

Circuit Court for Baltimore City
Case No. 24-C-15-002718

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 296

September Term, 2016

BRIAN GRACE, *et al*

v.

BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY

Reed
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: September 26, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2013, Brian Grace and Paul Gunshol, were issued a license to sell alcoholic beverages (the “License”) at The Big Easy Cabaret, a tavern in Baltimore City, by the Board of Liquor License Commissioners for Baltimore City (the “Board”). The License was renewed in 2014. When an application was submitted to the Board to renew the License in 2015, members of the community signed and submitted a petition in protest of the renewal application. Following a public hearing, the Board denied the renewal application, and Grace, Gunshol, and Haley Taggart, (collectively “appellants”), filed a petition for judicial review of the Board’s decision in the Circuit Court for Baltimore City. The circuit court affirmed the Board’s decision, and appellants noted this appeal. They present one question for our review:

Did the Board of Liquor License Commissioners for Baltimore City err in upholding a protest of renewal of the 2015 liquor license?

For reasons to follow, we conclude that the Board’s decision does not permit meaningful judicial review. Accordingly, we vacate the judgment of the circuit court and remand the case to the Board for further proceedings consistent with this opinion.

BACKGROUND

The Big Easy Cabaret (the “Big Easy”), a tavern and adult entertainment establishment, is owned and operated by Fireball Entertainment, Inc. (“Fireball”). In March of 2013, two of Fireball’s officers, Brian Grace, president, and Paul Gunshol, secretary, acting on behalf of the corporation, applied for and were granted the License by the Board. In March of 2014, they renewed the License for another year. In September of that year, a fight involving one of the Big Easy’s patrons resulted in a hearing before the

Board in November of 2014. Following the hearing, the Board suspended the License for two-months and imposed a fine.¹

In 2015, when Grace and Gunshol submitted an application to renew the License (the “2015 Renewal Application”), the Fells Prospect Community Association (“FPCA”) submitted to the Board a Petition for Public Hearing that was signed by dozens of area residents. The Board held a hearing on FPCA’s petition on April 23, 2015. At that hearing, FPCA maintained that Grace and Gunshol did not meet the statutory requirements to hold a liquor license in Baltimore City and that the operation of the Big Easy negatively affected “the public health, safety, and welfare of the community.”

As to their first contention, FPCA noted that in order for Grace and Gunshol to hold a valid liquor license in Baltimore City, both needed to be officers of Fireball and one of them needed to be a registered voter and taxpayer in Baltimore City who had resided in Baltimore City for at least two years prior to submitting the renewal application. To support its position on that issue, FPCA presented “a packet of documents” to the Board. Included in that packet was paperwork from the Maryland State Department of Assessments and Taxation that indicated that, in 2014, Grace resided in Queen Anne’s County and Gunshol resided in Anne Arundel County. FPCA, referring the Board to the 2014 Renewal

¹ The Board found that Grace and Gunshol had violated two Board Rules: disturbing the peace and failing to cooperate with police. Grace and Gunshol thereafter filed a petition for judicial review in the Circuit Court for Baltimore City. That court reversed the Board’s decision as to the first violation (disturbing the peace) but affirmed as to the second violation (failing to cooperate). An appeal was noted, and this Court affirmed. *Brian Grace, et al. v. Board of Liquor License Commissioners for Baltimore City*, September Term 2015, No. 611 (filed April 24, 2017).

Application, pointed out that both Grace and Gunshol listed Baltimore City addresses as their places of residence. FPCA further pointed out that Grace and Gunshol had listed Baltimore City addresses as their places of residence on the 2015 Renewal Application.²

Regarding its second argument – that the Big Easy had a negative impact on the community – FPCA referred the Board to several letters in which various community members, associations, and local legislators asked the Board to deny the renewal application. One letter, written on behalf of the FPCA, noted the Big Easy’s “long history of troubling behavior” and that neighbors were “unable to sleep through the night due to patrons, employees and noise generated from the club pounding through the walls of their homes.” Another letter, written on behalf of the Baltimore Highlands Neighborhood Association, noted “traffic and parking issues for neighborhood residents” and “criminal dealings, which are associated with the establishment.” A letter, written by James Kraft, a Baltimore City councilman, complained of “frequent phone calls from neighbors of this property regarding criminal activity, noise, public intoxication, and other issues indicative of a systemic lack of good management and oversight by the current licensee.” Another Baltimore City Council member, Jack Young, stated that “community residents are consistently disrupted by noise levels, trash, public intoxication, parking, public urination and fighting directly related to this establishment.” Approximately twelve such letters were submitted containing “various complaints as to the operation of the establishment” and “a lot of complaints about noise, parking.”

