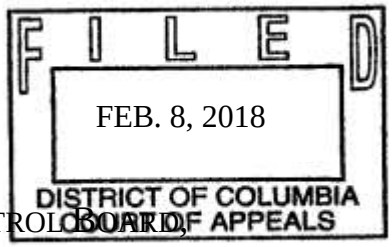
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 16-AA-755

MARTIN SCAHILL, PETITIONER,

v.

DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL BOARD, RESPONDENT.



On Petition for Review of an Order of the
District of Columbia Alcoholic Beverage Control Board
(15-PRO-96)

(Argued December 19, 2017 Decided February 8, 2018)

Before BECKWITH and EASTERLY, *Associate Judges*, and STEADMAN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Martin Scahill appeals a decision of the District of Columbia Alcoholic Beverage Control Board (the Board), granting a liquor license to the owners of The Alibi, a bar and restaurant, conditioned upon Mr. Scahill's exclusion from the physical premises and from the management and operation of the establishment. Mr. Scahill argues that the Board's decision deprived him of his rights under the District of Columbia Administrative Procedure Act, overstepped the Board's statutory authority, and imposed conditions that were unsupported by the evidence and arbitrary and capricious. Concluding that the conditions were within the Board's discretion in issuing licenses, we affirm.[1]

[1] Respondent does not challenge Mr. Scahill's standing to bring this appeal, and Mr. Scahill clearly has standing under D.C. Code § 2-510 (a) to raise at least the lack-of-notice issue. Given our disposition, we see no need to examine the standing issue in more detail. *Cf., e.g.*, *Childs v. United States*, 760 A.2d 614, 616–17 (D.C. 2000).

I.

In 2015, HRH Services LLC, doing business as The Alibi, applied for a license from the Board to serve alcohol at 237 2nd Street N.W.[2] Rachel Traverso and her father, Richard Traverso, were listed as the sole proprietors and applicants. The Alibi had assumed the lease of the previous establishment, a bar and restaurant called My Brother's Place.

Ms. Traverso had been a bartender at My Brother's Place from 2009 through 2013, while Mr. Scahill was a minority owner of the business and worked there in various capacities—including checking identification at the door. My Brother's Place had a history the Board characterized as "sad and sordid," involving recurring problems with underage drinking. Between 2006 and 2013, the business committed six documented sale-to-minor violations and owed more than $16,500 in related unpaid fines. My Brother's Place ultimately failed to complete its license renewal process, and the Board canceled the license in 2013.

About two months later, Mr. Scahill and two business partners created a new corporate entity and applied for a new liquor license at the same location. At the time, Ms. Traverso and Mr. Scahill lived together and maintained a joint bank account, and Ms. Traverso and her family provided more than $270,000 towards business operations and a renovation of the bar.[3] In the process of reviewing the new license application, the Board became concerned that the application was an attempt to avoid the $16,500 in delinquent fines owed by My Brother's Place and that "Mr. Scahill's prior actions demonstrate a lack of desire and ability to prevent underage drinking in compliance with the law." The Board set the matter for a hearing, but Mr. Scahill withdrew the application before any hearing was held.

When Ms. Traverso and her father, as the owners of The Alibi, then applied for a liquor license at the same location, the owners of an abutting property filed a petition in protest of the application, contending that it was "a ruse contrived by Martin Scahill and Rachel Traverso to camouflage Mr. Scahill's continued stealthy effort to operate an ABC establishment [next door]." At a subsequent hearing, Ms.

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[2] The Alibi was open at the time of the Traversos' application, offering a lunchtime service of food but no alcohol.

[3] In November of 2013 they became engaged to be married.

Traverso testified that she and Mr. Scahill had ended their relationship, but that Mr. Scahill was doing unpaid work for The Alibi four times a week for about five hours a day. The Board then scheduled a qualifications hearing and issued notice requiring the Traversos to demonstrate their qualifications for licensure "in light of possible evidence that the Applicant is not the true and actual owner of the business; does not intend to carry on the business for himself or herself; or is the agent of Martin Scahill, who is not identified or disclosed in the Application."

