



STATE OF ARIZONA
ARIZONA STATE LIQUOR BOARD
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DOUGLAS A. DUCEY
Governor

TROY L. CAMPBELL
Board Chair

TRACY UFFELMAN
Director

Arizona State Liquor Board Hearing Minutes
February 3, 2022

Members Present: Troy L. Campbell – Chair, Lynn Shulman – Vice Chair, and Jill Pernice

Members Absent: Matthew Roemer

Counsel Present: Michael Raine, Assistant Attorney General
Sunita Krishna, Assistant Attorney General

Staff Present: Denise Bale, Board Administrator
Arlene Moreno, Interim Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on February 3, 2022, at 9:00 a.m. with Mr. Campbell presiding via Google Meet. Other Board members, staff, and all parties participated either by Google Meet or telephonically.

Roll Call

Mr. Roemer was absent. All other members were present.

B. 9:00 a.m. Agenda: Review, consideration and action

1. Board and Board Panel Meeting Scheduling.

Mr. Campbell opened a discussion about the time constraints of his employment and his participation as Board Chair. Scheduling options were discussed. Mr. Campbell noted that as an efficiency strategy, he will be strict in limiting the time for testimony and oral arguments.

2. Bar Liquor License Application No. 154209 - Location Transfer Application

This matter was continued from the January hearings. This matter is set for hearing because of public protest. The Applicant, Whiskey Road LLC, and its Agent, Gregory Lee Wexler, appeared at the hearing and were represented by Peter H. Schelstraete. Paul Oland, Fernando Gomez Morales and Michael J. Stack were present and available to testify in support of the Applicant. Public protestor Catherine Segneri did not appear at the hearing and was not represented by counsel.

I will go ahead and move that we approve the location transfer application for Bar Liquor License Application Number 154209, based on the Applicant's good capabilities, qualifications and reliability factors. That wasn't really drawn into question as Mr. Raine had mentioned before. I know Ms. Shulman had mentioned there were a couple of violations on the license but that wasn't raised by the protestor. In addition, the local governing body did not raise concerns to those issues as well. We do appreciate that the protestor recorded their concerns in writing, unfortunately without having her here to speak to in person, there's some additional depth to that complaint that we might not have been able to ascertain through just the written documentation alone. The Board does also believe that the public convenience will be served by this location. As we mentioned before, the new location sounds like it might be better for some of these concerns that were happening. The Applicant has put in substantial investments, and effort, and opportunity into making sure that that is going to be a good place to operate the business. I think that means that we should not have a repeat of some of the issues that the protestor had mentioned in their documentation.

Motion to grant the application -	Pernice
Seconded -	Shulman
Yay -	Pernice, Shulman, Campbell
Nay -	None
Abstained -	None
Disposition -	Application granted

3. Restaurant Liquor License Application No. 153134 - Original Application

Celeste Maria Reytor, Agent
 D's Jerk Hut LLC
 D's Jerk Hut
 15220 N. Cave Creek Road
 Phoenix, AZ 85032

This matter was continued from the January hearings. This matter is set for hearing because the City of Phoenix recommended disapproval. The Applicant, D's Jerk Hut LLC, and its Agent, Celeste Maria Reytor, did not appear at the hearing and were not represented by counsel. Assistant City Prosecutor Elizabeth Canez and Assistant City Prosecutor Alexandra Lange appeared on behalf of the City of Phoenix. Phoenix Police Detective D. Hurt was available to testify. Ms. Canez summarized the City's position for the record and asked the Board to consider the written documentation previously submitted. The City's position is that the Applicant is not capable, qualified or reliable to operate a liquor license. There is some hidden ownerships concern is the City's main priority. Detective Hurt of the Phoenix Police Department on no more than two in-person occasions and no less than three different phone calls to the business, Ms. Reytor neither was there nor could be contacted directly. Her husband, Nerron Duncan, was at the business on every single occasion that Det. Hurt went to the business. He was the one that was available by phone every time Det. Hurt had contacted the business. It is the City's position there is a hidden ownership concern. Ms. Reytor and Mr. Duncan are married. Mr. Duncan is neither eligible to be employed, operate or apply for a liquor license due to his status in the United States and his criminal history, which is part of the documentation that the City previously submitted to the Board. It is also important to note that Ms. Reytor, who is Mr. Duncan's wife, does not go by "Mrs. Duncan" and she did not list that name on any of the applications or amended applications. When Det. Hurt asked her if the "D" in "D's Jerk Hut" stood for "Duncan," she indicated yes. It is the City's position that Mr. Nerron Duncan is the true manager and the person who would be operating this liquor license. It is important to note that Ms. Reytor is not present today, and she was not present when this license came before the City Council on two separate occasions.

