

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
Monday, November 30, 2015

**SUBJECT: ADVENT VENTURES
T/A WAHTNEY'S INN**

Petitioner/Appellant: **Licensee**
LID: **65608**
LIC No: **R-17793**
Case No: **2014-9135**
Docket No: **MD-663-2015** Lancaster County CCP

TO: PLANK, MICHAEL
ASSISTANT COUNSEL

FROM: RODRIGO J. DIAZ 
EXECUTIVE DEPUTY CHIEF COUNSEL

Attached is the Opinion of Judge Donald R. Totaro; and Order dated November 20, 2015 dismissing Appellant's Appeal.

PLEASE SEE ATTACHED

Distribution:

J. Waters
T. Albert
P. Burkett
J. Speece
R. Deitz
R. Diaz
M. Fox
R. McAteer
T. Nethaway

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

ADVENT VENTURES, INC.
t/a WAHTNEY'S INN,

Appellant

v.

PENNSYLVANIA LIQUOR CONTROL
BOARD,

Appellee

No. MD-663-2015

Liquor Control Board Appeal

OPINION

BY TOTARO, J.

AND NOW, this 20th day of November, 2015, upon consideration of the appeal of Advent Ventures, Inc., trading as Wahtney's Inn, and after holding a *de novo* hearing on said appeal, the Court hereby sets forth the following findings of fact:

1. Advent Ventures, Inc., trading as Wahtney's Inn ("Licensee"), filed an application with the Pennsylvania Liquor Control Board ("Board") for the renewal of Restaurant License No. R-17793 (LID 65608) ("the License") for a premises located at 2415 West Main Street, Ephrata, Pennsylvania 17522, for the renewal period beginning March 1, 2014, and ending February 29, 2016. (Notes of Testimony, 10/7/14 Administrative Hearing at 6-7) (Hereinafter "N.T.A.H.").

2. Prior to October 2012, the License was held by J.P.P. Inc. ("J.P.P."), trading as Dad's Bar & Grill, which operated at 168 South Main Street, Manheim, Pennsylvania 17545. (N.T.A.H. at 8-13, 33). In 2012, Paul Reuter, Jr., ("Reuter"), the sole corporate officer and shareholder of J.P.P., transferred the License to Licensee, a new corporation in Ephrata. (Notes of Testimony, 9/3/15 *de novo* Hearing at 97-99) (Hereinafter "N.T."). Reuter is Licensee's sole corporate officer and shareholder. (N.T.A.H. at 14; N.T. at 10-11; A.H. Ex. B-4).

CLERK OF COURTS
2015 NOV 20 AM 10:32
LANCASTER COUNTY, PA
RECEIVED
P.L.C.B.
15 NOV 25 AM 9:18
OFFICE OF CHIEF COUNSEL

3. In 2010, the Board's Bureau of Licensing ("Licensing") objected to J.P.P.'s application for license renewal.¹ (N.T. at 92). Thereafter, the Board voted not to renew the license, and Licensee filed an appeal to the Lancaster County Court of Common Pleas. *Id.* Rather than litigate the appeal, the Board agreed on September 10, 2010, to renew J.P.P.'s license under a Conditional Licensing Agreement ("2010 CLA"), which imposed additional conditions on both the License and the premises. (N.T. at 92; A.H. Ex. B-4).

4. In 2012, Licensing again objected to J.P.P.'s application for license renewal, as well as Advent's application for transfer of liquor license from 168 South Main Street, Manheim, Pennsylvania to 2415 West Main Street, Ephrata, Pennsylvania. (N.T. at 94-97; A.H. Ex. B-4). Licensing's objections were communicated by letter dated February 28, 2012, and were based on "five (5) adjudicated citations, approximately six (6) incidents of disturbance at or immediately adjacent to the licensed establishment, because the September 1, 2010 CLA was breached and because the application for renewal was untimely filed. The incidents included, but were not limited to fights, visibly intoxicated patrons, drugs, and reputation of owner." (A.H. Ex. B-4).²

5. In July of 2012, the Board renewed J.P.P.'s license, based on Reuter's agreement to close the Manheim establishment, place the license in safekeeping, form a new company for the purpose of transferring the license to that entity for use at the Ephrata location, and agree to

¹ By letter dated February 22, 2010, Licensing objected based upon an outstanding objection to the previous renewal application in 2008, because of four adjudicated citations and ten incidents of disturbance at or immediately adjacent to the licensed premises. *See* A.H. Ex. B-4. Moreover, Licensing objected due to four additional incidents of disturbance, including but not limited to drugs, fights and an assault by a bouncer, at or immediately adjacent to the licensed premises. *Id.* Additionally, the renewal had been untimely filed and J.P.P failed to submit a valid health license. *Id.*

