



STATE OF ARIZONA
ARIZONA STATE LIQUOR BOARD
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JANICE K. BREWER
Governor

J. D. GHELFI
Board Chair

ALAN EVERETT
Director

Arizona State Liquor Board Hearing Minutes
March 5, 2012

Members Present: J.D. Ghelfi -Chair, Mike Farley -Vice-Chair, Bill DuPont, Robin Cantrell, Tim Linden, Jim Carruthers, Vikki Scarafiotti

Members Absent: None

Counsel Present: Mona Baskin, Assistant Attorney General
Christopher Munns, Assistant Attorney General

Staff Present: Stefanie Murphy, Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on March 5, 2012 at 9:00 a.m. with Mr. Ghelfi presiding.

Roll Call

All board members were present.

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

1. Beer and Wine Bar Liquor License No. 07070150- Person & Location Transfer Application

From:

Mary Helen Baron, Agent
Pizza Hut of America, Inc.
Pizza Hut #203052
4708 S. 48th Street
Phoenix, AZ 85040

To:

Michael Ernest Scarbrough, Agent
QNC VIII, LLC
Quick N Clean
6925 E. Cave Creek Road
Cave Creek, AZ 85331

This matter was set for hearing due to Department protest. The applicant, Michael Ernest Scarbrough, did not appear at the hearing and was represented by counsel, David Cisiewski. Assistant Attorney General Mona Baskin appeared on behalf of the Arizona Department of Liquor Licenses and Control. Assistant Attorney General Christopher Munns was present to provide legal advice to the Board. Chairman Ghelfi noted that a request to withdraw the application was filed by the applicant. There was no objection.

Motion to withdraw -	DuPont
Seconded -	Farley
Yay -	Ghelfi, Farley, DuPont, Cantrell, Linden, Carruthers, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Withdrawal of application granted

2. Beer and Wine Bar Liquor License No. 07070090– Person & Location Transfer Application

From:

Marta Alicia Menjivar, Agent
Menjimek Corporation
Copa Habana Wines
350 E. Bell Road, Ste 12
Phoenix, AZ 85022

To:

Richard Kenneth Trombly, Agent
Foree-Garner Corporation
Flex
1517 S. Black Canyon Highway
Phoenix, AZ 85009

This matter was set for hearing due to Department protest and because the City of Phoenix recommended disapproval of the application. The applicant, Richard Kenneth Trombly, appeared at the hearing and was represented by counsel, H. J. Lewkowitz. Assistant City Prosecutor Robert Smith appeared on behalf of the City of Phoenix. Assistant Attorney General Mona Baskin appeared on behalf of the Arizona Department of Liquor Licenses and Control. Assistant Attorney General Christopher Munns was present to provide legal advice to the Board.

Mr. Lewkowitz asked that the Board dismiss the motion to continue filed on February 17, 2012 and made a motion to withdraw the application instead. The Chairman continued the matter to the end of the agenda to allow for the applicant to file a withdrawal form with the Department.

The Board proceeded to item #3.

3. Restaurant Liquor License No. 12078823- Original Application

Araik Khachatryan, Agent
Arik Company LLC
Aros Grill
1606 E, Bell Road, Ste 101-104
Phoenix, AZ 85022

This matter was continued from the December 1, 2011 and February 2, 2012 hearings and was set for hearing due to Department protest and because the City of Phoenix recommended disapproval of the application. The applicant, Araik Khachatryan, appeared at the hearing and was represented by counsel, Peter Schelstraete. Hasmik Babayan was present at the hearing to interpret for the applicant. Jose Moreno, Javier Hernandez, Carlos Vasquez and Anait Kardjian were also present at the hearing and were sworn and testified on behalf of the applicant. Assistant City Prosecutor Robert Smith, Detective Eric Breindl and Detective Karen Hughes appeared on behalf of the City of Phoenix. Assistant Attorney General Mona Baskin and Officer Dan Wilde appeared on behalf of the Arizona Department of Liquor Licenses and Control. Assistant Attorney General Christopher Munns was present to provide legal advice to the Board.

Ms. Babayan noted her professional background and credentials as an interpreter. Mr. Smith asked when she was retained for this case. Ms. Baskin asked if she met with the applicant and Mr. Schelstraete prior to the hearing or if she reviewed any documents prior to the hearing. Ms. Babayan confirmed she did meet with the applicant and Mr. Schelstraete prior to the hearing and explained the documents she was presented for review and preparation for interpretation. Mr. Schelstraete added that they met on February 2, 2012, while waiting approximately four hours for their case to be called before the State Liquor Board and they reviewed documents and discussed the case. Ms. Baskin noted an objection to the client preparation meeting with the interpreter and counsel for the applicant and stated the need for a fair and impartial interpreter. Mr. Smith also objected and noted the need for a neutral court hired interpreter for this hearing. Mr. Ghelfi noted that the applicant is required to hire an interpreter for hearings before the State Liquor Board. Mr. Schelstraete noted the difficulty in finding an Armenian translator and the purpose of the meeting was to facilitate the hearing process and translate police reports. Mr. Smith noted that the meeting was improper. The City and the Department position were to continue the matter to obtain a new interpreter. Mr. Ghelfi made a motion to convene in executive session to receive legal advice.