² The 2015 renewal application was not made part of the record before this Court. Grace testified that Gunshol was not included as a licensee on the 2015 renewal application.

FPCA then called two witnesses. The first, Marianne Furgison, had lived “a half block from the Big Easy for the last 20 years.” Ms. Furgison stated that the Big Easy had been open for only “a couple weekends” since the License had been suspended. She recounted one occasion, after the Big Easy reopened, when she witnessed “people standing outside loitering,” which she described as “a chronic problem.” She emphasized that she had been “coming to the Liquor Board about this bar, this problem bar since 2006” and that, in her opinion, it was “necessary for the public health, safety, and welfare of the community to deny the renewal.”

Robert Burch, who owned property adjoining the Big Easy, also testified. During his testimony, Mr. Burch read part of a letter written by three of his tenants:

In closing, we enjoyed a bit of a reprieve from the Big Easy from the time the Liquor Board suspended its liquor license in November of last year to late January 2015. However, as far as we’re concerned, the situation has not changed.

Getting restful sleep is difficult, and our concerns about fights and arrests of patrons with firearms clearly do not sit well with us. Lastly, most important, as we have learned, the federal government continues to investigate the Big Easy, making us ask ourselves, if it’s time to move on.

Brian Grace testified in response to FPCA’s presentation. He admitted that he currently resides in Queen Anne’s County but that he also rents an apartment in Baltimore City, which he uses when he comes to the Big Easy on weekends and that was the address he listed on his renewal applications. It was his impression that “by having an apartment to rent that [he] was a resident.”

Grace admitted that Gunshol’s primary residence was in Anne Arundel County but that he did not know that until June of 2014. After learning of Gunshol’s residency, he

submitted a revised renewal application omitting Gunshol as a licensee and naming Hailey Taggert, a dancer at the Big Easy and a resident of Baltimore, as the proposed licensee in Gunshol's stead. Grace's counsel later explained that this revision was made on the 2015 Renewal Application and that Gunshol was "not being requested to be a licensee for the upcoming year." Grace acknowledged that Taggert was neither an officer of nor a shareholder in Fireball at the time of the hearing.

Regarding the Big Easy's operations following the suspension of the License in November of 2014, Grace stated that he fired the manager, Mr. Mariano, following the incident that led to the suspension, but he was unaware that Mr. Mariano had since been arrested. He also stated that he had not received any complaints from Mr. Burch's tenants since the suspension. On cross-examination, Grace admitted that he had not done a background check on Mr. Mariano prior to hiring him as manager and was unaware of Mr. Mariano's "prior drug and gun charges."

At the end of the hearing, each member of the Board's three-judge panel voted to deny Grace's request to have the License renewed:

[CHAIRMAN]:

All right. Time for decision. I vote first. My – the decision is, I vote that the license shall not be renewed. Because I adopt [the] argument with respect to the legality of the renewal of the license, which I find that it has not been properly renewed. And then the license is a nullity, and – at the present time.

Therefore, since it has not complied with the city law with respect to the Liquor Board, and the city law with respect to liquor license approvals, it can't be renewed.

In addition to that, with respect to the testimony, I find that while past performance is not a – that there seems to be, in this particular case, an improvement, certainly in the operation of the license.

Nevertheless, I adopt all of the prior testimony and the testimony today with respect to my decision.

[COMM'R 1]:

I concur with the [Chairman]. And I was very quiet during the proceeding, but I was listening....And what I heard was, [Mr. Grace] did not know. You know, sometimes what you don't know can cause harm to others. In this case, it caused harm to the peacefulness of this community.

As – we have a due diligence to knowing things about the business that you're going to be a part of. And the type of business that we are talking about can have a great effect on that community. And I think every community deserves peace. And also, there should be a good working relationship with that community and owner of your establishment.

I'm quite sure you're a good person, your intent was good, you wanted to do something good for yourself and your family, but your method for going about doing that was poor. I mean, you hired somebody without knowing the background. Obviously, there wasn't enough supervision over that person; things happened.

With all this in mind, I mean, I agree. I have nothing further to add.

[COMM'R 2]:

So I concur with the Chairman and my fellow Commissioner. I remember when you were here in November, and one of the things that struck me then, and I don't have the full record, but I remember being very concerned about the

absentee nature of the management of this location. And that has continued.