The Traversos arrived at the hearing with an order barring Mr. Scahill from 237 2nd Street N.W. This notice, written on a Metropolitan Police Department form, had been executed and signed by Mr. Traverso and signed by Mr. Scahill two days prior to the hearing. Mr. Traverso testified that he had obtained the barring notice because "after much consideration and discussion with my daughter, we realized for the sake of the business this was just absolutely necessary. . . . [w]e had to basically make sure [The Alibi] had all ties severed from Mr. Scahill."

The Board questioned Mr. Traverso at length about how the barring notice was obtained and how the mechanics of enforcement would work. Members of the Board expressed concern that Mr. Traverso could withdraw the barring notice at any time, and one member asked, "[i]f we issued this license with an order that said . . . this barring notice that bars Martin Scahill from being in your establishment must be in effect . . . is that a problem for you?" Mr. Traverso replied: "I would not be happy . . . but I think we have to live with it. If it came to that, we would." In closing, the attorney for the Traversos stressed that they had obtained the barring notice on their own initiative and that Mr. Traverso would be willing to keep it in place for five years. "[T]hey take their business serious enough . . . to take that step and would be willing to take it a step further if that's what the board wanted to do."

The Board then issued an order approving a liquor license for The Alibi, contingent upon a set of conditions designed to ensure that the license holder maintain a barring notice against Mr. Scahill for five years, notify the police if a violation of the notice occurred, and refrain from employing Mr. Scahill or allowing him control over the business. The Board found the other issues raised by the neighboring property owners to be moot.

This appeal by Mr. Scahill followed. Mr. Scahill also filed suit in federal court, alleging that the conditions imposed by the Board violated his First Amendment rights by prohibiting him from entering into a business relationship with The Alibi and violated his Fifth Amendment rights to travel and movement, to

procedural due process, and to "liberty" more generally. *Scahill v. District of Columbia*, 271 F. Supp. 3d 216 (D.D.C. 2017).[4]

II.

The Board grants licenses to sell alcoholic beverages in the District upon completion of an application and review process. D.C. Code § 25-104 (c).[5] The Board must determine that "[t]he applicant is of good character and generally fit for the responsibilities of licensure." D.C. Code § 25-301 (a)(1). The Board is also responsible for verifying that "the applicant is the true and actual owner of the establishment for which the license is sought, and he or she intends to carry on the business for himself or herself and not as the agent of any other individual . . . not identified in the application." D.C. Code § 25-301 (a)(5).

When it issues licenses, the Board is authorized to require that "certain conditions be met if it determines that the inclusion of the conditions will be in the best interest of the locality . . . where the licensed establishment is to be located." D.C. Code § 25-104 (e). When the Board sets such conditions, it "shall state, in writing, the rationale for the determination." *Id.*

We recognize "the broad powers of the Board in setting conditions for the issuance or renewal of a liquor license." *Acott Ventures, LLC v. District of Columbia Alcoholic Beverage Control Bd.*, 135 A.3d 80, 92 (D.C. 2016). "We undertake only limited review of an administrative agency's decision, affirming unless we conclude that the decision was either unsupported by substantial evidence in the record or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* at 88 (citing *Panutat, LLC v. District of Columbia Alcoholic Beverage Control Bd.*, 75 A.3d 269, 272 (D.C. 2013)). "When there is substantial evidence in the record to support the Board's decision, we will not substitute our judgment for that of the Board, 'even though there may also be substantial evidence to support a contrary decision. . . .'" *Aziken v. District of*

[4] The court dismissed his case, finding that Mr. Scahill failed to allege sufficient facts to support his claim. Mr. Scahill's appeal of that dismissal is pending before the federal appellate court.

[5] All citations to the D.C. Code are to the 2012 replacement volume.

Columbia Alcoholic Beverage Control Bd., 29 A.3d 965, 972 (D.C. 2011) (quoting *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985)). We defer to the Board's interpretation of the statutes it administers as long as the interpretation is "reasonable and not plainly wrong or inconsistent with the legislative purpose." *Holzsager v. District of Columbia Alcoholic Beverage Control Bd.*, 979 A.2d 52, 58 (D.C. 2009) (citation and internal quotation marks omitted).

