

Mailing Date: March 19, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 06-1861
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :
 :
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 vs. :
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 :
 53 BASIN STREET, INC. : License No. R-7916
100 North 53rd Street :
Philadelphia, PA 19139-2612 :
 :

Counsel for Licensee: Lori Hahn Maslin, Esquire
The Hahn Law Offices, LLC
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Pennsylvania State Police,
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6901 Woodland Avenue, Third Floor
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OPINION

Girard Finance Company (“GFC”),¹ by and through Thomas Richter,
appealed from the Supplemental Opinion and Order of Administrative Law
Judge Felix Thau (“ALJ”), wherein the ALJ deferred the previously-imposed

¹ According to GFC, it is authorized to act on behalf of the Licensee because Licensee's corporate officer, Johnnie Roach, has defaulted on a lending agreement and under the terms of that agreement, GFC now controls the Licensee. (GFC's Appeal).

suspension of the subject license pending its reactivation from safekeeping.

The citation underlying this appeal consisted of five (5) counts. The first count charged that, on June 13, 2006 and divers other occasions within the past year, 53 Basin Street, Inc. ("Licensee"), by its servants, agents or employees, violated section 471 of the Liquor Code [47 P.S. § 4-471] and sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §§ 5512, 5513] by possessing or operating gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises. The second count of the citation charged that, on June 13, 2006, Licensee, by its servants, agents or employees, violated section 491(10) of the Liquor Code [47 P.S. § 4-491(10)] by refilling liquor bottles. The third count of the citation charged that, on June 13, 2006, Licensee, by its servants, agents or employees, violated section 491(2) of the Liquor Code [47 P.S. § 4-491(2)] by unlawfully possessing and/or transporting liquor within the Commonwealth. The fourth count of the citation charged that, on June 13, 2006, Licensee, by its servants, agents or employees, violated section 491(2) of the Liquor Code [47 P.S. § 4-491(2)] by unlawfully possessing liquor obtained from a source other than a Pennsylvania state store. The fifth count charged that, on June 13, 2006 and divers other occasions

within the past year, Licensee, by its servants, agents or employees, violated section 493(2) of the Liquor Code [47 P.S. § 4-493(2)] and sections 11.192 and 11.193 of the Board's Regulations [40 Pa. Code §§ 11.192, 11.193] by selling alcoholic beverages on credit.

A hearing was held on July 16, 2007. By Opinion and Order issued August 10, 2007, the ALJ sustained the charges in the citation and imposed a penalty consisting of a fine of three thousand seven hundred dollars (\$3,700.00), and a suspension of the license for a period of thirty (30) days. By Supplemental Opinion and Order issued January 7, 2008, the ALJ noted that since the subject license was in safekeeping with the Board at the time it was suppose to serve its suspension, he was deferring the license suspension pending reactivation of the subject license from safekeeping.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers'

Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005);
Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49,
484 A.2d 413 (1984).

On appeal, GFC, which claims to own the licensed corporation, claims that the ALJ committed an error of fact and law and/or abused his discretion in deferring the thirty (30)-day license suspension, in that the subject license was improperly accepted in safekeeping by the Pennsylvania Liquor Control Board's Bureau of Licensing ("Licensing"), in that Licensee, in fact, served its suspension between November 19 and December 19, 2007, and that the ALJ's Supplemental Opinion and Order will require Licensee to serve a second suspension.

The Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"), avers that the ALJ did not commit an error of fact and law and/or abuse his discretion in issuing the Supplemental Opinion and Order deferring the thirty (30)-day license suspension, as the subject license was in safekeeping and could not have been suspended in accordance with the ALJ's Order issued August 10, 2007.

There is no record relative to the facts set forth by GFC. Based upon GFC's appeal, and Licensing's records, however, the Board is able to

determine that on November 3, 1994, the Board approved a person-to-person transfer with the following corporate structure: John C. Brock – president, director, manager, stockholder (50 shares); Johnnie Roach – secretary, treasurer, director, stockholder (50 shares); and William J. Ryan – Director. (Admin. Notice). On February 11, 2003, John C. Brock resigned and his stocks were transferred to Mr. Roach. (Admin. Notice). On March 25, 2003, a Notice of Change in Officers was filed proposing the following corporate structure: Johnnie Roach – president, secretary, treasurer, director, manager, stockholder (100 shares); Thomas Richter – director; and Barbara Leonarski – director. (Admin. Notice). Due to a question about Mr. Roach’s ability to devote his full time and attention to the licensed business, and Licensee’s failure to respond to Licensing’s discrepancy letters, the Notice was cancelled May 21, 2004. (Admin. Notice). On June 22, 2005, a request was made by new counsel, Lori Hahn Maslin, to reinstate the Notice, which request was denied by Licensing as it was made beyond thirty (30) days after Licensing’s cancellation. (Admin. Notice).

