

Circuit Court for Prince George's County
Case No. CAL-14-22337

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 847

September Term, 2016

ARD MALHI, LLC
T/A TICK TOCK LIQUOR AND
RESTAURANT

v.

BOARD OF LICENSE COMMISSIONERS
FOR PRINCE GEORGE'S COUNTY

Eyler, Deborah S.,
Reed,
Friedman,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: August 4, 2017

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In this administrative appeal, ARD Malhi, LLC (“ARD”), trading as Tick Tock Liquor and Restaurant (“Tick Tock”), the appellant, challenges a decision of the Board of License Commissioners for Prince George’s County (“the Board”), the appellee, to deny its Alcoholic Beverage License renewal application for the 2014/2015 license year. That decision was affirmed on judicial review by the Circuit Court for Prince George’s County. ARD presents five questions,¹ which we have combined and rephrased as one: Was the Board’s decision to deny the renewal application legally correct and supported by substantial evidence in the record? For the following reasons, we answer that question in the affirmative and shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

Tick Tock is a retail liquor store and restaurant located in a shopping center on University Boulevard in Adelphi. In 1996, ARC Melhi, Inc. (“Melhi Corp.”) purchased Tick Tock and became the licensee on the business’s Class B+, Beer, Wine, and Liquor

¹ The questions as posed by ARD are:

- I. May the Board decide an issue that was not presented in the notice of non-renewal hearing summons?
- II. Is reversal of the Board’s decision required when it failed to render any adverse findings of facts or conclusions of law with respect to the issues set forth in the hearing summons?
- III. Although not discussed by the Board, was there substantial evidence in the record to support a finding of Mrs. Melhi owning Tick Tock, and, even if there was, may Petitioners employ Mrs. Melhi in an employment of managerial capacity?
- IV. Is a felony conviction of a prior owner a complete bar to holding a liquor license by a subsequent owner?
- V. Did the Board fail to apply any particular burden of proof and improperly shift the burden to the license holder?

License. Ravinder Kaur Melhi (“Ravinder”) owned 75% of Melhi Corp.’s stock and ran the business along with her husband.²

On June 16, 2011, Ravinder plead guilty in the United States District Court for the District of Maryland to having violated 18 U.S.C. § 1030, which prohibits accessing information in a governmental database for financial gain.³ Her husband was charged in the same indictment and plead guilty to more serious crimes.

On July 19, 2011, Ravinder applied to the Board to transfer her interest in the liquor license to ARD, allegedly owned 75% by Ripponjit Malhi (“Ripponjit”), her adult son, and 25% by Hazari Kapur. Ravinder notified the Board, through counsel, that the “underlying reason” for the transfer was her status as a defendant in a pending federal criminal case.

In October 2011, in her criminal case, Ravinder was sentenced to a term of probation.

In February 2012, the Board held a hearing and approved the transfer of the liquor license to ARD, Kapur, and Ripponjit.⁴

² The record does not reflect the identity of the 25% owner of Melhi Corp.

³ Ravinder had asked a Prince George’s County police officer to access the Motor Vehicle Administration database for the purpose of locating contact information for an individual who had passed bad checks at Tick Tock in order to facilitate collecting the debt.

⁴ The record does not reveal the precise date when the transfer was approved.

In August 2013, the State Comptroller’s Office conducted an investigation into an unregistered wholesaler that was selling Cameroonian beer in Prince George’s County (“the County”). Investigator Lou Berman and Agent James Olienyk, both with the Field Investigation Division at the Comptroller’s Office, made an unannounced visit to Tick Tock to investigate a purchase from the unregistered wholesaler. Ravinder was present at Tick Tock and permitted the investigators to inspect the stock. They located “numerous cases of Cameroonian beer” with a retail value of \$15,201.90. Because the wholesaler was unregistered, the beer was untaxed contraband and it was seized.