Motion to convene in executive
session for legal advice -

Ghelfi

Seconded -	Linden
Yay -	Ghelfi, DuPont, Cantrell, Linden, Carruthers, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 9:19 a.m. and reconvened in open session at 9:24 a.m.

The Board tabled item #3 briefly to go back to item #2. Mr. Lewkowitz presented the Board with a withdrawal form filed with the Department. Mr. DuPont made a motion to grant the withdrawal of Liquor License No. 07070090.

Motion to withdraw -	DuPont
Seconded -	Farley
Yay -	Ghelfi, Farley, DuPont, Cantrell, Linden, Carruthers, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Withdrawal of application granted

The Board went back to item #3.

The objections by both the City and the Department were overruled and noted for the record. The hearing continued and the interpreter was sworn. The interpreter was asked if she was related to the applicant or any of the witnesses. The witnesses were sworn. Mr. Smith made a motion to exclude the witnesses not providing testimony from the hearing. The motion for exclusion of witnesses was granted by the Board. The first witness approached the stand and the other witnesses were excused. Mr. Schelstraete, Mr. Smith, and Ms. Baskin made opening statements. The Chairman noted that location was not being contested by the City and the Department to expedite testimony.

Mr. Moreno was called as witness and testified. He noted he is a thirty-four year resident of the neighborhood and described the area and problems including gang activity and prostitution. He described the 27th Avenue bar location. Mr. Smith noted an objection for relevancy as to ownership prior to the applicant's ownership. Mr. Moreno discussed recent changes and improvements to the location, his relationship to the applicant and personal visits to the location. During cross examination he was asked about police incidents at the location, hours of service, violations, and charitable events held at the location. During Board questioning he was asked about bringing outside food to events, liquor sales and atmosphere at the location.

The Board recessed at 10:10 a.m. and reconvened at 10:23 a.m.

Mr. Hernandez was called as witness and testified. He noted he was a former resident and business owner in the area. He described the neighborhood and 27th Avenue location at the time he lived there and discussed the changes and improvements that have been made including security. He noted his affiliation with the Maryvale Community Business Alliance and his described his personal and professional relationship with the applicant including work performed as a contractor. During cross examination he was asked about his knowledge of liquor laws, violations at the location, the applicant's criminal history, his license as a registered contractor, work preformed and language used.

Mr. Khachatrian was called as witness and testified. He was asked about his personal background, work experience, and military service. He also discussed renovations, menu changes, security and the business plan.

Mr. Ghelfi made a motion to convene in executive session to receive legal advice.

Motion to convene in executive session for legal advice -	Ghelfi
Seconded -	DuPont
Yay -	Ghelfi, DuPont, Cantrell, Linden, Carruthers, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 11:01 a.m. and reconvened in open session at 11:05 a.m.

Testimony continued. Ms. Baskin noted that it appeared Mr. Schelstraete was communicating directly to the interpreter and not the witness. The Chairman asked that Mr. Schelstraete address the applicant directly. Mr. Khachatrian further discussed improvements to the establishment and photographs were presented. Mr. Smith noted an objection. Mr. Schelstraete inquired about the specific improvements made to the bathrooms and kitchen and the health inspection. Mr. Khachatrian was asked about his fluency in English and the liquor application filing process.

The City began cross examination and asked questions about the applicant's family, employees and managers. Mr. Schelstraete noted an objection due to relevancy. Mr. Khachatrian was asked about duties, hours worked and security at the bar. He was asked questions about the liquor license application filing process, fluency in English, and interpretation assistance. Mr. Schelstraete noted an objection. Mr. Smith asked about the application completion process specifically about criminal history disclosure and questions #15 and #19 on the questionnaire.

The Board recessed at 11:42 a.m. and reconvened at 11:50 a.m.

City cross examination and questions regarding the questionnaire continued. The applicant testified that he was advised by Mr. Vasquez that he didn't have to disclose citations unrelated to the business and this was the basis for not disclosing citations beyond the DUI listed. There was discussion regarding the applicant's questionnaire and criminal history including domestic violence and past liquor violations at the 27th Avenue bar. Mr. Smith noted that the applicant answered questions before they were interpreted. There were questions about English proficiency, the site inspection conducted by Officer Wilde and question #15 on the questionnaire. Cross examination from the State began. Ms. Baskin asked questions regarding Arik Company LLC, communication in English on Facebook and during a health inspection and interpretation services. Mr. Schelstraete noted an objection. During redirect, there was more discussion regarding interpretation services, liquor violations, site inspection, communication in English, and anger management classes for a domestic violence charge.