² At the *de novo* hearing held on September 3, 2015, Appellant's counsel acknowledged that the five prior adjudicated citations were admissible and relevant to explain why the conditional licensing agreement was implemented. (N.T. at 5).

obligate Advent to the same conditions that had applied to J.P.P. through a second Conditional Licensing Agreement ("2012 CLA"). (N.T. at 14, 97-100; A.H. Ex. B-4). The 2012 CLA imposed the following relevant restrictions on both J.P.P. and the new establishment of Advent Ventures, Inc., trading as Wahtney's Inn, located in Ephrata, Pennsylvania:

- a. Upon renewal of the license, the license shall immediately be placed in safekeeping and shall remain in safekeeping until such time as it is transferred in accordance with this Agreement. J.P.P.'s failure to place the license in safekeeping shall authorize the Board to place the license in safekeeping, where it shall remain until such time as it is transferred in accordance with this Agreement.
- b. [Licensee] shall become compliant with and remain compliant with the responsible alcohol management provisions of the Liquor code including, but not limited to:
 - i. New employee orientation;
 - ii. Training for alcohol service personnel;
 - iii. Manager/owner training;
 - iv. Displaying of responsible alcohol service signage; and
 - v. A certification compliance inspection by a representative of the Board's Bureau of Alcohol Education;

If [Licensee] hires additional alcohol service personnel, those additional employees shall receive any and all responsible alcohol management training appropriate to their positions within ninety (90) days of their date of hire. For purposes of this section, days in which the license is in safekeeping shall not be counted against the ninety (90) day deadline;

- c. [Licensee] 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 [Licensee] 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. [Licensee] shall employ, at a minimum, two (2) security personnel on Fridays and Saturdays, with at least one security person stationed inside and at least one security person stationed outside, from 9:00 p.m. until one-half (½) hour after the time when all patrons are required to vacate the premises. The security personnel shall monitor and maintain order in the interior of the licensed premises and shall be clothed to make their status as security readily apparent;
- e. [Licensee] shall direct at least one of the security persons referenced in paragraph 12(d) of this Agreement, to patrol on Fridays and Saturdays, the exterior of the premises at least once every thirty (30) minutes, from 9:00 p.m. until one-half (½) hour after the time when all patrons are required to vacate the premises. [Licensee] shall maintain a log of the date, time and personnel included in each such patrol as a business record, subject to Section 493(12) of the Liquor Code, and shall make the log available upon request to law enforcement officials, as well as Board and Bureau employees;
- f. [Licensee] shall install and maintain in good working order six (6) security/surveillance cameras during all times the premises is operational. Recordings shall be retained for not less than (2) weeks, and [Licensee] shall make all recordings from the system available upon request to the Board, its employees, to any local, state or federal law enforcement officials, and to the employees of the Bureau;
- g. [Licensee] shall initiate and maintain regular monthly meetings with the chief or another designated officer of the Northern Lancaster County Regional 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, [Licensee] shall adhere to meetings at the frequency desired by the Northern Lancaster County Regional 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 Licensee.
- h. Patrons prohibited by [Licensee] from purchasing additional alcoholic beverages will immediately be escorted from, and prohibited from re-entering the licensed premises for the remainder of the business day. For purposes of this agreement, "business day" shall mean from 7:00 a.m. until 2:00 a.m. of the following day; and

- i. [Licensee] shall not sell or serve more than (2) multi-alcohol drinks to any one (1) patron during any business day. For purposes of this paragraph, "multi-alcohol drinks" shall mean alcoholic beverages containing more than one brand or type of alcohol.

(N.T. at 11-14, 100; A.H. Ex. B-4).

6. The 2012 CLA also stated that a "[f]ailure to adhere to this Agreement may result in citation(s) by the Bureau and/or nonrenewal of this license by the Board." (A.H. Ex. B-4). Moreover, Licensee agreed that this Agreement was intended to create "legally binding obligations," and the terms of the 2012 CLA would remain in effect on the premises "unless and until a subsequent agreement is reached with the Board rescinding these restrictions." *Id.*

7. Licensee is required to apply to renew its license in even-numbered years. (N.T. at 46-47). Following the 2012 renewal, March 2014 was the first time Licensee was required to renew the License. (N.T. at 47; N.T.A.H. at 6-7). Licensee filed an untimely application for renewal of License for a renewal period beginning March 1, 2014, because it did not have tax clearance from the Pennsylvania Departments of Revenue or Labor and Industry. (A.H. Ex. B-1).