There was Board discussion regarding the Applicant's lack of experience operating a liquor licensed establishment, the untruthful responses on the application, and the many opportunities that were provided the Applicant to provide logical explanations to the Detective's concerns. Vice Chair Shulman made a motion:

I move that we find that the Applicant is not capable, qualified and reliable as required by A.R.S. section 4-203, based upon the experience of running a liquor establishment, written documentation that has been presented to us by the police department to disapprove the recommendation, and by the City to disapprove, and failure for the Applicant to appear to defend their position on obtaining the license. So, I move that we deny.

Motion to deny application -	Shulman
Seconded -	Pernice
Yay -	Shulman, Pernice, Campbell
Nay -	None
Abstained -	None
Disposition -	Application denied

4. Beer and Wine Store Liquor License, Application No. 149007 - Original Application

Stephanie Felix Figueroa, Agent
Match One Smoke Shop LLC
Match One Smoke Shop
507 E. University Drive #7
Mesa, AZ 85203

This matter was continued from the December hearings. This matter is set for hearing because the City of Mesa recommended disapproval. The Applicant did not appear and was not represented by counsel. Assistant City Attorney Alexander Lindvall appeared on behalf of the City of Mesa. The reasons the City Council recommended disapproval were (1) the Applicant did not pay the application fees; (2) unpaid fees owed to the Mesa City court; (3) unpaid code compliance fees related to an alarm system; (4) she had not applied for permits needed to run her shop; and (5) she had unpaid utility fees. Ms. Figueroa then asked this Board for a continuance in order to sort out these issues. Records from the City's Tax and Licensing Office show that of these outstanding issues, she has only resolved one. She paid her outstanding utility bills but it appears she only did that because she opened a new account at a new address. She probably could not obtain utility service at the new address, so she paid her unpaid utilities. To date, she still has not paid her liquor license application fee. She has not paid her debt to the City court. She has not paid her code compliance fees, and she has not applied for the required permits. According to these factors laid out in the Arizona Administrative Code, the City continues to believe that the community's best interest would not be served by awarding a liquor license in this case. Because the Applicant has outstanding debts to the City, City Code prohibits the City from supporting this liquor license application.

There was Board discussion. Vice Chair Shulman made a motion:

I move that we find that the Applicant is not capable, qualified and reliable as required by A.R.S. section 4-203, based upon the lack of paying the fees and permits, and the request from the City of Mesa to deny the license. Therefore, I move that we deny the liquor license.

Motion to deny application -	Shulman
Seconded -	Campbell
Yay -	Shulman, Campbell, Pernice
Nay -	None
Abstained -	None
Disposition -	Application denied

5. Restaurant Liquor License No. 12074609 - Appeal of Director's Final Decision

Sushi Brokers, LLC
 DBA Sushi Brokers
 17025 N. Scottsdale Road, #190
 Scottsdale, AZ 85255

This matter was continued from the November hearings. This matter is set for hearing because the Respondent appeals the Director's Final Decision. Dennis I. Wilenchik and Timothy A. La Sota appeared on behalf of the Respondent, Sushi Brokers, LLC, and its Agent, Jared M. Repinski. Assistant Attorney General Michael Raine appeared on behalf of the Department. Assistant Attorney General Sunita Krishna was available to provide independent legal advice to the Board. Mr. Wilenchik argued that the decision of the former Director was all five of the factors listed in A.R.S. § 4-210.02(A). Mr. Raine argued that the Board may affirm, reverse or modify any decision issued by the director, pursuant to A.R.S. § 4-210.02(D).

There was Board discussion. Vice Chair Shulman made a motion:

I motion that we affirm the Director's decision based on the records of the Administrative Law Judge, the transcripts, the video, and that there is no unsupported evidence in their decision as A.R.S. § 4-210.02 indicates, the conditions for affirming, or reversing, or modifying decision issued by the Director. Also, that we deny the appeal issued by Sushi Brokers.

Motion to affirm the Decision and	
Order of the Director -	Shulman
Seconded -	Pernice
Yay -	Shulman, Pernice, Campbell
Nay -	None
Abstained -	None
Disposition -	Decision and Order of the Director is affirmed

Motion to recess five minutes	
and reconvene at 11:00 a.m	Campbell
Seconded -	Shulman
Yay -	Campbell, Shulman, Pernice
Nay -	None
Abstained -	None
Disposition -	Board recessed at 10:55 a.m.

Board reconvened at 11:00 a.m.

6. Bar Liquor License No. 06100174, Application No. 119787 - Motion for Rehearing and Review

H.J. Lewkowitz, Agent
Lucky's LLC
Love Cabaret
5822 E. Speedway
Tucson, AZ 85712

This matter is set for hearing to consider Applicant's Motion for Rehearing and Review of the Board's decision to deny the Person Transfer Application of Lucky's LLC dba Love Cabaret after a hearing at its Board meeting on October 7, 2021. The Applicant, Lucky's LLC, was represented by J. Michael Murray and Andrea Lewkowitz. The City of Tucson was represented by Principal Assistant City Attorney Shilpa Hunter-Patel.

Mr. Murray presented the grounds on which the Applicant is seeking Board rehearing and review, pursuant to A.A.C. R19-1-703:

- (1) Irregularity in the proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
- (4) Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
- (6) Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
- (7) The findings of fact or decision is not justified by the evidence or is contrary to law.