During Board questioning, Mr. Ghelfi asked why the applicant did not fill out the questionnaire completely with assistance. The applicant was asked how much time he spent at the 27th Avenue bar. Mr. Linden asked about the assistance obtained from a friend to complete the application. He also asked about employee liquor law training and question #15 on the questionnaire. Ms. Scarafiotti asked about the letter written to the Director regarding an interim permit. Ms. Cantrell asked if there was a Series 6 Bar liquor license at the 27th Avenue bar and about the application process for that license and liquor training completion. She asked if the applicant understood the difference between a Series 6 Bar and Series 12 Restaurant liquor license. Mr. Farley asked when and how the applicant learned English. Mr. Carruthers asked if Mr. Vasquez was aware of the applicant's criminal history at the time he assisted with completing the application and if he understood the criminal disclosure section. He was asked if he received assistance with the application from the Department. Ms. Cantrell asked questions regarding the manger questionnaire. End of Board questions.

The Board recessed at 1:10 p.m. and reconvened at 1:43 p.m. and moved to item #4.

The Board tabled item #3 and moved to item #4.

4. Restaurant Liquor License No. 12104139- Original Application

Thomas Robert Aguilera, Agent
Avenue Coffee, LLC
Cartel Coffee Lab
2502 N. Campbell Avenue
Tucson, AZ 85719

This matter was set for hearing because the City of Tucson forwarded the application with no recommendation and due to public protest. The agent, Thomas Robert Aguilera, appeared at the hearing. Mark Harrell, Avenue Coffee LLC, was present at the hearing and was sworn. There were no public protestors present. It was noted that notice of hearing was sent to the protestors via certified mail to the address of record.

Mr. Harrell was called as witness. He discussed a meeting held with neighborhood residents and a City Council member and discussed a mitigation plan and the steps taken to address the issues including parking. There were no questions from the Board.

Mr. Ghelfi made a motion to grant Liquor License No. 12104139 based on the applicant's completions of the appropriate liquor law training, the applicant currently holds an active liquor license and the applicant and the neighborhood have gone through a mitigation process to address public concerns as it relates to location.

Motion to grant -	Carruthers
Seconded -	Farley
Yay -	Ghelfi, Farley, DuPont, Cantrell, Linden, Carruthers, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	License granted

5. Beer & Wine Store Liquor License No. 10076214- Original Application

Troy Charles DeVos, Agent
QuikTrip Corporation
QuikTrip #1403
1550 E. Baseline Road
Phoenix, AZ 85042

This matter was set for hearing due to public protest. The agent, Troy Charles DeVos, appeared at the hearing and was represented by counsel, Charles Huellmantel. The public protestor was not present. It was noted that notice of hearing was sent to the protestor via certified mail to the address of record. It was also noted for the record that Mr. Huellmantel was a former Board member and had been out of office for over one year and there was no objection.

Mr. Huellmantel made an opening statement and noted the support of the City and a letter of support. Chairman Ghelfi noted that the Board does not address anti-competitive issues and they are not a concern of the Board. There was no further discussion or questions from the Board.

Mr. DuPont made a motion to grant Liquor License No. 10076214 based on the applicant's liquor law training program in place, the applicant currently holds liquor licenses at 90 stores in the State of Arizona with no liquor violations since 2009, and Clean and Beautiful is a necessary aspect.

Motion to grant -	DuPont
Seconded -	Carruthers
Yay -	Ghelfi, Farley, DuPont, Cantrell, Linden, Carruthers, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	License granted

The Board went back to item #3.

Mr. Vasquez was called as witness. He discussed his professional background as a business broker and relationship with the applicant. There was discussion regarding services provided to the applicant to assist with the liquor license application filing process. He discussed communication with the applicant and his understanding of the application process. Mr. Vasquez noted that he filled out the application with the applicant. There was further discussion regarding the completion of the questionnaire and application for an interim permit. During cross examination there were questions regarding his real estate license, formal education, and liquor license application experience. There was discussion regarding the questionnaire and the applicant's criminal history. Chairman Ghelfi asked Mr. Vasquez to read question #15 on the questionnaire and provide his interpretation. He stated that domestic violence charges were not needed to be listed according to his understanding of question. There were no further questions.

The Board recessed at 2:45 p.m. and reconvened at 2:52 p.m. Mr. Linden left the meeting.