8. On February 28, 2014, Licensee received a letter stating its application for renewal was being conditionally accepted, pending adjudication of Citation Number 13-2099.³ (A.H. Ex. B-2). The Citation was adjudicated on July 16, 2014, following an evidentiary hearing, and the violations were sustained as charged. (A.H. Ex. B-5).

³ Licensee received Citation Number 13-2099 on October 17, 2013, containing two separate counts. *See* A.H. Ex. B-5. The first count was a violation of 47 P.S. § 4-404 of the Liquor Code, by failing to adhere to conditions of the 2012 CLA on four separate occasions. *Id.* More specifically, Licensee did not maintain two security personnel on the premises during specified weekend hours. *Id.* Reuter admitted he does not always comply. *Id.* Furthermore, Licensee violated 47 P.S. § 4-471 of the Liquor Code and Section 637.6(a)(2) of the Clean Indoor Air Act for allowing employees, including Mr. Reuter, to smoke indoors on three separate occasions. *Id.* Reuter admitted to this violation as well. *Id.*

9. On August 12, 2014, following adjudication of Citation No. 13-2099, Licensing sent a letter to Licensee objecting to the application for renewal based upon the adjudicated citation, breach of the 2012 CLA, and untimely filing of the application. (A.H. Ex. B-3).

10. On October 7, 2014, following proper notice to Licensee, Licensing conducted a hearing to take testimony regarding Licensee's renewal. (A.H. Ex. B-6).

11. At the October 7, 2014, administrative hearing, Licensee testified to the history of the building located at 2415 West Main Street, Ephrata, Pennsylvania 17522, the reasons Licensee purchased the building and transferred the License, and what his experiences have been since doing so. (N.T.A.H. at 6-69). Licensee also testified about the requirements of the 2012 CLA, Licensee's awareness that the 2012 CLA's requirements remained in effect after the transfer, and Licensee's reasons for not strictly complying with its terms. *Id.*

12. Roy Walton, who had been employed by Licensee as a bartender for nearly two years, also testified on Licensee's behalf at the October 7, 2014, administrative hearing. (N.T.A.H. at 71-72). In addition to bartending, Mr. Walton acted as a security guard for Licensee on one or two occasions. *Id.* at 73. Mr. Walton testified that he was unaware of any complaints or confrontations with customers, other than one incident that occurred on a night in which he was not working. *Id.* at 74-75, 77-80. Although he was aware that a barred patron list did exist, Mr. Walton did not know whose names were on the list. *Id.* at 78.

13. On June 10, 2015, the Board denied Licensee's application for renewal of the License. Licensee filed the instant appeal on June 12, 2015. Thereafter, on August 18, 2015, the Board filed an opinion containing the following conclusions of law:

- a. Licensee received the requisite notice of Licensing's objections to its renewal application and of the date, time, and place of the hearing held in this matter;
- b. Section 470 of the Liquor code [47 P.S. § 4-470] vests in the Board the authority to refuse renewal of a restaurant liquor license;
- c. As of the date of the hearing, Licensee had accrued one (1) adjudicated citation;
- d. Licensee breached its CLA with the Board;
- e. Licensee filed a late renewal application;
- f. Licensee has abused the privilege of holding a license; and
- g. Restaurant Liquor License No. R-17793 was not renewed effective March 1, 2014.

14. Relevant testimony cited by the Board in their opinion denying Licensee's license renewal included, but is not limited to, the following:

- a. Mr. Reuter signed the 2012 CLA on behalf of both Licensee and Dad's Bar and Grill.
- b. Licensee filed an untimely application for the renewal of Restaurant License No. R-17793 (LID 65608) for the premises located at 2415 West Main Street, Ephrata, Pennsylvania, for the renewal period beginning March 1, 2014 and ending February 29, 2016.
- c. Citation No. 13-2099 was issued against Licensee on October 17, 2013, and it contained two (2) Counts. At count one, Licensee was charged with violating section 404 of the Liquor Code [47 P.S. § 4-404], in that on April 19, May 4, 5, and June 1, 2013, Licensee, by its servants, agents or employees, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license. At count two, Licensee was charged with violating section 471 of the Liquor code [47 P.S. § 4-471] and section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. § 637.6(a)(2)] in that on May 4, 5, and June 1, 2013, Licensee, by its servants, agents, or employees, smoked and/or permitted smoking in a public place where smoking is prohibited. Pursuant to an evidentiary hearing held on July 15, 2014, Licensee was ordered to pay a fine of three hundred dollars (\$300.00).