Ravinder provided the investigators with three invoices for the purchases. The invoices all identified Ravinder as the “Customer” and stated that the beer had been “SOLD TO[:] Tick Tock.” One of the invoices reflected that the beer should be “SHIP[PE]D TO[:] Golden Bull,” however. Golden Bull Restaurant is a retail liquor store and restaurant in Adelphi that is owned and operated by Ravinder’s daughter and another person.

Several days later, Berman and Olienyk went to Golden Bull to inspect the stock and determine if contraband beer also was present at that establishment. They did not locate any contraband beer there. While they were conducting the inspection, Berman received a phone call from David Jarrell, a manager at Tick Tock, asking why he (Berman) was at Golden Bull. Berman explained his purpose. Jarrell responded that the beer already had been “returned.”

The Comptroller’s investigative report was forwarded to the Board and it commenced an administrative proceeding against ARD for illegal purchases of untaxed beer. The charges were heard during a regular session of the Board on January 8, 2014. Ravinder was the only witness who testified for ARD. She testified that she purchased the beer not knowing it was illegal. She represented to the Board that the wholesaler offered a better price than a competitor and that she wanted to make a good deal for the business. The Board voted unanimously to find a violation, imposed a \$5,000 fine, and suspended ARD’s liquor license for ten days (beginning January 9, 2014).

The following month, on February 25, 2014, ARD applied to renew its liquor license for the 2014/2015 term. Pursuant to Md. Code (1957, 2011 Repl. Vol., 2013 Supp.), section 10-302 of Article 2B,⁵ a Class B+ liquor license expires on May 31 each year. A renewal application must be filed by April 1 of each year.

In their license renewal application, Ripponjit and Kapur identified themselves as the licensees; averred that no one on the license has been convicted of a felony; that no one other than the licensees had a pecuniary interest in the license; that neither of the licensees held a pecuniary interest in any other license in the County; and that the facts set forth in the renewal application were the “same as those approved in the original application.” They answered “Yes” to a question asking if the licensees had been found

⁵ Article 2B has since been recodified, largely without substantive change, as the Alcoholic Beverages Article. Because the Board proceedings all occurred prior to the recodification, we shall refer to the pertinent provisions of Article 2B.

in violation of the alcohol and beverage laws, noting that they been cited for violations for a sale to minors and for “purchase from unauthorized vendor.”

On May 10, 2014, the Board served upon Kapur a summons commanding ARD to appear at a hearing to show cause why the license should be renewed given that “the facts in the renewal application are not the same as those approved in the original application and that the applicant made material false statements in the application.” The hearing notice alleged that the licensee had violated numerous provisions of Article 2B, including section 9-217(f), pertaining to the prohibition on a licensee holding an interest in more than one license, and section 10-401(g)(5)(i), permitting the Board to revoke a license if the licensee or, in the case of a corporation, a stockholder in the corporation having the use of the license, has been convicted of a felony. The summons further provided the following explanation of the issues to be addressed at the show cause hearing:

That the applicant and stockholder of the corporate entity do not hold a financial interest in the business; that persons other than the applicant and stockholder are deriving a profit from the sale of alcoholic beverages; that Ravinder . . . a convicted felon is alleged to be the owner of both t/a Tick Tock . . . and other licensed establishments to include t/a Golden Bull which is a licensed establishment located in [the] County; that the applicant has made material false statements in the renewal application for 2014-15.

The hearing went forward on May 27, 2014. Board employee Kelly Markomanolakis provided background information. She explained that the Board’s investigation revealed that “the transfer of the license that traded as Tick [T]ock was fraudulently filed in order to hide . . . a convicted felon’s interest in a licensed premises” and that Tick Tock and Golden Bull were being “operated like a chain store” in order to

“achieve . . . discounts.” She argued that the Board should not renew the license because Ravinder “continue[d] to operate . . . as the owner of both Tick Tock and Golden Bull in a continuation of the process started years ago utilizing nominees as fake business owners to circumvent the law[.]”⁶

Markomanolakis explained that while Ravinder had given notice to the Board that she was a defendant in a federal criminal case, she did not notify the Board that she already had entered a guilty plea in that case and she also did not notify the Board following her sentencing that she had been convicted of a federal crime.

