

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0225

September Term, 2014

STASIA M. FISHER, ET AL.

v.

BALTIMORE COUNTY BOARD OF
LIQUOR LICENSE COMMISSIONERS

Graeff,
Nazarian,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 19, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following an incident, resulting in the death of a patron, at the Fish Head Cantina, the Baltimore County Board of Liquor License Commissioners (“the Board”), cited the liquor license holders, Stasia Fisher, Nolley Fisher, and Fish Head Incorporated (“the Licensees”).¹ Following a hearing before the Board, the Licensees were found to have violated Board Rule 3B. As a sanction, the Board imposed a fine of \$2,000. The Licensees sought judicial review in the Circuit Court for Baltimore County, which, after a hearing, affirmed the Board’s action. This appeal followed, in which the Licensees assert that the evidence was not sufficient to support the Board’s findings. We shall affirm.

FACTS and PROCEEDINGS

On the evening of July 7, 2013, Fish Head Cantina, located in Arbutus, Baltimore County, hosted a program of live rap music produced by Yellow Tape Entertainment. Fish Head had six members of its security personnel on duty that night. None of the security staff were armed, nor did they employ metal detectors to screen customers prior to entry.

As the evening’s events were drawing to a close, several altercations broke out in and around the establishment. A Fish Head Cantina security officer, Richard McCauley, observed one patron swinging a barstool at another. He intervened by knocking the barstool away, and tried to settle the situation. As he was doing so, the other man who had been involved in the altercation picked up a barstool and attempted to retaliate against the original

¹ Scott Fisher was identified as the owner of Fish Head Cantina and the former licensee. His wife and uncle, the above-noted Stasia and Nolley Fisher, were noted as being the current holders of the establishment’s liquor license.

aggressor. McCauley then knocked that patron's barstool away and pinned both men to the floor.

As McCauley was subduing the men, a woman ran up and appeared to "sucker punch[]" one of them in the ribs. McCauley shoved the woman and told her to "go away." Moments later, as McCauley backed away from the original combatants, he noticed that there was blood covering his arm, and observed that one of the men had blood covering the "entire left side of his body." At that point, McCauley instructed the bartender to call 911 and advise that both EMS and police personnel were needed.

McCauley then ran to the parking lot and stopped the woman he had seen "punch" the man he was subduing and told her "you can't leave. I need you to stay until the police get here. You were accused of stabbing the gentleman inside."

Two men then got between McCauley and the woman and "squared up to fight [McCauley]." As a result, McCauley backed away, but saw the men and the woman get into a vehicle. One of the men bent the license plate on the vehicle and told McCauley "you're not getting any [tag numbers]." McCauley also heard one of the men shout "if anybody gets in your way just hit them. We're not stopping for nothing." A number of other vehicles were trying to exit at the same time. Seeing that traffic leaving the premises was stopped, McCauley approached the subject vehicle, bent the license plate back, and noted the car's tag number.

When a police officer arrived, McCauley reported the details of the events to that point, including the tag number he had written down. Moments later, EMS personnel arrived and McCauley showed them to the victim, who had been receiving first aid from a security staff member. The stabbing victim later succumbed to his injuries.

On July 10, 2013, the Board issued a Notice to the Licensees informing them that “a Show Cause Hearing will be held to determine what action shall be taken against your license as a result of the alleged violations as set forth below[.]” The notice included the various provisions related to the alleged violations and, specifically, stated that the police report from the July 7th incident would be a “part of [the] Show Cause Hearing.”

The Board Hearing

At the hearing before the Board, Captain Douglas Irwin, of the Baltimore County Police, explained:

[CAPTAIN IRWIN]: . . . [On the evening of July 7th] there was an altercation inside the Fish Head Cantina. It resulted in a subject being fatally injured during that time period. The fight that broke out was very quickly quelled by the security at the Fish Head Cantina. I was at the scene, and they were nothing but cooperative with us. They assisted us in our investigation. And because of steps that they had taken having plenty of security there, folks that were working there were not just lackeys. They were on the ball. They got tag numbers for us. They did a number of things for us. Additionally, they had a fully functioning very good video recording system, which allowed us to have [a] monumental amount of evidence. I’m in contact almost daily with our homicide folks. Charged three people related to that incident, not only the person who was responsible, but two people who assisted them. And in a homicide case, that’s tough to do. That’s a tough thing to do. So I have to give them their due. In this incident, they had a lot of security. . . .