On February 7 and April 17, 2003, Licensee, by Mr. Roach, borrowed money from Girard Finance Company, Inc. (“GFC”). (Admin. Notice). It is purported that he executed a Loan, Security and Stock Pledge

Agreement (pledging the license and Licensee's assets and his stock in Licensee as collateral), and an Irrevocable Limited Power of Attorney (granting GFC the power to execute on Licensee's behalf, an application for change of officers, etc.) in favor of GFC. (Admin. Notice). The copy of the Loan, Security and Stock Pledge Agreement provided, however, has no legible date, and is not signed by GFC. (Admin. Notice). The Irrevocable Limited Power of Attorney, likewise, has no legible date except that located in the Notary's attestation. (Admin. Notice). A copy of a Note and a Corporate Resolution purported to be executed by Mr. Roach on April 17, 2003 regarding the loans refers to "Johnny Roach" in the signature line, rather than "Johnnie Roach." (Admin. Notice). On March 22, 2007, minutes of a special meeting of GFC indicate that as Mr. Roach was delinquent in his payment on the loans, and it was resolved that GFC would take all steps necessary to foreclose on said loan. (Admin. Notice).

According to GFC, on or about April 13, 2007, Thomas Richter on behalf of GFC, exercised his rights as the Board-approved director of the licensed corporation upon default of the terms of a lending agreement between GFC and Licensee's corporate officer, Johnnie Roach, divested Mr. Roach of his interest in Licensee, and took control of Licensee's stock by use

of a February 7, 2003 proxy accepting Mr. Roach's April 13, 2007 resignation. (GFC's Appeal).

On May 8, 2007, a Notice of Change in the Business Structure was submitted by GFC relative to the following corporate structure: Abera D. Balcha – president, secretary, director, manager; Thomas Richter – director; and Girard Finance Company – stockholder (100 shares). (Admin. Notice; GFC Appeal). Supplied with this application was a resignation, purportedly signed by Mr. Roach, indicating that he, voluntarily and of his own free will, resigned all of his offices and directorship of Licensee effective April 13, 2007. (Admin. Notice). The Resignation contains a “Witness” line, but there is no signature evidencing that it was witnessed. (Admin. Notice).

On May 10, 2007, Vernon McInnis, counsel for Mr. Roach and Licensee, filed an application for replacement of the license, and the fee. (Admin. Notice). He stated that the license had been “stolen or taken by a creditor.” (Admin. Notice). He asked to be informed of any attempt to change Licensee’s corporate set-up, since Mr. Roach had not authorized any change to Licensee’s ownership. (Admin. Notice). Licensing issued a duplicate license to Mr. Roach on May 15, 2007. (Admin. Notice).

On May 15, 2007, GFC became aware that Mr. Roach requested and

received a duplicate license from Licensing, and notified Licensing of Mr. Roach's status relative to the licensed business. (Admin. Notice; GFC's Appeal). On May 24, 2007, Mr. Brock, "having at all times since its inception, been a 50% shareholder of Basin Street, Inc." executed an affidavit for Licensee to file a petition in bankruptcy under Chapter 11. (Admin. Notice).

On May 29, 2007, Abera D. Balcha executed an affidavit as Licensee's president and secretary, calling for the cancellation of the stock certificate representing Mr. Roach's fifty (50) shares of stock from Mr. Brock, stating that it was "lost, misplaced and/or destroyed in a manner unknown" to him. (Admin. Notice). By letter dated May 29, 2007, Mr. Roach's counsel indicated to Licensing that Mr. Roach and Mr. Brock each own fifty percent (50%) of the shares in Licensee, and that Licensee filed for Chapter 11 bankruptcy. (Admin. Notice).

In July of 2007, GFC filed an action against Mr. Roach in the Court of Common Pleas of Philadelphia County, docketed at July Term 2007 No. 001771. (Admin. Notice). On July 16, 2007, Mr. Roach was enjoined from the licensed premises pending final resolution of the case. (Admin. Notice). Also on July 16, 2007, the hearing relative to Citation No. 06-

1871 was held, with Mr. Richter representing Licensee. (Admin. Notice; GFC's Appeal). On August 10, 2007, the ALJ's Adjudication and Order was issued imposing the fine and the thirty (30)-day suspension of the license, to be served between November 19 and December 19, 2007. (Admin. Notice; GFC's Appeal). GFC paid the fine and received the Notice of Suspension placard. (GFC's Appeal).

On October 16, 2007, a Notice of Change in the Business Structure was submitted by GFC relative to the following corporate structure due to Mr. Balcha's departure from the country: Kerry Willis – president, secretary, director, manager; Thomas Richter – director; Girard Finance Company – stockholder (100 shares). (Admin. Notice; GFC's Appeal).