- d. Mr. Reuter indicated that Licensee stopped having security on its licensed premises after April 18, 2013, because “after ten o’clock, there’s no one there except usually [him] and Roy. So instead of paying someone \$150 every weekend, \$600 a month, [he] decided to just not do it because there was no one there to secure.” Mr. Reuter later testified that Licensee had “a handful of people there after ten o’clock.” Mr. Reuter acknowledged that he did not have the Board’s approval to cease having security at the licensed premises and Licensee did not attempt to contact Licensing to amend its 2012 CLA regarding this provision. Also, Mr. Reuter acknowledged that Licensee did have patrons at 9:00 p.m.
- e. Mr. Reuter acknowledged that Section 12(g) of Licensee’s 2012 CLA required that if the police chief believed the meetings were no longer necessary, the police chief must provide something in writing to that effect. Mr. Reuter believed that Chief Steffen was going to provide something in writing to the Board that the meetings were no longer necessary, but he did not know whether the Chief had provided the information to the Board.

15. On September 3, 2015, this Court conducted a *de novo* hearing on Licensee’s appeal, at which time additional testimony was presented by Licensee.

16. At the *de novo* hearing, Reuter testified that he purchased the premises located in Ephrata, Pennsylvania, in June 2011. (N.T. at 13). Licensee began operation at that location on or around October 2012. *Id.* at 101.

17. Reuter testified that the building which houses Wahtney’s Inn is a 250 year-old stone building located in the middle of farm land. (N.T. at 14-15). In the past, Wahtney’s was known as more of an upscale establishment, and Reuter was hoping the establishment would have a similar reputation under Licensee’s management. *Id.* at 15-18.

18. Reuter testified that Licensee is open for business Monday through Thursday from 3:00 p.m. until about 11:00 p.m.; Friday and Saturday from 11:00 a.m. until about midnight; and Sunday from 11:00 a.m. until about 11:00 p.m. (N.T. at 63).

19. Licensee offers a lunch menu and a dinner menu with a variety of food items. (Ex. L-2). Licensee also offers mixed drinks, wine, draft beer, and cases of beer for carry-out. (N.T. at 15, 20, 66).

20. Reuter testified that Licensee's primary focus is to serve the dinner crowd, and food sales account for approximately 70% of Licensee's total sales. (N.T. at 18, 20). However, later in his testimony, Reuter acknowledged that for the calendar year 2012, only 53% of total gross sales was for food. *Id.* at 22. Reuter then explained that in August 2014, 70% of total sales was for food sales. *Id.* at 26-30. However, Reuter arrived at 70% by including the sales of six-packs of beer. *Id.* at 29. When subtracting the 29% of sales attributed to six-packs of beer and 3% for other miscellaneous items, the total amount of food sales for August 2014 was actually 38%. *See* Ex. L-3. Reuter then stated that food sales significantly increased from September 2014 to August 2015. (N.T. at 28-30). However, Reuter failed to produce any documentation to support such an assertion, and this Court did not find Reuter to be credible given the clear mischaracterization of food and alcohol as contained in Exhibit L-3.

21. Despite Reuter's testimony to the contrary, Licensee sells more alcohol than food in dollar figures. (Ex. L-3).⁴ For example, in August 2014, Licensee had food sales of \$6,219.58, compared to alcohol sales of \$9,927.85. (N.T. at 66-76; Ex. L-3). Thus, Licensee sold almost twice as much alcohol as food, or approximately 61% alcohol sales compared to 39% for food. (N.T. at 77-78). Moreover, during the months of January through August of 2014, alcohol sales accounted for approximately 56%, 57%, 58%, 60%, 64%, 59%, 60%, and 61% of Licensee's total sales for each respective month, not 30% as represented by Reuter. *See* Ex. L-3.

⁴ Alcohol sales are calculated based on the total monthly dollar sales of six-packs of beer, draft beer, wine, and liquor compared to Licensee's total sales for each month.

22. At the *de novo* hearing, Reuter testified that Licensee agreed to comply with all conditions required within the 2012 CLA, and those conditions would be transferred from Manheim to Ephrata. (N.T. at 99-100).

23. At the *de novo* hearing, Reuter testified that Licensee was cited by the LCB for smoking inside the establishment and for not having a doorman. (N.T. at 44). Said offenses occurred in 2013. *See* A.H. Ex. B-5. Reuter admitted this citation constituted a violation of the CLA. (N.T. at 44-45).