But it's even worse than that. You all aren't even Baltimore City residents. There is no Baltimore City resident. So I think the first argument that was made regarding the eligibility to own this license is – it's persuasive. And it makes very, very clear that they're – even the basic requirements haven't been met. And I think that it's more of an – not an actual not knowing of information, but active knowing.

You're a former police officer. You're a current member of the fire department for the District of Columbia. I think that raises – that gives you a higher level of access to the knowledge necessary to vet those that would be managing your property. The absolute failure to do anything at all to vet the background of your manager.

And I do have the testimony where we asked you what was it that you wanted, and you said it was your wish that the – [Mr. Mariano] managed the property, the business properly. And we even – I said properly and you said yes, properly.

And nothing was – that was not – that's not what happened. I think that the problems that the community has had to deal with are gross. It's just absolutely gross and it doesn't have to be that way.

So it's – you know, it's for those reasons that I do join in the decision to not renew this license.

[CHAIRMAN]: All right. Folks, you have our decision.

Appellants thereafter filed a petition for judicial review of the Board's decision in the Circuit Court for Baltimore City. Following a hearing, the circuit court affirmed the

Board’s decision. Appellants then noted this appeal, arguing that the Board’s denial of their 2015 Renewal Application was erroneous.

STANDARD OF REVIEW

The statutory standard applicable to judicial review of the Board’s decision is set forth in Section 16-101(e)(1)(i) of Article 2B³ of the Maryland Code:

Upon the hearing of such appeal, the action of the local licensing board shall be presumed by the court to be proper and to best serve the public interest. The burden of proof shall be upon the petitioner to show that the decision complained of was against the public interest and that the local licensing board’s discretion in rendering its decision was not honestly and fairly exercised, or that such decision was beyond the powers of the local licensing board, and was illegal.

Id.

“We have ‘consistently explained that judicial review of a decision by the Board is similar to review of decisions by most other administrative agencies.’” *Rojas v. Board of Liquor License Commissioners for Baltimore City*, 230 Md. App. 472, 480 (2016) (citations omitted). We do not review the circuit court’s decision; rather, we adopt “the same posture as the circuit court...and limit our review to the [Board’s] decision.” *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244 (2007) (citations omitted).

When we review factual findings, we apply the substantial evidence test and “decide whether a reasoning mind reasonably could have reached the factual conclusion the [Board] reached.” *Rojas*, 230 Md. App. at 481 (citations omitted). In doing so, we “review

³ Article 2B has since been repealed and recodified as the Alcoholic Beverages Article. See Acts 2016, c. 41, § 1, eff. July 1, 2016. In this opinion, we shall cite to the statute as it existed at the time of the hearing.

the [Board’s] decision in the light most favorable to the [Board] since its decision is *prima facie* correct and carries with it the presumption of validity.” *Id.* (citations and quotations omitted). And, although our review of the Board’s legal conclusions is less deferential, we still “respect the [Board’s] expertise in its field and give considerable weight to its interpretation and application of any statutes or regulations it is charged with administering.” *Board of Liquor License Commissioners for Baltimore City v. Austin*, 232 Md. App. 361, 368 (2017). In short,

we are limited to determining if there is substantial evidence in the record as a whole to support the [Board’s] finding and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. Stated differently, [o]ur primary goal is to determine whether the [Board’s] decision is in accordance with the law or whether it is arbitrary, illegal, and capricious.

Rojas, 230 Md. App. at 481 (citations omitted).

That said, the Board is required to make meaningful findings of fact “in part to protect the fundamental right of a party to a proceeding before an administrative agency to be apprised of the facts relied upon by the agency in reaching its decision and to permit meaningful judicial review of those findings.” *Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. v. Maryland Public Service Commission*, 227 Md. App. 265, 288 (2016) (citations and quotations omitted). Meaningful findings of fact are essential because

[j]udicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of

agency action the court may not uphold the agency order unless it is sustainable on the agency’s findings and for the reasons stated by the agency.

United Steelworkers of Am. AFL-CIO, Local 2610 v. Bethlehem Steel Corp., 298 Md. 665, 679 (1984) (quoted in *Kor-Ko Ltd. v. Maryland Department of the Environment*, 451 Md. 401, 424 (2017)). In other words, the Board’s findings ““must at least be sufficiently detailed to apprise the parties as to the basis for the agency’s decision.”” *Accokeek*, 227 Md. App. at 284 (citations omitted).