Markomanolakis also detailed the Comptroller’s investigation in 2013 and the resulting charges against ARD. During the January 8, 2014 hearing, Ravinder had testified that she had purchased the illegal beer because the dealer offered to give her a better price and she was “try[ing] to . . . save money” “[a]s a businessman.” Ravinder also referred to Jarrell as “[*her*] manager” and advised the Board that she had changed procedures since the illegal purchase to ensure that violations like this would not occur in the future. (Emphasis added.)

Berman testified about the August 2013 investigation into the Cameroonian beer purchase. He explained that under Maryland law, beer may only be purchased from a licensed wholesaler who owns the franchise for the particular beer and who pays the

⁶ During her argument, Markomanolakis read from the transcript of a November 16, 2010 bond hearing in the federal district court pertaining to the criminal charges against Ravinder, her husband, and others. In its final decision, the Board excluded that evidence because the transcript was “argument of counsel” and not evidence presented under oath. Accordingly, it is not before us.

required state and local taxes. An unlicensed wholesaler had sold the Cameroonian beer to Tick Tock, however. The invoices for those purchases were introduced into evidence.

Berman was asked if he got the impression that Ravinder “had a certain level of control over the business [at Tick Tock].” He replied that he believed she was “absolutely in charge.” Berman noted that another man who identified himself as a manager was present the day he went to Tick Tock. That man had “deferred to” Ravinder on all matters. Berman testified that the purchase by Tick Tock for Golden Bull and the fact that Golden Bull returned the illegally purchased beer during the investigation was evidence that they were operating as “a co-managed grouping.”

Olienyk also testified about the Comptroller’s investigation. He described a conversation he had with Jarrell, who, as mentioned, was a manager at Tock Tock. Olienyk asked Jarrell what Ravinder’s role was at Tick Tock. Jarrell responded that Ravinder was the “wife of the former owner” of Tick Tock and that she was now a “paid company employee” of ARD. Ripponjit was the owner, according to Jarrell. Olienyk asked Jarrell why Ravinder would have purchased beer for the Golden Bull. He replied “[i]t’s her money.” Olienyk opined that when “you’ve got two people at one store asking about what you’re doing over at the other store, and one person taking direct business action by ordering alcohol for another store and paying for it, there’s a financial relationship there.”

Sergeant Renee Plumb from the Prince George’s County Police Department testified that, at the request of Jarrell, she had attended a May 13, 2014 meeting at Tick

Tick Tock about “two recent incidents of violence” at the business. When Plumb arrived, only Jarrell was there. Jarrell told Plumb that “the owners” would be arriving shortly. Four people later arrived for the meeting: Ravinder, two attorneys for the business, and Mohamed Sala, a manager at Golden Bull and a property manager for properties owned by Ravinder. Ravinder spoke for Tick Tock, asking Plumb’s advice on how to improve security at Tick Tock. Ravinder told her that she had terminated the contract with Tick Tock’s security company and had hired a new company. Plumb had the impression that Ravinder was making decisions for Tick Tock.

Christian Mendoza, the Deputy Chief Liquor Inspector, testified that he made an unannounced visit to Tick Tock on May 15, 2014, and interviewed four employees. He asked each of them if they knew Kapur. None of the four employees ever had met him or knew who he was.

Markomanolakis argued that the testimony and other evidence established that Ravinder continued to control Tick Tock and that Ripponjit had not “replaced her in any way.” In response to questioning from the Board, Markomanolakis stated that a security guard for Tick Tock had testified at a prior Board hearing that he negotiated his contract with Ravinder; he had referred to Ravinder as the “owner.”

Counsel for ARD asked Markomanolakis if it was permissible, in her view, for Ravinder to be a paid manager for Tick Tock. Markomanolakis replied that she believed that that would not violate the law.