24. At the *de novo* hearing, Reuter testified that Brittany Manbeck and Melissa Walton are currently employed as bartenders at Licensee's premises. (N.T. at 31).⁵ Pursuant to the 2012 CLA, if Licensee hires additional alcohol service personnel, those additional employees shall receive any and all responsible alcohol management training appropriate to their positions within ninety (90) days of their date of hire. (A.H. Ex. B-4).

25. Melissa Walton was hired on November 25, 2013, and there is no record of her having completed the required Responsible Alcohol Management Program ("RAMP") training within ninety (90) days of the date of her hire, as required by the 2012 CLA. (N.T. at 79-80; A.H. Ex. B-4). In fact, there was no record of her having completed the RAMP training as of the date of the administrative hearing held on October 7, 2014. (N.T. at 80). At the *de novo* hearing, Reuter claimed that Ms. Walton completed her training "this week." *Id.* However, Reuter did not produce any documentation to support this assertion, and the Court did not find Reuter credible.

⁵ Roy Walton, who testified at the Board's Bureau of Licensing hearing on October 7, 2014, is no longer employed by Licensee. (N.T. at 32, 82).

26. Brittany Manbeck completed her RAMP training on December 11, 2012. (N.T. at 91; Ex. L-4). RAMP certification expires two years from the date of certification. (N.T. at 81). There is no record of Brittany Manbeck's re-certification since the expiration of the original RAMP certification in December of 2014, as required by the 2012 CLA. (N.T. 81-82; A.H. Ex. B-4). At the *de novo* hearing, Reuter claimed that Ms. Manbeck completed her re-certification "a couple months ago." (N.T. at 81-82). Reuter further stated that Ms. Manbeck showed him her card and stated she renewed her certification. *Id.* at 83. However, Reuter did not produce a copy of that card or of any supporting documentation, and this Court did not find Reuter to be credible.

27. At the *de novo* hearing, Reuter testified he ceased employing security guards in April 2013, despite clear language of the 2012 CLA requiring that Licensee shall employ, at a minimum, two (2) security personnel on Fridays and Saturdays, with at least one security person stationed inside and at least one security person stationed outside, from 9:00 p.m. until one-half (½) hour after the time when all patrons are required to vacate the premises. (N.T. at 108-09; A.H. Ex. B-4). Reuter acknowledged signing the 2012 CLA knowing Licensee had this specific requirement for security. (N.T. at 107). Reuter further admitted that Licensee did not ask for permission to discontinue employing security guards as required, nor did Licensee seek to have the 2012 CLA modified to remove this requirement prior to making the decision to stop having security guards on the premises. *Id.* at 39-40, 108-09.⁶ As such, Licensee admitted at the *de novo* hearing that he did not comply with the terms of the CLA. *Id.* at 40.

⁶ During his testimony, Reuter claimed that he asked to be relieved of this security obligation because it was no longer necessary by going to the Board office in Harrisburg and asking for information on who to contact to formally request removal of the condition. (N.T. at 105-06). According to Reuter, he was told by "some guy" at the Board that he had to wait a certain period of time before he could request to have it changed. *Id.* at 106. The Court did not find Reuter credible in this regard.

28. At the *de novo* hearing, Reuter testified he had his first meeting with Chief David Steffen of the Northern Lancaster County Regional Police Department on October 31, 2012, pursuant to the 2012 CLA which states that Licensee shall initiate and maintain regular monthly meetings with the chief or another designated officer until the chief of police or his designee indicates **in writing** that such meetings are no longer necessary. (N.T. at 51; A.H. Ex. B-4) (emphasis added). Reuter did not show Chief Steffen the 2012 CLA document, but did inform the chief that Licensee was required to “check-in” with Chief Steffen every month. (N.T. at 57, 60). Reuter met with Chief Steffen two or three more times after their initial meeting. *Id.* at 58. However, Chief Steffen informed Licensee that he no longer felt the meetings were necessary, and “if they had something to talk about, [they’d] get together.” *Id.* at 60.⁷ Nevertheless, Licensee did not ask Chief Steffen to indicate in writing that he felt the meetings were no longer necessary, as required by the 2012 CLA. *Id.* at 60, 112, 114.⁸

DISCUSSION

Licensee submitted its application for renewal of Restaurant License No. R-17793 (LID 65608). The Bureau of Licensing objected to the renewal of the license, and an administrative hearing was held. Following the administrative hearing, the Board denied Licensee’s application for renewal.