Mr. Scahill first argues that the Board violated the District of Columbia Administrative Procedure Act, which provides that all parties "shall be given reasonable notice" of a contested case. D.C. Code § 2-509 (a). In his view, the conditions are an infringement of his rights and exceed the Board's authority because he was not named as a party or given notice of the hearing regarding the Traversos' license application before the Board. *See Ammerman v. District of Columbia Rental Accommodations Comm'n*, 375 A.2d 1060, 1062 (D.C. 1977) ("An administrative agency's power to impose sanctions extends only to those parties before the agency who have been afforded the required procedural guarantees with respect to the agency's proceedings.")

Unlike in *Ammerman*, however—a case in which this court reversed the imposition of a $50 fine upon a landlord who had never been named a party or given notice of a tenant's complaint before an administrative agency—here Mr. Scahill was not fined or penalized. *Id.* at 1063. The conditions he complains of were placed not upon him but upon the license holder. While Mr. Scahill argues that the conditions directly infringed upon his rights and privileges, he has failed to substantiate that claim. The conditions imposed by the Board merely adopted and reinforced the license applicants' choice to voluntarily obtain the barring notice against Mr. Scahill. Further, "[t]here is no inherent right in a citizen to . . . sell intoxicating liquors by retail." *Crowley v. Christensen*, 137 U.S. 86, 91 (1890).

Mr. Scahill also contends that the Board exceeded its statutory authority by imposing conditions without the appropriate findings. Specifically, he argues that the Board failed to state in writing, as required by D.C. Code § 25-104 (e), why the condition excluding him from The Alibi was in the best interests of the locality where The Alibi is located. Mr. Scahill points to the concurrence written by one Board member, who argued against the condition maintaining the barring order on the grounds that the Board did not "articulate its reasons for doing so and why it was in the best interest of the affected area."

While the Board's order could well have been more detailed, its analysis was

sufficient under the special circumstances of this case to satisfy D.C. Code § 25-104 (e). The Board explained that it was appropriate to impose conditions upon a license holder when relied upon to approve an application, noting that to hold otherwise "creates an incentive for applicants to misrepresent their intentions to the Board, which is not in the best interest of the neighborhood." Detailed analysis of neighborhood impact is also less critical in a situation like this one, where the barring notice was proffered voluntarily by the Traversos, as compared to a situation where conditions are externally imposed by the Board.

With respect to Mr. Scahill's argument that the conditions set by the Board were not supported by substantial evidence in the record, the record provides ample documentation of the Board's unease regarding Mr. Scahill's involvement in The Alibi and its specific request, in advance of the qualifications hearing, that the Traversos rebut its concerns. The Board is required to establish that any license applicant is "the true and actual owner of the establishment for which the license is sought." D.C. Code § 25-301 (a)(5). The 704 pages of hearing transcripts that accompany this appeal make clear that the Board devoted considerable time and effort into complying with this statutory mandate and understanding the relationship between Mr. Scahill and the license applicants. The Board's order also incorporated the testimony of Mr. Scahill himself at a factfinding hearing regarding his own (later withdrawn) license application, at which he spoke about his ownership of and his involvement with My Brother's Place. The Board heard abundant evidence from which it could conclude that enforcing the existing barring order was an appropriate condition of licensure.

Finally, Mr. Scahill argues that because he holds a manager's license issued by the Board that permits him to manage any bar in the District, a condition barring him from one particular bar "smacks of hypocrisy" and is arbitrary and capricious. But again, the Board's order did not impose conditions upon Mr. Scahill himself but upon the license holders. And in any event, a manager's license and retailer's liquor license—and the qualification procedures for each—are not equivalent. *Compare* D.C. Code §§ 25-120 *and* 25-113. The Board's order was appropriately tailored in response to the specific history of one particular locale, and Mr. Scahill's qualifications as a general bar manager are not a critical aspect of this inquiry. *See Acott Ventures, LLC*, 135 A.3d at 91 (holding that the Board had the authority to condition the renewal of a liquor license upon an establishment retaining a police detail).

III.

The conditions imposed here were within the Board's authority and supported by careful documentation and reasoning. For the reasons set forth in this memorandum opinion and judgment, we affirm the order of the Board.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court

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