

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Patchway Holdings, LLC :
T/A Marzonis, :
Appellant :
v. : No. 2054 C.D. 2012
: Argued: September 12, 2013
Pennsylvania Liquor Control Board :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: October 3, 2013

Patchway Holdings, LLC, T/A Marzonis (Licensee) appeals from an order of the Court of Common Pleas of Dauphin County (trial court) affirming the Pennsylvania Liquor Control Board's (Board) decision to deny Licensee's request for reinstatement of Restaurant Liquor License No. R-13793 (license). For the reasons that follow, we affirm the trial court.

Licensee acquired the license via intermunicipal transfer in April 2007 and, pursuant to Section 474.1 of the Liquor Code,¹ placed it into safekeeping with

¹ Act of April 12, 1951, P.L. 90, *as amended*, 47 P.S. §4-474.1, *added by* the Act of December 9, 2002, P.L. 1653. That section provides, in relevant part:

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(a) A restaurant, eating place retail dispenser, hotel, importing distributor and distributor licensee whose licensed establishment is not in operation for fifteen consecutive days shall return its license for safekeeping with the board no later than at the expiration of the fifteen-day period. The license may only be reissued from safekeeping in the manner set forth by the board through regulation.

(b) The board may hold the license in safekeeping for a period not to exceed three consecutive years. Any license remaining in safekeeping for more than three consecutive years shall be immediately revoked by the Bureau of Licensing unless a transfer application or request for reissue from safekeeping has been filed prior to the expiration of the three-year period or unless the board has approved a request to extend the safekeeping for an additional year as set forth in subsection (g). In addition, the board shall extend the period for an additional year if, at the end of the three-year period, the licensed premises are unavailable due to fire, flood or other similar natural disaster; no further extension beyond one additional year shall be granted by the board regardless of whether the licensed premises are unavailable due to fire, flood or other similar natural disaster unless an application is made as set forth in subsection (g).

* * *

(g) (1) A licensee whose license is subject to this section may, upon written request, apply to the board to allow the license to remain in safekeeping for an additional one year. The written request must be accompanied by a five thousand dollar (\$5,000) fee for licenses placed in safekeeping from counties of the first class, second class, second class A, third class and fourth class and a fee of two thousand five hundred dollars (\$2,500) for licenses placed in safekeeping from counties of the fifth through eighth classes. The board shall approve the request unless the licensee no longer meets the requirements of this act or the board's regulations. The fee collected shall be paid into the State Treasury through the Department of Revenue into the State Store Fund.

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the Board for a three-year period. The three-year safekeeping period was set to expire on April 30, 2010. On April 28, 2010, Licensee filed an application with the Board requesting to extend the safekeeping period for an additional one year, pursuant to Section 474.1(g)(1) of the Liquor Code. By letter dated April 30, 2010, the Board granted the request and confirmed the extension of the safekeeping period with a new expiration date of April 30, 2011. The letter also informed Licensee that if it did not reactivate or transfer the license prior to that date, it would have to request to extend the safekeeping period in order to prevent revocation of the license.

The Board sent Licensee notices in February and March 2011 reiterating the April 30, 2011 expiration date and that it would revoke the license unless Licensee filed a transfer application, request for reissue from safekeeping, or application to extend the safekeeping period for an additional one year prior to that date. After Licensee failed to respond or take any of those actions, the Board, by letter dated June 6, 2011, informed Licensee that the safekeeping period had

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(2) A licensee whose license remains in safekeeping after the expiration of an approved additional one-year period may submit a written request for additional one-year periods; however, each such request must be accompanied by a five thousand dollar (\$5,000) fee for licenses placed in safekeeping from counties of the first class, second class, second class A, third class and fourth class and a fee of two thousand five hundred dollars (\$2,500) for licenses placed in safekeeping from counties of the fifth through eighth classes.

expired and that it had revoked the license effective April 30, 2011. The letter also informed Licensee that it had 20 days to request a hearing.