⁷ According to testimony from Chief Steffen, aside from one incident on March 23, 2013, involving a dispute between two former co-workers from another establishment, the police department did not receive complaints of any incidents at Licensee’s establishment. (N.T. at 52-53). Chief Steffen did not have any concerns about, nor did he receive any other complaints regarding Licensee’s establishment. *Id.* at 53-54.

⁸ After twice conceding he did not ask Chief Steffen to put in writing that further meetings were not necessary, Reuter changed his testimony by stating “I’m pretty sure I did.” (N.T. at 114-15). The Court did not find Reuter to be credible in this regard.

In response to the Board's decision, Licensee filed a Petition for Appeal, and the Board issued an opinion detailing the reasons for the decision as required by 47 P.S. § 4-464. Licensee then appealed the Board's decision to the Lancaster County Court of Common Pleas.

When such an appeal is taken, the trial court hears the case *de novo* on issues of fact and administrative discretion. 47 P.S. § 4-464. If offered, the court is required to accept into evidence the record of the proceedings below and may hear additional evidence. *Two Sophia's, Inc. v. Pennsylvania Liquor Control Bd.*, 799 A.2d 917, 922 (Pa. Cmwlth. 2002). The trial court enjoys the same discretion over the case as the Board, and a decision by the trial court will only be reversed upon an abuse of that discretion when there is no rational support in the record for a finding of fact, or if there has been a manifestly unreasonable error of judgement. *Paey Associates, Inc. v. Pennsylvania Liquor Control Bd.*, 78 A.3d 1187, 1199 (Pa. Cmwlth. 2013). The trial court is required to issue its own findings of fact and conclusions of law, and "has the authority to sustain, alter, change, modify or amend a decision of the Board, even if the court does not make findings of fact that are materially different from those found by the Board." *Goodfellas, Inc. v. Pennsylvania Liquor Control Bd.*, 921 A.2d 559, 565 (Pa. Cmwlth. 2007).

The renewal of a liquor license is not automatic, and the Board may refuse to renew a liquor license for several reasons. *Jim Jay Enterprises, Inc. v. Pennsylvania Liquor Control Bd.*, 91 A.3d 274, 283 (Pa. Cmwlth. 2014). In deciding whether to renew a liquor license, the Board may consider a licensee's history of violations, and a single Liquor Code violation is sufficient cause for the nonrenewal of a license. *Hyland Enterprises, Inc. v. Pennsylvania Liquor Control Bd.*, 631 A.2d 789, 791 (Pa. Cmwlth. 1993). A single citation is also sufficient cause for the nonrenewal of a license, regardless of when it occurred. *Paey Associates*, 78 A.3d at 1200.

In *Paey Associates*, the licensee received a single citation for hosting a ladies night on its premises. 78 A.3d at 1200. On appeal to the Commonwealth Court of Pennsylvania, the licensee argued that the single citation was insufficient evidence for the Board to refuse its license renewal. *Id.* In its opinion, Commonwealth Court stated that it “has held that a single citation can form a sufficient basis upon which the [Board] may refuse to renew a license.” *Id.* Finding no abuse of discretion, the court affirmed the trial court’s order. *Id.*

In the case *sub judice*, J.P.P. was the previous holder of Restaurant License No. R-17793 (LID 65608). Paul Reuter, Jr., was the sole owner and shareholder of J.P.P., and he is now Advent Venture Inc.’s sole owner and shareholder. Since the license transfer occurred, Licensee Advent Ventures, Inc. has received one citation containing multiple violations.⁹ The first count was a violation of 47 P.S. § 4-404 of the Liquor Code, by failing to adhere to conditions of the 2012 CLA on four separate occasions whereby Licensee did not maintain two security personnel

⁹ When J.P.P. held the license, it received five adjudicated citations. Licensee cites *Pennsylvania Liquor Control Bd. v. Bartosh*, 730 A.2d 1029, 1030 (Pa. Cmwlth. 1999) for the proposition that J.P.P.’s citation history should not be considered, because there is a distinction between J.P.P. and Licensee. However, according to the Liquor Code, “[t]he Director of the Bureau of Licensing may object to and the board may refuse a properly filed license application . . . 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.” 47 P.S. § 4-470 (a.1) (2). The Liquor Code also permits the Board to refuse an application for license renewal “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.” 47 P.S. § 4-470 (a.1) (4) (emphasis added).

