

In the instant matter, this Court finds that the only applicable Orders are the Orders dated December 10, 2020, which prohibited indoor dining while permitting outdoor dining and takeout ordering. The Courts finds that these Orders are clear and unambiguous. Furthermore, Appellant has not offered any argument on how there is any ambiguity with respect to this specific order.

f. Due Process Rights of Appellant

Appellant argued that in order to restrict a licensed activity, there must be an opportunity for pre-deprivation or prompt post-deprivation hearing. Appellant also

argued that due process requires an individual to be given an opportunity for a hearing before they are deprived of any significant property interest. Appellant argued that in the instant case the Orders/Mandates violated due process as they restricted Appellant's rights because they were not provided an opportunity for pre-deprivation or prompt post-deprivation hearing. Appellant further argued that Appellant lost significant interest in his license but was given no right to a hearing. Thus, Orders violated due process and were unlawful.

Appellee argued that between the Pennsylvania Liquor Control Board and a licensee, the license is a privilege, not a right. and the privilege may be taken away or restricted by the government. **Section 468(d) of the Liquor Code**. Appellee further argued that the mere existence of conditions in a highly regulated industry does not constitute a deprivation of due process citing to the Supreme Court case *Friends of Danny DeVito v. Wolf*, 658 Pa. 165, 227 A.3d 872 (2020). Appellee argued that Appellant was, at all times, permitted to operate and sell alcohol under the license granted by the Pennsylvania Liquor Control Board, albeit under certain safety mandates and therefore no deprivation of due process occurred.

The "amount of due process that is due in any particular circumstance is flexible and calls for such procedural protections as the particular situation demands." *Comm. Dep't of Transp., Bureau of Driver Licensing v. Clayton*, 546 Pa. 342, 684 A.2d 1060, 1064 (1996). The amount of process that is due in any particular circumstance must be determined by application of a balancing test which considers three factors: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state. *Friends of Danny DeVito v. Wolf*, at 897. The Supreme Court in *Friends of Danny DeVito* held that the initial orders temporarily closing businesses did not

deprive the owners of due process under the circumstances. *Id.*, at 885. Furthermore, with regard to the pre-deprivation notice, the primary question is “whether the state is in a position to provide for pre-deprivation process”. *Bundy v. Wetzel*, 184 A.3d 551, 557 (Pa. 2018). The claims in this instant matter arose during the extenuating circumstances of the COVID-19 public health emergency. For that reason, the Court believes that neither the Governor nor the Secretary of Health were in a position to provide every licensee in the Commonwealth with pre-deprivation notice and opportunity to be heard. As to Appellant’s argument regarding a post-deprivation hearing, this Court finds that Appellant was provided with a constitutionally adequate post-deprivation remedy by virtue of the administrative process of which it is currently availing itself.

g. Sufficient Service and Notice to Appellant

Appellant argued that the Orders/Mandates were not lawfully served and notice was not appropriately provided. Appellant cited to 45 Pa. Cons. Stat. Ann 725 which provides that all proclamations/executive orders of the Governor and all notices of the Department of Health should have been published in the Pennsylvania Bulletin. Appellant argued that because neither the Governor’s Orders nor the Department of Health’s Notices were published in the Bulletin, no notice was given to Appellants and therefore, no enforcement was permitted.

Appellee argued that the Emergency Management Services Code provides that “an executive order/proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public.” 35 Pa.C.S. 7301(c). Appellee argued that the proclamation of emergency, all renewals and all amendments to the proclamation were posted on the PA Emergency Management Agency’s (PEMA) website and published in the Pennsylvania Bulletin. Furthermore, the Orders, in the interest of time, were published on the Governor’s website and widely disseminated via press outlets. Appellee also argued that the Board issued

immediate guidance and updates published on the legal portion of its website and through numerous emails sent to all licensees. For those reasons, the Court finds the Orders complied with all notice requirements under the law and existing circumstances and that sufficient notice of the Orders was provided to Appellant.

II. Whether the Bureau of Liquor Control Enforcement has the authority to administratively cite Appellant for violations of the Orders under the doctrine of “other sufficient cause”.

a. Authority of the Bureau to Enforce the Orders and Issue Citations to Appellant under “Other Sufficient Cause”

Appellant argued that pursuant to 47 Pa. Stat. Ann. 4-471, the Bureau of Liquor Control Enforcement may only act to enforce the laws of the Commonwealth. Conclusively, Appellant argued that neither the liquor code nor any other authority gives Pennsylvania Liquor Control Board or Bureau of Liquor Control Enforcement the authority to enforce Orders of the Governor and/or Secretary of Health. Conversely, Appellee argued that under 47 Pa. Stat. Ann. 4-471, the Bureau of Liquor Control Enforcement has the authority to cite licensees for violations of the Orders under the doctrine of “other sufficient cause”.