With respect to Fish Head Cantina's record for requiring police service, in comparison to other relatively similar venues, Irwin noted:

[CAPTAIN IRWIN]: . . . What I did was from the perspective of the Police Department . . . I pulled up calls for service for a 60-day period and compared the Fish Head [Cantina] to two of those establishments. Now Fish Head Cantina is a very unique place. Very neat outside venue. They have live music. It's bigger. They have a lunch and dinner crowd. So it's difficult to find places that are close. I did my best with three other bars in the area, and it was Penguin's, Paolo's and La Conte's. . . .

* * *

[CAPTAIN IRWIN]: . . . six calls at Penguin's. Paolo's Club had one, and that call was a very serious shooting call. . . . And they had five [calls] at La Conte's. At Fish Head Cantina, there are 15 calls for service. Five of those repeat calls, which means generally speaking that more than one person has seen or heard something, and those repeat calls are what the Police Department really has to concentrate on. . . . Two, three people calling about a singular incident, then we have something generally speaking that's going on. So in that time period we're talking about 20 calls for service as opposed to the next [establishment], who had six. . . . In addition to that, I had our crime analysis look at total calls for service [because] what I looked at were only disturbances, assaults, music complaints, things of that nature. I had a complete analysis done. And since 2010 up to this point in 2013, we've been called to the Fish Head Cantina . . . 213 times. That's a lot of calls for service. . . . I can tell you definitively that the majority of these calls are early Friday, early Saturday, early Sunday, early Monday mornings . . . And for the most part the folks that were within the police investigations were not from the area. So that was what I believe to be a causal factor.

When asked about the circumstances surrounding the events in question, Irwin responded:

[CAPTAIN IRWIN]: . . . In addition, I would also argue that they made a pretty poor choice in the entertainment that they chose for that particular evening. . . . the fact of the matter is . . . that . . . entertainment . . . were called

Yellow Tape Entertainment, which is crime scene tape. You know it. I know it. I don't think that's funny. I know some people do. Because I'm left to pick up the pieces after this stuff happens . . . based on everything that the Fish Head Cantina has done, I'm betting that they're going to do that better next time. . . .

* * *

[CAPTAIN IRWIN]: During that melee that happened during the latest and most serious offense there, we were called to a hostile crowd. Generally . . . they have things taken care of. They had taken care of things that were going on inside of that establishment. Unfortunately, I have to be responsible for everything else. I ended up having a tasing in the middle of Benson Avenue. I ended up having an officer assaulted there. And ultimately the drunk person . . . I don't know if this person came from within there, but we believe they did, was under age and was intoxicated. . . .

[CHAIRMAN MOHLER]: Was that a separate fight, unrelated –

* * *

[CAPTAIN IRWIN]: No, this was related to the fight.

* * *

[CHAIRMAN MOHLER]: Is there anything that they could have done better in your opinion that night?

* * *

[CAPTAIN IRWIN]: Not ha[ving] Yellow Tape Entertainment there that evening would have been a really wise choice.

Commenting about the 213 calls for police service to Fish Head Cantina, over a period of several years, Irwin asserted that the Fish Head Cantina was “clearly . . . head and shoulders above other bars [in number of service calls], but those other bars aren't the same.”

A number of witnesses testified in support of Fish Head Cantina. Among those witnesses were Terrance Nolan, President of the Arbutus Business and Professional Association, and Mickey Young, President of the Arbutus Improvement Association.

The Board's Decision²

The Board chair attested in his affidavit:

6. At the close of all evidence, and after deliberation by the Board, I announced the imposition of a civil penalty of \$2,000 against . . . Fish Head Inc. t/a Fish Head Cantina . . .

7. I stated that the Board was convinced that [Fish Head Inc.] violated Rule 3B of the Board's Rule because the evidence presented proved that [Fish Head Inc.] disturbed the peace, tranquility, safety, health, and quiet of the neighborhood and that [Fish Head Inc.] failed to meet its responsibility to take all precautionary measures to prevent the disturbance as required by the rule.

8. The conclusion stated in Item 6 above was substantiated by uncontroverted evidence that a patron had been fatally stabbed during a bar fight at [Fish Head Inc.'s] establishment.

9. Based on the egregiousness of the incident, which was described in detail during the proceeding by several witnesses, the Board decided to impose the maximum civil penalty.

10. The imposition of the maximum civil penalty was also based on evidence presented that [Fish Head Inc.] had required approximately 213 calls for police service due to public disturbances or other similar incidents. Further, the Board referenced the fact that [Fish Head Inc.] had been before it on several

² At the conclusion of the evidence, the Board went off the record to deliberate. For some reason, as the Board rendered its decision the court reporter failed to go back on the record. Thereafter, before the circuit court, the parties proceeded on an affidavit of the Board chair, Charles Klein, which recited his rendition of the decision.

previous occasions for show cause hearings as a result of similar offenses and that the penalties and incidents have escalated each time.