Additionally, in *Bartosh*, Commonwealth Court stated it has “consistently held that regardless of when they occur the Board may consider all code violations committed by a licensee in determining whether to renew a liquor license.” 730 A.2d at 1033-34. Despite Licensee’s argument to the contrary, *Bartosh* did not preclude the introduction of prior citations under circumstances found in the present case, where a sole corporate officer and shareholder of one entity transfers the License to a new corporation involving the same sole corporate officer and shareholder. Thus, while the prior citations are not the basis for the Court’s determination in the present case, this Court is not convinced that consideration of J.P.P.’s five adjudicated citations would be improper.

on the premises during specified weekend hours. Furthermore, Licensee violated 47 P.S. § 4-471 of the Liquor Code and Section 637.6(a)(2) of the Clean Indoor Air Act for allowing employees, including Reuter, to smoke indoors on three separate occasions. Licensee admitted to these violations. Thus, pursuant to *Paey Associates, supra*, Licensee's single citation is sufficient grounds to refuse Licensee's application for license renewal.¹⁰

Additionally, the Liquor Control Board ("Board") may enter into a conditional licensing agreement ("CLA") with an applicant, imposing additional restrictions on the license in question, and such an agreement is binding on the licensee. 47 P.S. § 4-470 (a). Because a CLA is a contract between the Board and the licensee, a licensee cannot repudiate a CLA which the licensee accepted for its own personal benefit. *Derry St. Pub, Inc. v. Pennsylvania State Police, Bureau of Liquor Control Enforcement*, 111 A.3d 1240, 1253 (Pa. Cmwlth. 2015). A licensee's failure to comply with a CLA is sufficient cause for the nonrenewal of a license under the Liquor Code. 47 Pa. C.S. A. § 4-470; *KC Equities v. Dep't of Pub. Welfare*, 95 A.3d 918, 936 (Pa. Cmwlth. 2014) (citing *Greg's Big Dawg's Bar & Grille, Inc. v. PA. Liquor Control Bd.*, 2014 WL 688133 (unreported opinion)).¹¹

¹⁰ In their Proposed Findings of Fact and Conclusions of Law, Licensee cites *Bartosh, supra*, for the proposition that J.P.P.'s citation history should not be considered as justification for the refusal to renew the License of Advent. Thereafter, Licensee asks the Court to consider J.P.P.'s citation history to illustrate the substantial steps Advent has taken to remediate prior violations involving J.P.P.

¹¹ In *KC Equities*, a child day care facility petitioned for review of the decision of the Bureau of Hearings and Appeals which affirmed the Department of Public Welfare's ("DPW") decision to revoke the day care's certificate of compliance and refusal to issue a provisional certificate. 95 A.3d at 922. The day care previously entered into a settlement agreement with the DPW and subsequently violated the settlement. *Id.* In affirming the DPW's decision, the court stated "[a]dministrative agencies create additional criteria as a means of ensuring compliance by the entities they license. For example, the Pennsylvania Liquor Control Board may impose additional conditions on a license that apply to a licensee, the violation of which provides grounds for revocation." *Id.* at 936.

In the present case, Licensee entered into the 2012 CLA with the Board as a result of Licensing's objection to its license renewal. The 2012 CLA was enacted because of Reuter's failure to properly address a history of problems when he was the sole corporate officer and shareholder of J.P.P. in Manheim.¹² The 2012 CLA was approved by the Board to enable Reuter to maintain J.P.P.'s license, transfer the License to the newly-formed Advent, and move the License to Ephrata to operate a new business. The renewal was approved primarily because Reuter agreed to abide by the conditions set forth in the 2012 CLA. Reuter was aware of the requirements imposed by the 2012 CLA, he voluntarily agreed to abide by the conditions, and he was aware that a failure to comply could result in the nonrenewal of the License.

Nonetheless, Licensee chose to knowingly, deliberately, and arbitrarily stop complying with several requirements of the CLA, despite having full knowledge that it remained in effect. More specifically, Licensee discontinued the employment of security guards, discontinued patrols of the exterior of the premises, discontinued the maintenance of patrol logs, and discontinued meetings with Chief Steffen without obtaining and providing to the Board a written document from the chief stating that such meetings were no longer necessary. Furthermore, Licensee failed to obtain or maintain RAMP certifications for two employees. Thus, pursuant to *KC Equities, supra*, Licensee's failure to comply with the 2012 CLA, standing alone, is sufficient grounds to refuse Licensee's application for renewal.¹³

¹² At the *de novo* hearing, Licensee acknowledged the five prior adjudicated citations involving J.P.P. were admissible and relevant to explain why the 2012 CLA was implemented. (N.T. at 5).