Mr. Murray argued that none of the Board's Findings of Fact support the statutory grounds on which a person-to-person transfer may be denied. Finding of Fact No. 2 ("The Applicant erected an outdoor sign that is out of compliance with City code and not permitted.") is not relevant to whether an Applicant is capable, qualified and reliable to hold a liquor license. There is no basis to deny a person-to-person transfer application because the Applicant delegated meetings with neighbors to his vice president. (Finding of Fact No. 3: "The Applicant delegated meetings with the neighbors to his vice president.") The Fourth Finding of Fact ("The Applicant did not attend any meetings with the neighbors.") is not supported by the record and is irrelevant to whether the person-to-person transfer should be granted. Finding of Fact No. 5 ("The Applicant sued one community member during negotiations with the neighbors.") cannot support the denial of this application because such a finding penalizes the Applicant for exercising a constitutional right. There is no evidence to support Finding of Fact No. 6 ("The Applicant has not resolved the issues brought forward by the neighbors such as bright parking lot lights, excessive outdoor noise, litter and increased traffic through neighborhood."), and it relates to the club's location, which is not a proper consideration for a person-to-person transfer.

Mr. Murray described new evidence that conclusively demonstrates that a liquor violation at Christy's Cabaret at the airport (one of Mr. Cooper's clubs), which was resolved by a consent agreement, was for a COVID-related violation and not a shooting, as the City's witness had testified. After the hearing was held in this case, the Club received a letter, dated September 27, 2021, from the Department of Liquor Licenses and Control, and subsequently a refund check, which conclusively established the violation that was the subject of the Consent Agreement, was a COVID guideline violation.

Mr. Murray argued that the City of Tucson failed to comply with the requirements of A.R.S. § 4-201(C), and therefore the City's objection is invalid. A recommendation of disapproval must contain three things to be valid: the Order, a statement of the specific reasons for the denial, and a summary of the testimony or other evidence supporting the recommendation for disapproval, which is required to be attached to the Order.

Ms. Hunter-Patel addressed the Board. The issue here is the lack of business acumen and demonstrated by not following the City's code requirements and properly filing for an application before the installation. The Applicant filed an application with the city a month after the hearing with this board. A zoning violation is not the basis for the Board's decision. The basis was the lack of the business skills and failing to apply for the permit in the first place. The Applicant has filed an intent to sue the City, the City Councilmember who addressed this Board. The City adequately stated the reasons for disapproval of the person-to-person transfer. The details are in the transcript which is part of the City's objection. The Applicant argues that because he has 30 years experience running nightclubs the Board should automatically grant this liquor license. If the Applicant had so much experience, he would have been able to demonstrate the proper business skills and follow the City's regulatory requirements, had a professional manner in dealing with the community and community members, and respectfully would have appeared before this Board to provide his position, which he has been given adequate opportunity to do so and never availed himself to that opportunity. Rather than filing lawsuits to silence and intimidate community members and the City, he would have behaved in a manner that would have demonstrated business skills and acumen that this Board would have required from anyone who holds a liquor license in this state. The City urges the Board to deny a Rehearing or review of this application.

There was Board discussion. Mr. Raine explained that granting rehearing means just that - a new hearing. The Board could take new testimony up to the date of the new hearing.

Ms. Pernice made a motion:

I would like to make a motion that we deny the request for rehearing of Lucky's LLC, Love Cabaret, Bar Liquor License Application No. 119787, based on not meeting the applicable criteria for rehearing as outlined in R19-1-703 section C1-7.

Motion to deny request for rehearing -	Pernice
Seconded -	Shulman
Yay -	Pernice
Nay -	Shulman, Campbell
Abstained -	None
Disposition -	Motion fails

Ms. Shulman made a motion:

I motion that we rehear the application for Love Cabaret based upon the zoning issue, the lawsuits, and that our decision was not justified.

Ms. Shulman clarified that the rehearing would be on the whole case.

Motion to grant request for rehearing -	Shulman
Seconded -	Campbell
Yay -	Shulman, Campbell
Nay -	Pernice
Abstained -	None
Disposition -	Rehearing entire case granted

C. Reports on Current Events, Matters of Board Procedure, Requests and Items for Future Agenda

The next Board meeting is scheduled for March 3, 2022. Three matters are set for hearing. Board members received the Director's report of the use of K-Fund and L-Fund surcharges. Mr. Campbell requested future agenda items to include training on Title 4 updates and the use of K-Fund and L-Fund surcharges. The Legislature is in session. Board member confirmation hearings will be held in the Senate.

E. Call to the Public

None.

Motion to adjourn meeting -
Seconded -
Yay -
Nay -
Abstained -
Disposition -

Shulman
Pernice
Shulman, Pernice, Campbell
None
None
Meeting adjourned at 11:51 a.m.



Denise M. Bale
Administrator of the
Arizona State Liquor Board



Date