



STATE OF ARIZONA
ARIZONA STATE LIQUOR BOARD
800 WEST WASHINGTON, 5TH FLOOR
PHOENIX, AZ 85007
PHONE: 602-542-9789 FAX: 602-542-5707
Website: www.azliquor.gov

DOUGLAS A. DUCEY
Governor

TROY L. CAMPBELL
Board Chair

TRACY UFFELMAN
Director

Arizona State Liquor Board Hearing Minutes
May 5, 2022

Members Present: Troy L. Campbell – Chair, Lynn Shulman – Vice Chair, Jill Pernice, Paul R. David, Matthew W. Roemer, and Victoria L. Yarbrough

Members Absent: None

Counsel Present: Seamus Monaghan, Assistant Attorney General

Staff Present: Denise Bale, Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on May 5, 2022, at 9:00 a.m. with Mr. Campbell presiding. Google Meet was utilized for facilitating the meeting. Board members, staff, and all parties participated either online or telephonically.

Roll Call

All members were present.

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

1. Restaurant Liquor License, Application No. 163529 - Original Application

Francisco Javier Gaucin, Agent
Las Tres Potrancas Operating LLC
La Hefa Cerveceria Y Botanas
7710 W. Lower Buckeye Road #107
Phoenix, AZ 85043

This matter is set for hearing because the City of Phoenix recommended disapproval based on a Finance Department recommendation for disapproval. The Applicant, Las Tres Potrancas (“LTP”) Operating LLC, and its agent, Francisco Javier Gaucin, appeared at the hearing and were represented by Patrick Keery. Assistant City Prosecutor Jay Chapman appeared on behalf of the City of Phoenix.

During the pandemic, the Applicant had difficulty paying its transaction privilege tax (“TPT”) and withholding tax. The Applicant applied for the Arizona Department of Revenue’s “offer and compromise” program, which was pending for many months and ultimately denied by the Department (“DOR”). The Applicant entered into a payment agreement resolving all of the payment amounts that the DOR asserted are owing. Those amounts will be paid over the next 48 months pursuant to the agreement that was executed

yesterday between the Applicant and the DOR. The Applicant needs a liquor license in order to generate the revenues that are necessary to perform under the payment agreement entered into with the DOR. The Applicant respectfully requests the Board approve its restaurant liquor license application.

Mr. Chapman noted that the Phoenix City Council recommended disapproval based solely on the Finance Department's disapproval. The City submitted a packet of several pages including a memo from the Finance Department. There are no reasons stated in the memo because the reasons cannot be disclosed due to confidentiality requirements.

Mr. Keery questioned Mr. Gaucin. Mr. Gaucin testified that LTP had debts owing to the DOR for TPT and withholding taxes, and that LTP entered into a payment agreement with the DOR on May 4, 2022. Mr. Gaucin testified that the payment agreement resolved all of the taxes that are asserted by the DOR as owing by LTP. Mr. Gaucin affirmed that LTP requires a liquor license in order to generate the revenues that are required to make the payments under the payment agreement; and that LTP will comply with the terms of the payment agreement.

PROOF STARTS HERE There were questions by the Board. Prior to the pandemic, LTP had a liquor license at the location. LTP sold the liquor license to an individual whose inability to perform under the lease caused LTP to take back the location because it had a personal guarantee on the lease. LTP was required to reapply for the liquor license. Mr. Gaucin testified that he has held a liquor license at the location over the course of the last six years; and that the first payment agreement with DOR was during the time of his ownership. Mr. Gaucin also testified that other businesses he has owned, managed, or had a substantial interest in, have gone into debt with DOR. When one of his locations filed for Chapter 11 bankruptcy, all of his other locations were compelled to enter a payment agreement with DOR. Mr. Gaucin indicated that business improved after the pandemic. Mr. Gaucin holds one liquor license and is applying for a second one.

Mr. Keery and Mr. Chapman gave closing arguments. There was Board discussion.

Ms. Shulman made a motion:

I move that we find the Applicant is not capable, qualified and reliable as required by 4-203, based upon the outstanding tax more than just with this issue. So there's another business that he's had that had with the same issue. So now, we have two businesses that have had the same issue. I do find that the location, however, would serve the best interest of the public based upon the fact that it is already had a license at that location. So I move that we deny the license.

Motion to deny the license -	Shulman
Seconded -	Pernice
Yay -	Shulman, Pernice, Yarbrough
Nay -	Roemer, David, Campbell
Abstained -	None
Disposition -	Motion fails

Board Member discussion continued. Mr. Gaucin responded to concerns expressed in Board discussion. There were additional Board questions.

Mr. David made a motion:

I move that the Board finds that the propriety of the location is not contested, that the record before the Board establishes that the public convenience requires and that the best interest of the community will be substantially served by the issuance of the license. But, I move that the Board finds that the Applicant is not capable, qualified and reliable as required by

A.R.S. section 4-203(A) and that the Board deny the Applicant based on the following facts: not having all the information on the agreement; not being aware if there are any other financial concerns that the City of Phoenix has; and a mitigator would be that encouraging the Applicant to reapply or to appeal once we have additional information so that we can hear this again in the future.