Appellee argued that the validity of the “other sufficient cause” as a catch-all provision is supported by case law and has been affirmed by the Pennsylvania Supreme Court. *Appeal of Banks*, 467 A2d 85 (Pa. Cmwlth. 1983); *V.J.R. Bar Corp v. PLCB*, 390 A.2d 163 (Pa. 1978). Appellee further argued that under the “other sufficient cause” there are only two limitations. The first limitation is that the conduct in question must be reasonably related to the sale and use of alcohol on the licensed premises *V.J.R. Bar Corp v. PLCB*, at 164. The second limitation was set forth in a later case holding that there must be some evidence that a licensee knew or should have known that the alleged impermissible activity was occurring on the licensed premises. *PLCB v. TLK, Inc.*, 544 A.2d 931, 933 (Pa. 1988). Additionally,

Appellee argued that the Liquor Code itself is to be deemed an exercise of the Commonwealth's police power. Pursuant to the Liquor Code, 47 P.S. § 1-104(a), "this act shall be deemed an exercise of police power of the Commonwealth for the protection of the public welfare, health, . . . and all provisions of this act shall be liberally construed for the accomplishment of this purpose".

The catch-all provision of "other sufficient cause" provides the ALJ broad authority to view the conduct of a licensee to determine whether enforcement action is warranted against its liquor license because it "is almost impossible to anticipate all of the actions that may justify enforcement." *In Re Quaker City Development Co.*, 365 A.2d 683, 684 (Pa. Cmwlth. 1976). For this reason, the courts have viewed the "other sufficient cause" provision together with the stated purposes of the Liquor Code and allowed a necessarily broad application of the doctrine. *In Re Ciro's Lounge Inc.*, 358 A.2d 141, 143 (Pa. Cmwlth. 1976). The Pennsylvania Supreme Court has also held that "perhaps no other area of permissible State activity within which the exercise of the police power of the State is more plenary than in the regulation and control of the use and sale of alcoholic beverages." *Commonwealth v. Wilsbach Distributors*, 519 A.2d 397 (Pa. 1986).

The conduct in the instant case took place during a state of emergency and the COVID-19 pandemic, which were unprecedented events. Therefore, this Court concludes that the ALJ had broad authority to view the alleged conduct of Appellant to determine if enforcement was warranted under the "other sufficient cause" provision. Furthermore, the state of emergency and the pandemic were the catalysts for the unpredictable Orders and mandates set by the Governor and Secretary of Health. Appellant, a company with a liquor license, should have been aware of such Orders and were required to comply with them as to ensure that the public health and welfare was protected as determined by the Governor and Secretary of Health. As a result, the Court finds Appellee had the

authority to hold Appellant accountable in order to safeguard the welfare and health of the public.

b. Enforceability of Virus Control Measures under the Liquor Code

Appellant argued that there is no precedent law indicating that the Pennsylvania Liquor Control Board or Bureau of Liquor Control Enforcement has any authority over virus control and therefore, virus control should be left to the Department of Health. Appellant further argued that virus control laws only allow for individual enforcement. Therefore, Appellant contended that the Governor and Department of Health could only impose restrictions on individuals diagnosed with Covid and locations where Covid was presently known. On the other hand, Appellee argued that virus control measures implemented through the Disease Prevention & Control Law and/or the Administrative Code may be enforced under the Liquor Code. Appellee also argued that the Orders had the force and effect of law under the Emergency Management Services Code, 35 Pa.C.S. 7301, which provides that in times of emergency, the Governor may issue executive Orders, proclamations, and regulations which shall have the force and effect of law. Additionally, Appellee argued that under the Emergency Management Services Code, the Governor is empowered during a declared emergency to “Suspend or limit the sale, dispensing or transportation of alcoholic beverages . . .” 35 Pa. C.S.A. § 7301(f)(8).