In its case, ARD called Kapur, Ripponjit, Sala, and Ravinder. Kapur testified that he held a 25% interest in ARD. He was asked by members of the Board how much he had been “paid as [his] 25 percent share in 2012.” He replied, “I do not pay anything. I – I – I – I work at MVA. . . . I go to my job.” The Board member attempted to clarify, asking if he ever had been paid anything by Tick Tock. He replied, “No, I – I owe them . . . \$2 million.” According to Kapur, he had agreed to purchase Tick Tock for \$2 million, but had not paid the purchase price. He thought that Tick Tock’s profits amounted to a monthly payment on that debt. Kapur had not declared any income from Tick Tock or the forgiveness of debt by Tick Tock on his taxes.

A promissory note dated January 13, 2012, reflecting ARD’s promise to pay \$2 million to Melhi Corp. was introduced into evidence (“the Note”). It was signed by Ripponjit and Kapur on behalf of ARD. The pertinent terms provided that ARD would pay Melhi Corp. \$21,500 per month beginning January 1, 2012, and continuing for 180 months. The unpaid principal amount of the loan would bear interest at 10% per annum until paid. ARD’s failure to make any payment under the terms of the Note was an “Event of Default” and would render the full principal amount, plus interest, fees, charges, and attorney’s, fees due and payable immediately and could subject ARD to a confessed judgment.

Ripponjit testified that he worked at Tick Tock fifty hours each week and that he received payments from Tick Tock.⁷ When a member of the Board asked him, “What’s your job,” he replied, “Owner.” When asked what he actually does at Tick Tock, he said he “stop[ped] by bank, work on the register, answer calls, [and] work in the front office.”

Sala testified that he was the manager at the Golden Bull and also was the “property manager for all the Melhi properties.” He noted that although ARD owned and managed the business at Tick Tock, the building was owned by Ravinder.

Ravinder testified that she was just “one of the employees” at Tick Tock and that her son and Kapur were the owners and the licensees. Ripponjit and Kapur were obligated under the terms of the Note to pay her \$2 million for the business. Kapur only owed \$500,000 because he was a 25% owner, while Ripponjit owed \$1.5 million. For the first two years after the Note was executed, they made no monthly payments. According to Ravinder, they had started making monthly payments in the last six months. The payments were made by direct deposit from Tick Tock to the account for the Melhi Corp. No evidence of those payments was introduced into evidence.

According to Ravinder, Tick Tock had not been profitable after ARD purchased it and she had agreed that Kapur and Ripponjit could begin making monthly payments on

⁷ An IRS document was introduced into evidence showing that Ripponjit owed over \$96,000 in taxes. ARD’s attorney argued that this was evidence that he was earning money from his 75% interest in ARD.

the Note once that changed.⁸ She was asked how much Tick Tock had “netted” each month while she owned the business. She said she could not answer that question off the top of her head.

Ravinder denied having signed the invoice for the Cameroonian beer that was sold to Tick Tock and shipped to Golden Bull. She asserted that she had no involvement in managing Golden Bull.

At the conclusion of the evidentiary portion of the hearing, the Board deliberated on the record. The Board members agreed that Ravinder was in “control” of the license despite the purported transfer and voted not to renew the liquor license.

The next day, the Board issued its written decision. Having heard testimony, “weighed the credibility of all [of the] witnesses,” and “carefully considered and weighed all of the evidence,” the Board made the following pertinent findings:

- Ravinder had transferred her interest in Tick Tock’s license “[i]n order to avoid revocation or non-renewal” of that license resulting from her felony conviction.
- Despite that transfer, Ravinder had “continued to exercise control over the licensed premises just as she did when she was the 75% licensee.”
- “The named licensee and stockholder are the licensee and stockholder in name only.”
- Ravinder presented herself to the Board as a “mere salaried employee” at Tick Tock but, in all of her other affairs, she held herself out as the owner and manager of Tick Tock. Berman’s testimony that Ravinder was clearly in charge of Tick Tock was particularly persuasive to the Board in this regard.

⁸ ARD’s 2012 federal tax return was included as an exhibit to its Petition for Judicial Review in the circuit court. It is unclear if it also was before the Board. That return showed that ARD earned \$489,133 in 2012.