Motion to deny the license -	David
Seconded -	Shulman
Yay -	David, Shulman, Campbell, Roemer, Yarbrough
Nay -	Pernice
Abstained -	None
Disposition -	License denied

2. Bar Liquor License, Application No. 97891 - Owner Transfer Application

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

The Board voted to grant a de novo rehearing for the Owner Transfer Application for Bar Liquor License No. 06100174, Application No. 119787, after a hearing at its Board meeting on February 3, 2022. The Board scheduled a de novo rehearing for June 2, 2022. Lucky's LLC, through its counsel J. Michael Murray and Thomas R. Aguilera, filed Applicant's Motion to Hold the June 2, 2022 Hearing In-person. The Board scheduled a hearing to consider Applicant's Motion. Upon receiving Applicant's motion, the Board was notified by the Director that COVID was the reason for holding remote meetings. Now, per the Director, the Department no longer holds in-person hearings because of time efficiency and costs savings.

J. Michael Murray and Thomas R. Aguilera appeared on behalf of the Applicant, Lucky's LLC. Principal Assistant City Attorney Shilpa Hunter-Patel appeared on behalf of the City of Tucson.

Motion to convene in executive session for the purpose of receiving legal advice -	Campbell
Seconded -	Shulman
Yay -	Campbell, Shulman, Pernice, Roemer, Yarbrough, David
Nay -	None
Abstained -	None
Disposition -	Minutes approved

The Board convened in executive session at 10:19 a.m. The Board adjourned executive session at 10:30 a.m. and reconvened in open session.

Mr. Murray addressed the Board. First, the Applicant intends to present testimony of its principal, Steve Cooper, in support of the transfer application. Mr. Cooper suffers from a speech impediment and it is easier to understand him in-person. Second, according to the Notice of Hearing, the holding of a remote hearing is the result of the COVID-19 pandemic and is designed to promote social distancing and health and safety. At the present time, the crest of the pandemic has passed. The infection rate in Arizona is low. There is nothing in the Notice of Hearing that references a Director's order. Third, as the pandemic evolves into an endemic stage, governmental operations are returning to normal. On April 1, 2022, the Arizona Supreme Court issued General Order 2022-32, which terminated all orders related to the COVID-19 health emergency and directed the courts in Arizona to return to normal operations. Campbell's requested clarification of citing Supreme Court General Order 2022-32. Mr. Murray indicated that it was a persuasive authority that the Board could take into account.

Ms. Hunter-Patel addressed the Board. From the City of Tucson's perspective, it agrees with the Director that remote Board hearings are more efficient. Substantively, the City does not have an objection if the Board would like to hear from the Applicant in-person. It does put the City at an advantage. Ms. Hunter-Patel is planning to call multiple witnesses and at this time, she cannot confirm that all of them would be able to attend an in-person only hearing. Ms. Hunter-Patel proposed two options. If it is possible, the Board could hold a technically speaking hybrid meeting allowing for Mr. Murray's client to appear in person but also for others to testify remotely. Alternatively, we could attempt to have the meeting held consistent with the Director's decision to do remote hearings, and in the event that the Board finds that there is difficulty in understanding the Applicant, we could continue the hearing and reschedule it later. One possible practical thing we could do is to do the hearing the way it is set on June 2nd and address any issues down the road.

There was Board discussion.

Mr. Campbell made a motion:

I move that the Board denies the motion for our June 2, 2022 meeting hearings to be in-person, based on the fact that I believe in the technology that Google Meets provides to be able to accurately hear from any witnesses, not just Mr. Cooper, but any witnesses that address the Board. And I also feel very confident in the cost savings and time efficiency of holding our Board meetings and hearings virtually. I would also just like to say out loud to direct the Department to remove any language on our future agendas that mentions COVID-19 pandemic as a reasoning for the Board hearings being virtual to it is the Director's order. I will also just point out that the Arizona Supreme Court General Order on April 1, 2022/34 applies to the courts and not to boards and commissions in the State of Arizona at this time. So my motion is to deny the motion on behalf of the Applicant.

Motion to deny Applicant's Motion -	Campbell
Seconded -	Shulman
Yay -	Campbell, Shulman, Pernice, Roemer, David, Yarbrough
Nay -	None
Abstained -	None
Disposition -	Motion denied

C. Minutes: Review, Consideration and Action

Motion to approve Executive Session minutes of March 3, 2022 -	Campbell
Seconded -	Shulman
Yay -	Campbell, Shulman, Pernice, Roemer
Nay -	None
Abstained -	Yarbrough, David
Disposition -	Minutes approved

Motion to approve minutes of April 7, 2022 -	Shulman
Seconded -	Yarbrough
Yay -	Shulman, Yarbrough, Pernice, Campbell, David
Nay -	None
Abstained -	Roemer
Disposition -	Minutes approved


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

The next Board meeting is scheduled for June 2, 2022. Three matters are scheduled for hearing. Mr. Campbell directed staff to update Board materials by removing references to COVID as the reason for holding virtual Board meetings.

E. Call to the Public

Kunal Patel discussed his support of the Board's decision to deny the application of Las Tres Potranças Operating LLC.

Motion to adjourn meeting -	Shulman
Seconded -	David
Yay -	Shulman, David, Yarbrough, Campbell, Pernice, Roemer
Nay -	None
Abstained -	None
Disposition -	Meeting adjourned at 10:57 a.m.



Denise M. Bale
Administrator of the
Arizona State Liquor Board



Date