By letter dated October 31, 2011, Licensee's new counsel requested a reactivation of the license and another extension of the safekeeping period. Before a hearing examiner, Carl Raup, Chief Financial Officer for Licensee's parent corporation, Hoss's Steak and Sea House, Inc., testified regarding the history of the license and the steps taken by Licensee to reactivate it. Licensee's counsel also argued that pursuant to Section 474.1(g)(2), Licensee was permitted to submit a written request for an additional one-year extension of the safekeeping period after the expiration of the approved additional one-year period.

The Board denied Licensee's request to reinstate the license, concluding that "because Licensee did not timely file an application to transfer the license, reissue the license from safekeeping, or extend the safekeeping period for an additional one (1) year along with the requisite fee, Licensing was required to revoke Licensee's license upon the expiration of the extended safekeeping period." (Board's February 9, 2012 Opinion at 19). The Board disagreed with Licensee's interpretation of subsection (g)(2), explaining:

Subsection (g)(2) cannot be viewed in isolation, but instead must be considered together with the other provisions contained within section 474.1. Subsection (b) governs how long a license may remain in safekeeping and imposes a general three (3)-year time limit. ... Subsection (b) also provides for the immediate revocation of the license upon the expiration of the three (3)-year period, unless one (1) of the following conditions is satisfied prior to the expiration of the three

(3)-year period: an application for transfer is filed; an application for reissuance is filed; or an application to extend the safekeeping period for an additional one (1) year is filed as set forth in subsection (g). ... Further, subsection (g)(1) allows a licensee to apply to the Board to extend the safekeeping period for an additional one (1) year and sets forth the requisite fees. ... Lastly, subsection (g)(2) allows a licensee to apply to the Board to extend the safekeeping period for additional one (1)-year periods beyond the first one (1)-year extension period and sets forth the requisite fees.

While subsection (g)(2) does not expressly impose a deadline for submitting applications for additional one (1)-year extensions and is somewhat confusing as worded, it is implicit from subsection (b) of section 474.1 that any application for an additional one (1)-year extension must be filed prior to the expiration of the immediately preceding extension period.

Id. at 21-22. Moreover, the Board noted the General Assembly's intent to limit how long a license can remain in safekeeping, and explained that Licensee's interpretation would lead to absurd results because it would essentially reward licensees who keep their licenses in safekeeping for longer periods of time by excusing them from acting prior to the expiration of the preceding extension period. Finally, the Board found that Licensee did not introduce evidence establishing that its failure to timely file an application was the result of non-negligent circumstances beyond Licensee's control.

Licensee appealed the Board's order to the trial court, which held a *de novo* hearing. The trial court, also noting that the language of subsection (g)(2) is somewhat confusing but that Licensee's interpretation would lead to the absurd result of eliminating any timeliness requirement with respect to requests for

additional one-year safekeeping periods, affirmed the Board. This appeal by Licensee followed.²

On appeal, Licensee again argues that the plain language of Section 474.1(g)(2), which provides that “[a] licensee **whose license remains in safekeeping after the expiration of an approved additional one-year period** may submit a written request for additional one-year periods.” (Emphasis added). Licensee contends that this language allows for the submission of an application for another one-year safekeeping period after the previous one-year safekeeping period has already expired. Licensee argues that under the Board’s and trial court’s interpretation of subsection (g)(2), it would be impossible for a license to “remain in safekeeping” after the expiration of an additional one-year period because such a license would be immediately revoked upon expiration.

All of Licensee’s arguments were answered in the well-reasoned opinion of the Honorable Deborah E. Curcillo, and we need not repeat that reasoning here. Based on the reasoning set forth in that opinion, we affirm.

DAN PELLEGRINI, President Judge

² “This Court’s scope of review in a liquor license case is limited to determining whether the trial court’s findings of fact are supported by substantial evidence and whether the trial court committed an error of law or an abuse of its discretion.” *In re Application for Liquor License of Thomas*, 829 A.2d 410, 413 n.3 (Pa. Cmwlth. 2003).