DISCUSSION

Appellants argue that the Board’s decision not to renew the License was erroneous in several respects. First, they contend that the record contains “no evidence at all supporting a specific complaint as to the operation of the Licensee’s establishment,” which they claim is required under Maryland law. They also maintain that the Board’s rationale for its decision was deficient, in part because the Chairman, in stating his decision, “essentially makes no findings of fact” and because “the Liquor Board’s decision does not specify how it applied specific facts to the law to support its conclusion not to renew the Liquor License.” To the extent that the Board found that the 2015 Renewal Application was deficient because none of the appellants was statutorily qualified to hold the License, appellants aver that such a finding was not a legally sufficient basis for denying the 2015 Renewal Application because, in Baltimore City, “the sole basis for upholding a protest and not renewing the liquor license is a specific complaint as to the operation of the Licensee’s establishment...and not the qualifications of the Licensee.”

The Board counters that its decision was proper and supported by substantial evidence. In its view, appellants’ failure to meet the residency requirement was a specific complaint as to the operation of the business, more specifically, that appellants “operated the establishment out of compliance with the law.” The Board further maintains that it “also found that the license should not be renewed because of the general disturbances the Big Easy caused to the community.” This finding, it avers, was supported by documents and testimony presented at the hearing.

“The scope of the Board’s authority under Article 2B is a question of statutory interpretation and, thus, a question of law.” *Thanner Enterprises, LLC v. Baltimore County*, 414 Md. 265, 275 (2010). Although we may defer to an agency’s application of the statute it administers, “an agency may not take action ‘which is inconsistent or out of harmony with, or which alters, adds to, extends or enlarges, subverts, impairs, limits, or restricts the act being administered.’” *Board of Liquor License Com’rs for Baltimore City v. Hollywood Productions, Inc.*, 344 Md. 2, 11 (1996). “Even in cases where [our courts] have recognized broad delegations of authority, we have emphasized that agency rules and regulations must conform to the language and spirit of the statute under which the agency acts.” *Id.* at 10-11. In short, “[i]n any particular area of legislative concern, whether there should be a broad delegation of regulatory authority to administrators, or a more specific delegation, is a choice for the General Assembly.” *Christ v. Maryland Dep’t of Natural Res.*, 335 Md. 427, 439 (1994).

To be sure, the control and management of the sale of alcoholic beverages is an area of legislative and regulatory concern and, in that area, the General Assembly has exhibited quite specific (even stingy) delegation of regulatory authority to local liquor boards:

The provisions of [Article] 2B cover a myriad of subjects. They include the typical controls on the sale and consumption of alcoholic beverages, such as the types of places which may be licensed, the types of beverages which may be sold, the hours of sale, the license fees, etc. The subjects covered in [Article] 2B also include regulations concerning the premises, the conduct of licensees, ownership of establishments, membership requirements for association or club licensee, etc. For examples, [Article] 2B contains provisions dealing with the nature of kitchen equipment and kitchen facilities for the preparation of food on the premises of licensees, the size of dining rooms, sanitary and health conditions relating to the preparation of meals, the minimum number of rooms to qualify for a hotel license, landscaping and gardens for certain types of licensees, the clothing to be worn by employees of a licensee, the number of stories and elevators in a building to qualify for a hotel license, the size of parking facilities, restrictions on music, requirements concerning curtains on windows, the noise level of music, citizenship requirements for licensees, the number of boat slips for a yacht club to qualify for a license, the number of tennis courts and the size of the swimming pool to qualify for a country club license, and specific membership requirements for armed forces veterans clubs, fraternal clubs, etc., to be eligible for licenses.

Coalition v. Annapolis Lodge, 333 Md. 359, 371-72 (1994).

Because of the comprehensive nature of Article 2B, the Court of Appeals has determined that the power given to the local boards must be viewed through a more focused lens than that used when evaluating other agencies:

Rather than providing broad general guidelines, the General Assembly has chosen to closely control by statute even the more detailed aspects of the alcoholic beverages industry. This close regulation is perhaps partly due to the fact that, unlike other regulated areas, there is not a single agency that administers the alcoholic beverages law, but rather numerous local boards that are charged with its enforcement. Regardless of the reason for its enactment, the result of such a comprehensive statutory scheme is that the authority of the administering agencies necessarily is more circumscribed

than the typical administrative body. The Liquor Board thus differs fundamentally from those agencies to which the legislature more generously delegates the particulars of a regulatory scheme.

Hollywood, 344 Md. at 13.