On October 23, 2007, Mr. Roach submitted Licensee's license for safekeeping pending resolution of the ongoing litigation. (Admin. Notice). On or about October 25, 2007, GFC submitted the validation application for Licensee. (Admin. Notice; GFC's Appeal).

On November 3, 2007, Mr. Roach filed a Petition to Intervene in the October 16, 2007 Notice of Change in the Business Structure, stating that Mr. Willis works for Mr. Richter, and that Mr. Richter puts people in bars involved in drug dealing, to be sure he gets his money. (Admin. Notice). He

stated there are PHRC complaints against Mr. Richter for discrimination against African American-owned businesses, including one filed by Licensee. (Admin. Notice). He claimed that the licensed business had been paid for since 1998, that he did not resign, and he did not sign over his shares in the licensed corporation. (Admin. Notice). He stated that the property deed was transferred without his permission. (Admin. Notice).

Between November 19, 2007 and December 19, 2007, GFC posted the suspension placard as required by the ALJ's Adjudication and Order issued August 10, 2007, and Licensee's operation was suspended. (Admin. Notice; GFC's Appeal).

According to a letter dated December 26, 2007, Mr. Roach and Mr. Brock retained Patrick McHugh as counsel. (Admin. Notice).

On January 7, 2008, the ALJ issued a Supplemental Opinion and Order deferring the thirty (30)-day suspension of the subject license until it is reactivated from safekeeping. (Admin. Notice; GFC's Appeal). By letter dated January 11, 2008, Attorney Maslin claimed to have been made aware of the license being placed into safekeeping by the Supplemental Opinion and Order. (Admin. Notice; GFC's Appeal). She requested a replacement license and discount purchase card be issued to her, as Mr. Roach resigned

from Licensee. (Admin. Notice; GFC's Appeal). Licensing informed her of the procedure to follow to have the license reissued from safekeeping, but neither the application nor the fee has been provided to date. (Admin. Notice).

On January 28, 2008, an affidavit by Mr. Richter requested withdrawal of the May 8, 2007 Notice of Change in the Business Structure, stating that he is authorized by Licensee and GFC to do so. (Admin. Notice).

The Board's records currently reflect the following corporate structure for Licensee: John C. Brock – president, director, manager, stockholder (50 shares); Johnnie Roach – secretary, treasurer, director, stockholder (50 shares); William J. Ryan – director. (Admin. Notice).

While a license is property between a licensee and a third party, it is a privilege between the Board and a licensee. [47 P.S. § 4-468(d)]. Because a license is considered property as between a licensee and a creditor/lender, the creditor/lender may perfect a security interest in the license as it would any other type of intangible property (i.e., UCC-1 Security Agreement, etc.). However, because a license is not recognized as property as between the Board and a licensee, the Board does not recognize security interests in licenses that it issues. Therefore, while a license issued by the Board may be

subject to a security interest, the Board recognizes only the named licensee as having an interest therein. Until the Board receives either a court order, a writ of execution together with a sheriff's bill of sale, or a sworn affidavit executed by counsel, representing that the licensee is in default and that all necessary and required procedures have been followed pursuant to any underlying agreements, as well as all applicable laws, the named licensee retains its privileges in the license, including the right to transfer the license to another, or to place it into safekeeping. The Board will not become involved in resolving such property rights in a dispute between a licensee and third parties, nor can it be made a party to such disputes. Befwick of Philadelphia, Inc. v. Cobblestones, Inc., 466 Pa. 488, 353 A.2d 459 (1976).

GFC asserts that it is authorized to act on Licensee's behalf, that it has done what was required to satisfy the ALJ's Order issued August 10, 2007, and that the ALJ's deferral of the suspension of the license pending release of the license from safekeeping is in error.

At all times relevant to this inquiry, the Board has recognized Mr. Roach as Licensee's president, secretary, treasurer, director and manager. Since the Board is not a court of general jurisdiction, and there is insufficient evidence by which the Board can determine which party, either Licensee or

GFC, has authority to act on Licensee's behalf, the Board will continue to recognize Mr. Roach as Licensee's principal unless and until it receives sufficient documentation demonstrating otherwise.

Since the subject license was placed into safekeeping by Mr. Roach on October 23, 2007, Licensee could not have served the suspension imposed by the ALJ's Order between November 19 and December 19, 2007. Since the suspension of the license remains pending, the ALJ's Supplemental Opinion and Order issued January 7, 2008 is affirmed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Girard Finance Company is dismissed.

Licensee paid the fine in the amount of three thousand seven hundred dollars (\$3,700.00).

Licensee must adhere to all conditions set forth in the ALJ's Supplemental Order dated January 2, 2008.

Board Secretary