- The transfer of ownership of Tick Tock was “fraudulent” and was “done to circumvent the restriction that a convicted felon cannot be a licensee.”^{9]}
- Ripponjit does not control the business; has “little or no knowledge of the intricacies of the business”; and does not “appear to exercise any control or make any decisions regarding the business.” He is a “figurehead for his mother who continues to operate the business as if she were a licensee.”
- Kapur’s purported purchase of a 25% interest in Tick Tock was “not a legitimate sale.” He did not make a down payment; he has not made any monthly payments on the Note; “[n]o legal steps have ever been initiated by [Ravinder] to collect this debt or even a portion of it”; and no evidence of a “security interest was ever filed with the Board.” The purported sale was a “blatant attempt to deceive [the Board].”
- Ravinder “controls more than one liquor license in [the] County”: Tick Tock and Golden Bull. Those two establishments were operated under “one management umbrella.” The Board was persuaded by the evidence that Ravinder purchased illegal beer for Tick Tock and Golden Bull; that she maintained the books for both businesses in her office at Tick Tock; and by Jarrell’s statement to Olienyk that Ravinder made a purchase for Golden Bull because “[i]t’s her money.”
- Ravinder continued to act as if she were an owner of Tick Tock, repeatedly referring to it as “[her] store” and testifying to her desire to run a good business.
- Ravinder continued to “have a pecuniary interest in . . . Tick Tock . . . and . . . Golden Bull.”

The Board further found that upon Ravinder’s felony conviction, she became “ineligible to hold a license or be a stockholder” and, as a result, she decided to transfer her interest in Tick Tock’s liquor license to Ripponjit and Kapur. That transfer was “fraudulent,” however, because

[t]he current licensees are mere figureheads. [Ravinder] remains firmly in control of the business. She makes business decisions. She keeps the books. She hires and fires personnel. She represents the interests of the business in dealings with licensing authorities and other governmental bodies. She remains in control of the license in all but name.

⁹ As we shall discuss, *infra*, the Board is empowered to revoke a license based upon a felony conviction, but is not required to do so.

The Board reasoned that Ravinder’s control of the license was a “serious situation” because it amounted to a fraudulent circumvention of the legislative intent to “exclu[de] . . . convicted felons from liquor licenses.” The Board emphasized that the purpose of the laws to that effect is to “prevent a person with a serious criminal record from exercising control and making judgment calls about the distribution of a product which is so dangerous that its sale and distribution [are] tightly regulated.” A convicted felon, in the legislature’s view, might be “more likely to ignore or flout the law than a person without such a conviction.” The Board noted that the legislature was “prescient,” in that regard, given that Ravinder had ignored the law by purchasing “Cameroonian beer from an unlicensed dealer in order to get a better price to increase profit for . . . Tick Tock.”

The Board determined that the fact that Ravinder’s name was no longer on the license was not “controlling” because she continued to operate as the licensee. She also controlled the license for Golden Bull, in contravention of the law prohibiting one person from holding an interest in more than one license.

Given these findings, the Board concluded that the application for renewal should be denied because it included material misrepresentations and was otherwise fraudulent.

ARD petitioned for judicial review in the circuit court. On May 27, 2016, the court entered a written opinion affirming the decision of the Board. This timely appeal followed.

STANDARD OF REVIEW

This Court reviews a decision of the Board subject to the well-established principles governing review of administrative agencies. “When an agency, including a local alcoholic beverage licensing board, acts in a fact-finding or quasi-judicial capacity, we review its decision to determine whether it was rendered in an illegal, arbitrary, capricious, oppressive, or fraudulent manner.” *Bd. of License Comm’rs for Prince George’s Cty. v. Global Express Money Orders, Inc.*, 168 Md. App. 339, 345 (2006). Our review “is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *United Parcel Serv., Inc. v. People’s Counsel*, 336 Md. 569, 577 (1994). “In applying the substantial evidence test, a reviewing court decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999) (internal quotations omitted). In doing so, we “defer to the agency’s fact-finding and drawing of inferences if they are supported by the record.” *Id.* “While ‘an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts,’ [*Banks*, 354 Md. at 69], ‘we owe no deference to agency conclusions based upon errors of law.’” *Coleman v. Anne Arundel Cnty. Police Dep’t.*, 369 Md. 108, 121 (2002) (quoting *State Ethics v. Antonetti*, 365 Md. 428, 447 (2001)).