In interpreting any statute, our primary goal is to determine the intent of the legislature, and “[t]he most reliable indicator of [legislative] intent is the statute’s plain language as ordinarily understood.” *Id.* “If statutory language is unambiguous when construed according to its ordinary and everyday meaning, then we give effect to the statute as it is written.” *Kushell v. Dep’t of Natural Res.*, 385 Md. 563, 577 (2005).

Article 2B proscribes the sale of alcoholic beverages without a license. Md. Code, Art. 2B § 1-201. In order for a business to obtain such a license, it must file an application “with the local licensing board where the place of business is located.”⁴ Md. Code, Art. 2B § 10-101(a). “[I]f the application is made for a corporation...the license shall be applied for by and be issued to three of the officers of that corporation...at least one of whom shall be a registered voter and taxpayer of the county or city...and shall also have resided therein, at least two years prior to the application.” Md. Code, Art. 2B § 9-101(b)(1)(i). When, as in this case, a corporation has fewer than three officers, “all officers or directors shall make the application as provided in this section.” Md. Code, Art. 2B § 9-101(b)(6). If approved,

⁴ Article 2B identifies different “classes” of license based on the circumstances under which the alcoholic beverages are to be sold. Although the statute does provide general regulations applicable to all classes, some statutory provisions apply only to certain licenses. We discuss here only those provisions applicable to the type of license at issue in the instant case (Class “D” Beer, Wine, and Liquor License).

a license is usually dated “as of the date of issue and shall expire...on April 30 next after its issuance[.]” Md. Code, Art. 2B § 10-206(a).

Once a license is issued, the holder, except in special circumstances, “shall, not less than 30 nor more than 60 days before the first day of May of each and every year, file a written application, duly verified by oath, for the renewal of the license with the official authorized to approve the same.” Md. Code, Art. 2B § 10-301(a)(1)(i). Ordinarily, “on the filing of the renewal application and payment of the annual fee, the holder of the expiring license is **entitled to a new license for another year** without the filing of further statements or the furnishing of any further information unless specifically requested by the official authorized to approve the license.” Md. Code, Art. 2B § 10-301(a)(1)(ii)(4) (emphasis added).

On the other hand, “a license by way of renewal may not be approved without a hearing before such official if a protest has been filed against the granting of the new license at least 30 days before the expiration of the license for which renewal is sought.” Md. Code, Art. 2B § 10-301(a)(1)(iii)(1). “If the protest has been filed it shall be heard and determined as in the case of original applications, **except in Baltimore City** it shall be heard and determined not as in the case of original application in regard to zoning but only on a specific complaint as to the operation of the licensee’s establishments.” Md. Code, Art. 2B § 10-301(a)(1)(v) (emphasis added).

Article 2B § 10-301(a)(1)(v) makes plain that any protest filed against the granting of a renewal of a liquor license in Baltimore City must be “heard and determined...only on a specific complaint as to the operation of the licensee’s establishments.” *Id.* The

Chairman comments on “past performance” but also speaks of “an improvement, certainly in the operation of the license,” presumably since the suspension of the License, and he “adopts” the “prior testimony and the testimony today” without reference to any particular or specific complaint. Moreover, his conclusion appears to rest primarily on his determination that the License is “a nullity” and “cannot be renewed.” One other Commissioner stated a concurrence with the Chairman without explanation but spoke of the importance of maintaining a “good working relationship” with the community, referenced the earlier November hearing, and criticized Grace for poor hiring practices and the lack of supervision of the Big Easy’s manager. And, the third Commissioner concurred with both the Chairman and the other Commissioner. His concern focused on the “absentee nature of the management” and the fact that the licensees were not Baltimore City residents.

As noted, we can only sustain the Board’s decision on its findings and for the reasons stated by it, but no specific findings of fact were made in this case. Did the Board conclude that, because the proposed licensees were not statutorily qualified to hold the License, consideration of Article 2B § 10-301(a)(1)(v) was unnecessary? If not, what “specific complaint as to the operation” of the Big Easy was the basis for non-renewal, and what evidence over what time frame supported the Board’s decision? In short, the factual

and legal basis for non-renewal of the License, in light of the statutory scheme for renewal of licenses in Baltimore City, is not sufficiently clear for meaningful judicial review.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO VACATE THE ORDER OF THE BOARD OF LIQUOR LICENSE COMMISSIONERS FOR BALTIMORE CITY AND TO REMAND TO THE BOARD OF LIQUOR LICENSE COMMISSIONERS FOR BALTIMORE CITY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.