11. Despite the seriousness of the stabbing incident and the history of disturbing the peace, the Board chose not to revoke or suspend [Fish Head Inc.'s] liquor license. This leniency was based on a history of cooperation by [Fish Head Inc.] in increasing security in response to prior penalties imposed by this [B]oard, as well as a history of cooperation with the police over the course of the period during which these incidents have occurred.

12. I additionally stated, on the record, that the Board was imposing the aforementioned fine instead of suspending or revoking [Fish Head Inc.'s] license because the Board was persuaded by the testimony of Terr[a]nce Nolan, president of the Arbutus Business and Professional Association, and [Mickey] Young, president of the Arbutus Improvement Association, who testified on behalf of [Fish Head Inc.] The Board also was persuaded by the appearance of approximately thirty . . . citizens in the community who either testified or were prepared to do so in favor of [Fish Head Inc.] maintaining its operation without interruption.

13. Notwithstanding, the fact that the aforementioned witnesses favored [Fish Head Inc.] keeping its license and continuing operations, I pointed out that the Board found the violation did in fact occur, and based on the prior findings against [Fish Head Inc.], a \$2,000 fine should be imposed. The Board imposed the \$2,000 fine in lieu of a suspension or revocation . . .

DISCUSSION

The Licensees contend that the evidence was insufficient to support the Board's decision, because "there was no finding of fact that [the Licensees] acted or failed to act in any particular manner so as to avoid . . . disturbance or otherwise failed to take precautionary measures to avoid the unforeseen disturbance of the peace." Specifically, the Licensees insist that the evidence did not support the conclusion that their actions or inactions, in operating

Fish Head Cantina, led to the death of a patron. Accordingly, they seek reversal of the Board's decision.

We have explained:

Judicial review of a decision by a liquor board “is similar to review of decisions by most other administrative agencies.” *Blackburn v. Bd. of Liquor License Comm'rs for Baltimore City*, 130 Md. App. 614, 623 (2000). In [*Board of License Comm'rs for Prince George's County v. Global Express Money Orders, Inc.*, 168 Md. App. 339, 344-46 (2006)], we explained the standard:

In reviewing the decision of an administrative agency, this Court performs the same function as the circuit court. We review the decision of the agency, not that of the circuit court. 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. Our role 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. . . . Under the substantial evidence test, we may not substitute our own judgment for that of the board. When reviewing factual issues, we must review the agency's decision in the light most favorable to the agency since its decision is prima facie correct and carries with it the presumption of validity. Moreover, the action of the local licensing board is presumed to be proper and to serve in the best interest of the public. The burden of proof is on the licensee to show that the board's decision was arbitrary, fraudulent, unsupported by substantial evidence, or illegal.

Dakrish, LLC v. Raich, 209 Md. App. 119, 141-42 (2012) (further internal citations and quotations omitted). In sum, we give considerable deference to the findings of the Board.

Rule 3B, under which the Licensees were cited, provides, in pertinent part:

Rule 3 – Noise and Music

* * *

B. All licensees shall operate their establishments in such a manner as to avoid disturbing the peace, tranquility, safety, health, and quiet of the neighborhood where located. It shall be the responsibility of the licensees to take all precautionary measures to comply with this subsection.

Baltimore County, Md., Rules and Regulations of the Board of Liquor License Commissioners, R. 3B (2007).

We are persuaded that there was substantial evidence to support the Board’s findings of a violation and to sustain the sanction imposed, which appears to be at the lenient end of the range of possible sanctions. In addition to the events described, *supra*, resulting in the homicide of a patron, it was established that Fish Head Cantina had a significant history of the need for police intervention. The record reveals that security measures such as metal detectors, or armed guards, were not employed because the establishment was given an assurance of a “friendly” crowd from the promoter who provided the entertainment. The entertainment for that evening was a program of live rap music. Contrary to the promoter’s assertions, a sampling of lyrics from one of the featured artist’s songs was read into the record; the excerpt referred to the artist’s willingness to engage in violence and his involvement in the drug trade.

Speaking to the type of crowd the evening’s entertainment attracted, Irwin testified that law enforcement was “called to a hostile crowd” and that one police officer was assaulted by an individual who was believed to have come from the Fish Head Cantina. It was also noted that one of the entertainers on the bill for that evening had, subsequently, been “indicted on charges of accessory after the fact in connection [with] this murder [which occurred on the night in question].” All of that, we conclude, speaks to the Licensees’ failure to take precautionary measures to ensure the safety of patrons, which led to a disturbance of the peace, tranquility, safety, health, and quiet of the neighborhood.

On this record, we are convinced that the Board’s findings are supported by substantial evidence.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE COUNTY
AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.**