The Court finds that the Orders had the force and effect of law under the Emergency Management Services Code, 35 Pa.C.S. 7301, as the Orders were set during a state of emergency, specifically the COVID-19 pandemic. Furthermore, the Court finds that the Bureau had the authority to enforce such Orders as it related to liquor, alcohol, malt or brewed beverages under the Liquor Code.

c. Contractual Relationship between Appellant and Pennsylvania Liquor Control Board

Appellant argued that in this matter, the Pennsylvania Liquor Control Board sought to impose substantive changes on Appellant's businesses without their agreement. Appellant argued that a license between the government and an entity is an enforceable contract. Therefore, Appellant argued any substantial changes to the contract (i.e. license) could not have been made without mutual agreement between the Pennsylvania Liquor Control Board and Appellant or by the Pennsylvania General Assembly in accordance with their limited authority to modify contracts. Appellant supports its argument that this is a contractual relationship as licensees pay for a liquor license and agree to follow the Liquor Code and related regulations and in exchange the Pennsylvania Liquor Control Board grants the liquor license. Appellant also argued that there is no precedent law in Pennsylvania that permits an executive agency to modify the contractual relationship between the Pennsylvania Liquor Control Board and a licensee. Conclusively, as there is no authority to modify the contract, Appellant reasoned that the Pennsylvania Liquor Control Board could only enforce the PA Liquor Code as written and could not enforce the substantive changes sought by the Governor and Department of Health.

Appellee disagreed with Appellant's argument and argued that a liquor license is not a contractual relationship but a privilege between the licensee and the Pennsylvania Liquor Control Board as it conveys a privilege of selling alcohol. Appellee also argued that there is no "bargain for exchange" between the Board and a licensee. Appellee argued that the Board is not an actual party to the agreement between the buyer and seller of the licensee. Instead, the Board simply processes the transfer application and conducts a statutorily required investigation to determine whether the transfer should be approved. Furthermore, Appellee argued that the issuance of the license is not predicated on compliance with the provisions of the

Liquor Code but instead can be taken away or restricted for non-compliance with those provisions.

A liquor license is “a purely personal privilege for a specific limited time,” subject to revocation by the Board for cause. *Derry St. Pub, Inc. v. Pennsylvania State Police, Bureau of Liquor Control Enf't*, 111 A.3d 1240, 1253 (Pa. Commw. Ct. 2015) (citing *Pichler v. Snaveley*, 366 Pa. 568, 79 A.2d 227, 228 (1951)). While a license is property between a licensee and third parties, it is a privilege between the Pennsylvania Liquor Control Board and the licensee. 47 P.S. § 4-468(b). Between the Commonwealth and the licensee of a restaurant liquor license, the license is simply a personal privilege subject to termination for cause. *In re Feitz' Est.*, 402 Pa. 437, 444, 167 A.2d 504, 507 (1961). Considering the aforementioned case law, this Court is in agreement with Appellee and finds that a liquor license is a privilege rather than a contract, because the government has the right to grant or revoke it at their discretion, as it is not a guaranteed right but a permission to sell alcohol under specific conditions.

III. Whether the citations issued in this case are valid and enforceable.

a. Citation Satisfies Due Process

Appellant argued that the citations issued against them are invalid and unenforceable because they do not satisfy due process requirements. Appellant argued that due process requires at a minimum that the notice contain a sufficient listing and explanation of the charges against the individual. Appellant argued that the citation in this matter fails to state any specific details of the underlying offense and do not specify which Orders, or which provisions of those Orders/Mandates were allegedly violated.

Appellee argued that Appellant cannot reasonably claim it had no idea which Orders were being referenced in the citation because each order had a set date and time at which it went into effect. Furthermore, the Orders remained in effect until

they were replaced by subsequent orders. Appellee also argued that stipulated facts in this matter show that Appellant had actual knowledge of what was required by the Orders and still violated such mandates.

Due process notice requirements are satisfied where the citation states the type and date of the alleged violation. *Derry Street Pub, Inc. v. BLCE*, 111 A3d 1240 (Pa. Cmwlth. 2015). In this matter, the citation outlined the specific date, location, and specific provisions in the Order that Appellant was charged with violating. The citation also notified Appellant about when, where and how the violations occurred. Therefore, this Court finds that the Citation satisfies due process requirements.

CONCLUSION

For the foregoing reasons, this Court affirms the Pennsylvania Liquor Control Board's Order and Decision dated November 15, 2023, finding there was a violation of Section 471 of the Liquor Code, 47 P.S. §4-471, Section 521.20 of Pennsylvania's Disease Prevention and Control Law of 1955, 35 P.S. §521.20, and Section 1409 of the Administrative Code of 1929, 71 P.S. §1409. Appellant's appeal is therefore denied and a hearing to assess penalties has been scheduled. An Order will be entered consistent with the foregoing.