Ms. Kardjian was called as witness. She described her relationship with the applicant; work on the liquor license application at the 27th Avenue bar, and the applicant's criminal history. Mr. Farley asked about the applicant's English comprehension.

Detective Breindl was called as witness and testified on behalf of the City. He discussed his professional background and work with liquor license applications for the City. He summarized the applicant's criminal history including liquor sale violations, acts of violence at the 27th Avenue location, violation of court orders, and a disagreement with a landlord. He described an interview with the applicant, Detective Hughes and Detective Wilde and it was noted that there was not an interpreter present. In that interview they discussed the domestic violence charge and other citations not listed on the questionnaire. There was discussion regarding the City Council meeting, city questionnaire and requesting an interpreter. In cross examination Mr. Schelstraete asked questions about the interview, liquor violations at the 27th Avenue location, language fluency, and the questionnaire.

The Board recessed at 3:53 p.m. and reconvened at 4:02 p.m.

Cross examination continued. There was discussion regarding police reports. Mr. Smith objected to reading the reports. There were more questions about criminal charges filed against the applicant and assistance with the liquor license application. During Board questioning, Mr. DuPont asked about employee liquor law training.

Detective Wilde was called as witness. He described his professional background and work on this application for the Arizona Department of Liquor Licenses and Control. He summarized contact with the applicant, site inspection completed, discrepancies in the questionnaire and participation in the interview with the applicant. There was discussion regarding the applicant's English fluency during the site inspection. In cross examination, Mr. Schelstraete asked if he reviewed a particular police report and questions were asked about the findings of an inspection. Mr. Schelstraete asked about the interview being recorded and follow up contact with Mr. Vasquez after the interview. Detective Wilde was asked about prior law enforcement experience. During Board questioning, Mr. Carruthers asked questions about failure to disclose criminal background and Mr. DuPont asked about department policy.

There were no further questions or witnesses. The parties made closing arguments. In Board discussion, Chairman Ghelfi noted that question #15 of the questionnaire is worded poorly. It was determined that location is not an issue and not contested. Mr. DuPont made a motion to deny Liquor License No. 12078823 as to person based on the evidence provided by the documentation received and reviewed, based on the testimony of the applicant, under oath and through an interpreter, statements that all employees were trained, statements to the police that the applicant can read and understand English, and he has been through several legal processes, and this being his second application for a liquor license.

Motion to deny -	DuPont
Seconded -	Scarafiotti
Yay -	Ghelfi, Farley, DuPont, Cantrell, Carruthers, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	License denied as to Person

C. Minutes

It was noted that Mr. Carruthers was not present at the December 1, 2011 meeting.

Motion to approve the December 1, 2011-	DuPont
Seconded -	Farley
Yay -	Ghelfi, DuPont, Cantrell, Farley, Scarafiotti
Nay -	None
Abstained -	Carruthers
Disposition -	December 1, 2011 minutes approved

D. Review and possible action regarding guidelines for letters of authority designating spokesperson pursuant to A.R.S. § 4-201(E)

Lawrie Fitzhugh of the Sevilla Neighborhood Association was present. She stated concerns regarding the guidelines as originally adopted. Chairman Ghelfi referenced statute, neighborhood associations as interested parties, and the intent of the guidelines to clarify the statute and simplify the process. She noted the new statutory requirement is complicated and the guidelines are helpful. She also stated that community education regarding Title 4 by the Department is needed. Chairman Ghelfi suggested she continue to work with the Legislature and consult with the Department Director and the League of Cities and Towns. Mr. DuPont suggested she work with the Director to hold a forum in the auditorium. He also asked if she worked with Weed and Seed and the Department of Justice.

Chairman Ghelfi noted a proposed change to the guidelines presented by the Department Director. Mr. DuPont made a motion to amend the guidelines to add that the letter of authority may be signed by the Chair or Vice Chair of an association or corporation.

Motion to amend the guidelines -	DuPont
Seconded -	Carruthers
Yay -	Ghelfi, DuPont, Cantrell, Farley, Carruthers, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Guidelines for Letters of Authority Designating Spokesperson amended to include that the letter may be signed by the Chair or Vice Chair of an association or corporation.

The Board went back to item #3. Mr. Farley made a motion to terminate the interim permit for Liquor License No. 12078823 as of today.

Motion to terminate interim permit-	Farley
Seconded -	Carruthers
Yay -	Ghelfi, DuPont, Cantrell, Farley, Carruthers, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Interim permit terminated effective March 5, 2012

E. Call to the Public

None.

The Board adjourned at 5:45 p.m.

Marlene Buffa
for: Stefanie Murphy
Administrator of the
Arizona State Liquor Board

4-8-12
Date

MARLENE
BUFF