DISCUSSION

Contentions of the Parties

ARD contends reversal of the Board’s decision is required for five reasons. First, the Board failed to make any adverse findings of fact about the four issues identified in the hearing summons. Second, the Board focused on an issue—Ravinder’s control and management of Tick Tock—that ARD had no notice was even before the Board and, as Markomanolakis conceded, was not illegal. Third, to the extent the Board found that Ravinder continued to “own” Tick Tock, that finding was not supported by substantial evidence in the record. Fourth, Ravinder’s felony conviction did not make her ineligible to hold a liquor license and, thus, if the Board relied on her felony conviction to deny the renewal application, it erred as a matter of law. Finally, the Board did not identify the “burden of proof” applicable and “appeared to improperly shift the burden to the license holder.”

The Board responds that it “addressed all the issues before it, and rendered its decision on the basis of ‘substantial evidence.’” It emphasizes that the principal issue before the Board was whether ARD made “false representations” on its application for renewal and that the Board made numerous adverse findings on that issue. The Board asserts that ARD waived any contention that it was not on notice that Ravinder’s control of Tick Tock was at issue by failing to object at the hearing when that issue was plainly front and center. Even if not waived, the Board maintains that it clearly made findings about Ravinder’s “ownership,” not just her control and management of Tick Tock.

Applicable Law

As mentioned, at all relevant times, liquor licenses in the County were governed by Article 2B. We set forth the provisions identified by the Board as being applicable under the facts of the instant case.

Section 10-302 governs license renewal applications and requires a licensee to file a “written application duly verified under oath, together with the license fee” by the deadline (here, April 1, 2014) and to state that “the facts in the original application are unchanged.” Art. 2B §§ 10-302(a)(3) & (b)(1). At its discretion, the Board “may or may not” grant a renewal application upon a finding that “the licensee or any of the stockholders of the corporation having the use of a license have been convicted of a felony.” *Id.* at (e). Before denying a renewal application on the basis of a felony conviction, the Board must hold a public hearing at which “[a]ll relevant facts and circumstances of the offense may be inquired into.” *Id.*

Section 9-217(f)(1)(i), with exceptions not relevant here, provides that “a person, whether acting on that person’s behalf or on the behalf of another person or entity, corporation, association, partnership, limited partnership or other combination of persons . . . , may not have an interest in more than one license authorizing the retail or wholesale sale of alcoholic beverages.” An interest in multiple licenses may be “conclusively presumed” if there exists

1. A franchise agreement; 2. A licensing agreement; 3. A concession agreement; 4. Where both are part of a chain of businesses commonly owned and operated and so portrayed to the public; 5. Any sharing of directors or stockholders or any sharing of directors or stockholders of

parents or subsidiaries; 6. Common direct or indirect sharing of profit from the sale of alcoholic beverages; or 7. Sharing of a common trade name, trademark, logo or theme, or mode of operation identifiable by the public, except hotels or motels.

Id. at (f)(1)(ii). If the Board “determines after a hearing that an interest exists in more than one license, [it] shall refuse to issue a new license or shall revoke an existing license.” *Id.* at (f)(4).

Section 10-401 governs cause for the Board to revoke or suspend a liquor license. It provides, in pertinent part, that the Board may revoke a license for the “[m]aking of any material false statement in any application for a license or permit” or based upon a “felony conviction of a licensee or any stockholder of a corporation having the use of an alcoholic beverages license.” Art. 2B, §§ 10-401(a)(3)(iii) & (g)(5)(i).