¹³ As the Board aptly noted in their Proposed Findings of Fact and Conclusions of Law, "Reuter induced the PLCB to renew J.P.P.'s license with the original CLA, then promised to abide by a new CLA if the PLCB would agree to let him renew the license and move the business from Manheim to Ephrata. When the agreement was concluded, Reuter thumbed his nose at the agency, and at the law, deciding on his own that he did not have to honor his agreement." See Proposed Findings of Fact and Conclusions of Law of Respondent, Pennsylvania Liquor Control Board.

Finally, the Liquor Code requires that all applications for renewal of license shall be filed with tax clearance from the Department of Revenue and the Department of Labor and Industry at least sixty days before the expiration date of the license. 47 P.S. § 4-470 (a). Presently, Licensee filed an untimely application for renewal of License for a renewal period beginning March 1, 2014, because it did not have tax clearance from the Pennsylvania Departments of Revenue or Labor and Industry. Section 470 of the Liquor Code authorizes the PLCB to reject an application that is untimely. *Id.*

In conclusion, Licensee's citation, late filing, and failure to comply with the 2012 CLA are enough, standing alone, to justify the denial of Licensee's application for renewal of Restaurant License No. R-17793 (LID 65608). Based upon consideration of all listed violations in their totality, this Court finds that Licensee has demonstrated a clear disregard for the rule of law, thus warranting the nonrenewal of its liquor license.

WHEREFORE, after taking into consideration all testimony presented at the Board's Bureau of Licensing Hearing held on October 7, 2014, as well as the *de novo* hearing held on September 3, 2015, the Court now makes the following Conclusions of Law:

1. The Legislature of Pennsylvania has granted the Board broad police powers for the protection of the public welfare, health, peace, and the morals of the citizens of the Commonwealth.
2. Licensee filed an application with the Board for the renewal of Restaurant License No. R-17793 (LID 65608) for a premises located at 2415 West Main Street, Ephrata, Pennsylvania 17522, for the renewal period beginning March 1, 2014, and ending February 29, 2016.

3. Licensing specifically objected to Licensee's application, based on its one (1) adjudicated citation, breach of the 2012 CLA, and the untimely filing of the application.
4. Licensee's application for license renewal was untimely filed.
5. Licensee accrued one (1) adjudicated citation containing multiple violations.
6. Licensee breached the 2012 Conditional Licensing Agreement it entered into with the Board.
7. Section 464 of the Liquor Code [47 P.S. § 4-470] vests in this Court the authority to refuse renewal of a restaurant liquor license.
8. Licensee's willful misconduct warrants non-renewal of its liquor license.
9. Licensee's appeal is dismissed, and the decision of the Board to deny Licensee's application for renewal of Restaurant License No. R-17793 (LID 65608) is hereby affirmed.

I certify this document to be filed
in the Lancaster County Office of
the Clerk of the Courts.



[Signature]
Michael J. Plank, Esq.
Aaron K. Zeamer, Esq.

BY THE COURT:

[Signature]
DONALD R. TOTARO, JUDGE

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

ADVENT VENTURES, INC.
t/a WAHTNEY'S INN,

Appellant

v.

PENNSYLVANIA LIQUOR CONTROL
BOARD,

Appellee

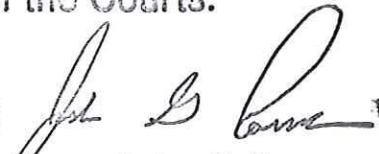
:
:
No. MD-663-2015
:
:
:
:
Liquor Control Board Appeal
:
:
:

ORDER

AND NOW, this 20th day of November, 2015, upon consideration of the appeal of Advent Ventures, Inc., trading as Wahtney's Inn ("Licensee"), after holding a *de novo* hearing on said appeal, and after review of proposed findings of fact and conclusions of law submitted by both counsel, it is hereby ORDERED and DECREED that the Appeal filed by Advent Ventures, Inc. is DISMISSED and the Order of the Pennsylvania Liquor Control Board is AFFIRMED.

I certify this document to be filed
in the Lancaster County Office of
the Clerk of the Courts.




Joshua G. Parsons
Clerk of the Courts

cc: Michael J. Plank, Esq.
Aaron K. Zeamer, Esq.

BY THE COURT:


DONALD R. TOTARO, JUDGE

CLERK OF COURTS
2015 NOV 20 AM 10:32
LANCASTER COUNTY, PA