Section 10-103 governs original license applications. It requires, as pertinent, that the applicant certify that he or she has never been convicted of a felony; that he or she “has a pecuniary interest in the business to be conducted under said license”; and that “no person except the applicant is in any way pecuniarily interested in said license or in the business to be conducted thereunder during the continuance of the license applied for.” *Id.* at (b)(9)(iv), b(10), & b(15).

Section 10-501(b)(4) governs security interests in a license. It permits a licensee to create a security interest in a license in favor of a creditor provided that a copy of the underlying security agreement is filed with the Board.

The Board also has promulgated its own rules and regulations governing liquor licenses. At the relevant time, Board Rule 12(E)(1) provided that an applicant for a

license shall not “make any material false statement in any . . . renewal application, letter or written statement or, in testimony before the Board or any other representative of the Board” Board Rule 19 prohibits a licensee from having an interest in more than one license, and Board Rule 21 prohibits chain store operations by retail liquor dealers. The Board is empowered to suspend or revoke a license if it finds that the licensee has “committed two or more violations” of Maryland law or the Board Rules within a two year period; fails to comply with any provision of the law; or makes any false statement on a license renewal application.

Analysis

The central thrust of ARD’s arguments on appeal is that the Board did not make *any* adverse findings about the issues set forth in the hearing summons. As a corollary to that argument, it asserts that all the adverse findings made by the Board related to an issue not included in the hearing summons: whether Ravinder continued to exercise control and management responsibilities for Tick Tock.

The hearing summons alleged that ARD and its members had made material false statements in their license renewal application. It specified that ARD was alleged to have falsely averred in its application that ARD, Ripponjit, and Kapur held a “financial interest in the business,” when in reality, it was Ravinder who was “deriving a profit from the sale of alcoholic beverages.” In analyzing this issue, the Board focused on circumstantial evidence that Ravinder continued to exercise complete control over the business by hiring and firing security companies; making purchases for the business because she was

offered a good price; and speaking for the business at Board hearings. In its final decision, the Board found as a fact that Ravinder’s transfer of her ownership interest in the Tick Tock to ARD was “fraudulent” and that she continued to have the “pecuniary interest in the . . . Tick Tock” that she had had before the purported sale. It found, moreover, that neither Ripponjit nor Kapur exercised “any control over the management of the premises.” The fact that Ravinder had caused her name to be removed from the license was “not controlling” because the overwhelming evidence showed that she controlled the license. It was implicit in these findings that the Board found that ARD was not financially interested in the business and that Ravinder was profiting from the license.

These findings were supported by substantial evidence in the record. The only evidence of the sale of Tick Tock by the Melhi Corp. to ARD was the Note and Ravinder’s testimony that Kapur and Ripponjit recently had begun making payments on the Note. The Board clearly rejected this evidence. Kapur testified that he had not made any payments and that he could not make any payments. The Board reasonably found that it defied credulity that Ravinder would sell her interest in a profitable business; receive no payment for that sale for more than two years; and take no action to enforce the Note.

The evidence also was overwhelming that Ravinder continued to hold herself out as the owner of Tick Tock and to act as if she was in charge of the business. Olienyk testified about Jarrell’s statement, about the purchase of the Cameroonian beer for Tick

Tick and Golden Bull, that “[i]t’s her [*i.e.* Ravinder’s] money.” There also was evidence that Ravinder hired and fired employees and that she alone appeared before the Board at a violation hearing. While ARD makes much of the fact that Article 2B does not prohibit a prior owner from being a paid employee of a licensee or from being tasked with management responsibilities, the Board did not find that Ravinder was a paid employee. It found that she never gave up her ownership interest and continued to control the earnings from the business.¹⁰

The Board’s findings that ARD, Kapur, and Ripponjit made false averments in the license renewal application were a sufficient basis, standing alone, for the denial of the application. The Board may revoke a license for the “[m]aking of any material false statement in any application for a license or permit.” Art. 2B, § 10-401(a)(3)(iii). Given that the making of a material false statement is grounds for revocation of an existing license, it plainly is grounds for the denial of an application to renew a license.

¹⁰ The case relied upon by ARD, *Cohen v. Orlove*, 190 Md. 237 (1948), is distinguishable. There, the issue was whether a former partner in a business that held a liquor license who, after the purported termination of his partnership interest, continued to work for the business in the same capacity and drew a larger weekly salary than he had previously, was pecuniarily interested in the license. In *Cohen*, there was testimony from the accountant for the business that the former partner was bought out and that he was a mere employee. The court credited that evidence. In the case at bar, in contrast, the evidence presented by ARD to show that Ravinder no longer held a pecuniary interest in Tick Tock was contradicted by other evidence and was not credited by the Board.

The Board also made adverse findings of fact about Ravinder’s ownership interest in multiple licenses, in violation of Article 2B, section 9-217(f)(i).¹¹ As a Board member commented during the hearing, the purpose of section 9-217(f)(i) is to prevent retail liquor stores from gaining an unfair competitive advantage by obtaining discounts on bulk purchases for multiple stores. Relying upon the testimony of Berman and Olienyk, the Board found that Tick Tock and Golden Bull were being operated under “common management.” This finding was supported by the evidence that Cameroonian beer was purchased by Ravinder for Tick Tock, for shipment to Golden Bull. This also was a basis upon which to deny the renewal application.

We briefly address ARD’s final two contentions of error. First, it asserts that the Board could not deny the renewal application on the basis of Ravinder’s felony conviction because “it was not set forth in the hearing summons.” The hearing summons advised, however, that an issue before the Board would be whether Ravinder, “*a convicted felon*[,]” was an owner of Tick Tock. The hearing summons also cited the provision of Article 2B permitting the Board to deny an application to renew a liquor license if the licensee had been convicted of a felony. Thus, ARD is incorrect that it was not on notice that Ravinder’s felony conviction could serve as a basis for the denial of the

¹¹ ARD suggests that the Board could not find a violation of section 9-217(f) unless it found that one of the criteria set forth at subsection (ii) was present. We agree with the Board that the statute does not so require. The Board is permitted to “conclusively presume[.]” an interest in multiple licenses if any of the subsection (ii) criteria are met. Absent such a finding, however, the Board still may find based upon other evidence that such an interest in multiple licenses exists.

application. In any event, the Board did not deny the application on that basis. Rather, it found that the risk that it would revoke Tick Tock’s liquor license pursuant to Article 2B, section 10-401(g)(5)(i), based upon Ravinder’s conviction of a felony, motivated Ravinder to take steps to transfer the license to Ripponjit and Kapur without notifying the Board of her conviction. For the reasons already discussed, the Board determined that that transfer was a sham designed to conceal the fact that Ravinder continued to control and operate Tick Tock’s license. The Board further found that the legislative intent behind section 10-401(g)(5)(i) (as well as the other provisions of Article 2B pertaining to felony convictions) was to ensure that the sale of alcohol, a dangerous and highly regulated product, is not controlled by persons who have demonstrated a willingness to flout the law and that to permit a licensee who has been convicted of a felony to transfer her license to “mere figurehead[.]” licensees while continuing to control the license and derive a profit from it would undermine that legislative purpose. We agree.

Finally, ARD argues that the Board improperly shifted the burden of proof to it to prove that it did not make any false statements on its renewal application. This argument lacks merit. The Board presented evidence at the show cause hearing about the Comptroller’s investigation that showed that Ravinder was holding herself out to be the owner of Tock Tock; was making purchases for the business and for Golden Bull; and was, according to Jarrell, doing so with “her money.” This was affirmative evidence that the license renewal application contained material false statements about the ownership of Tick Tock and whether anyone else held a pecuniary interest in the license. ARD did

not present any credible evidence rebutting the Board's case. The Board did not impermissibly shift the burden of proof to ARD by so finding.

**JUDGMENT AFFIRMED. COSTS
TO BE PAID BY THE APPELLANT.**