Arizona State Liquor Board Hearing Minutes  
December 6, 2018

Members Present:    Michael J. Troyan – Chair, Troy L. Campbell – Vice Chair, Michael N. Widener,  
Jeffrey K. Oravits, and Walter W. Jahn

Members Absent:    None

Counsel Present:    Michael Raine, Assistant Attorney General  
John R. Tellier, Licensing & Enforcement Section Chief Counsel, Independent  
Advisor to the Board

Staff Present:    Denise Bale, Board Administrator

A. **Call to Order**
The hearing of the Arizona State Liquor Board was called to order on December 6, 2018, at 10:00 a.m.  
with Mr. Troyan presiding.

**Roll Call**
All members were present.

B. **10:00 a.m. Agenda: Review, consideration and action**

Mr. Troyan announced that the order of hearings would be changed. There were no objections.

2. **Bar Liquor License No. 06040015 - Appeal of Director’s Order**

Sara Hardy, Agent  
Top Note, LLC  
Dba Jammerz  
598 N. Broad Street  
Globe, AZ 85501

This matter is set for hearing because the Respondent requests that the Board reverse the Director’s Order  
Summarily Suspending Liquor License. Counsel for the Licensee, Peter H. Schelstraete, appeared at the  
hearing. Assistant Attorney General Michael Raine appeared on behalf of the Department. Licensing &  
Enforcement Section Chief Counsel John R. Tellier provided independent legal advice to the Board. The  
Department filed a Motion to Dismiss Appeal. The Director issued an Order Vacating Summary  
Suspension of Bar Liquor License No. 06040015 issued to Top Note, LLC. Mr. Schelstraete stated the  
Licensee submitted a request to withdraw its Appeal because it is moot. Mr. Raine stated Licensee’s request  
for withdrawal renders the Department’ Motion moot, and there is no objection to withdrawing the Appeal.
Motion to accept application withdrawal - Widener
Seconded - Campbell
Yay - Widener, Campbell, Troyan, Oravits, Jahn
Nay - None
Abstained - None
Disposition - Appeal withdrawal accepted

3. **Beer and Wine Store Liquor License, Application No. 26599 - Original Application**

Michelle Ivy Valenzuela  
DG Retail, LLC  
Dollar General Store #14192  
1335 W. Ajo Way  
Tucson, AZ 85713

This matter is set for hearing because the City of Tucson recommended disapproval. This matter is also set for hearing because of public protest. Subsequent to this matter being scheduled for hearing an application withdrawal was filed with the Board. The Applicant and its Agent, Michelle Ivy Valenzuela, did not appear at the hearing and were not represented by counsel. Assistant City Attorney Jacinta Figueroa appeared telephonically on behalf of the City of Tucson. Protestor Liberty Partnership Kino Neighborhoods Council and Protestor Southside Neighborhood Association Presidential Partnership did not appear at the hearing and were not represented by counsel.

4. **Beer and Wine Store Liquor License, Application No. 26566 - Original Application**

Michelle Ivy Valenzuela  
DG Retail, LLC  
Dollar General Store #12582  
945 E. 22nd Street  
Tucson, AZ 85713

This matter is set for hearing because the City of Tucson recommended disapproval. This matter is also set for hearing because of public protest. Subsequent to this matter being scheduled for hearing an application withdrawal was filed with the Board. The Applicant and its Agent, Michelle Ivy Valenzuela, did not appear at the hearing and were not represented by counsel. Assistant City Attorney Jacinta Figueroa appeared telephonically on behalf of the City of Tucson. Protestor Liberty Partnership Kino Neighborhoods Council and Protestor Southside Neighborhood Association Presidential Partnership did not appear at the hearing and were not represented by counsel.

5. **Beer and Wine Store Liquor License, Application No. 26598 - Original Application**

Michelle Ivy Valenzuela  
DG Retail, LLC  
Dollar General Store #13199  
5663 S. 12th Avenue  
Tucson, AZ 85706

This matter is set for hearing because the City of Tucson recommended disapproval. This matter is also set for hearing because of public protest. Subsequent to this matter being scheduled for hearing an application withdrawal was filed with the Board. The Applicant and its Agent, Michelle Ivy Valenzuela, did not appear at the hearing and were not represented by counsel. Assistant City Attorney Jacinta Figueroa appeared telephonically on behalf of the City of Tucson. Protestor Liberty Partnership Kino
Neighborhoods Council, Protestor Sunnyside Neighborhood Association, and Protestor Southside Neighborhood Association Presidential Partnership did not appear at the hearing and were not represented by counsel.

Ms. Figuerola addressed the Board and stated that the City of Tucson does not object to the application withdrawal of the three Dollar General Stores on the agenda.

Motion to accept application withdrawal of
Beer and Wine Store Liquor License
Nos. 26599, 26566 and 26598 - Campbell
Seconded - Widener
Yay - Campbell, Widener, Troyan, Jahn, Oravits
Nay - None
Abstained - None
Disposition - Application withdrawal for agenda items 3, 4, and 5 accepted

1. Bar Liquor License No. 06070159 - Request for Rehearing or Review

Frank Mario Zanzucchi, Jr., Agent  Laurence Dellheim, Lienholder
4716, Inc., dba Hi-Liter Gentleman’s Club 4716, Inc., dba Hi-Liter Gentleman’s Club
4716 N. 12th Street 4716 N. 12th Street
Phoenix, AZ 85014 Phoenix, AZ 85014

This matter is set to consider the Licensee’s request for rehearing filed with the Board. This matter is also set to consider the Lienholder’s request for rehearing filed with the Board. The Board voted to affirm the Director’s Decision and Order in Complaint number 17A-0004-LIQ issued June 11, 2018, after a hearing at its Board meeting on September 6, 2018. The Licensee, through its counsel Jacquese L. Blackwell, and Counsel Pro Hac Vice, J. Michael Murray, timely filed a Motion for Rehearing. The Department of Liquor Licenses and Control (Department), through its counsel Michael Raine, filed a Response to 4716, Inc.’s Request for Rehearing. The Licensee filed a Reply in Support of its Motion for Rehearing. The Lienholder Laurence Dellheim, through his counsel Harvey M. Yee, timely filed a Motion for Rehearing. The Department, through its counsel Michael Raine, filed a Response to Lienholder Dellheim’s Request for Rehearing. The Lienholder filed a Reply to Response. Mr. Tellier provided independent legal advice to the Board.

Mr. Murray argued that the charges based on dancer misconduct that occurred on March 17, 2016, should have been dismissed and evidence of those violations should have been excluded as a result of the consent decree entered into by the Licensee and the Director. On July 1, 2016, the Licensee and the Director entered into a Consent Agreement to resolve claims that violations of R19-1-309 had taken place in August 2015. Mr. Murray argued that introducing the charged violations tainted the entire proceeding, and a reversal and remand for a new hearing is required. In addition, bringing the charges based on events that were barred by the Consent Agreement also deprived the Licensee of its right to due process. Mr. Murray stated that rehearing should be granted because the March 2016 violations were critical to the ALJ’s recommendation, adopted by the Director, to revoke the Hi-Liter’s license. Mr. Murray argued the Licensee demonstrated that A.R.S. § 4-202(C), § 4-119, and A.A.C. R19-1-302 were not violated. In addition, Mr. Murray questioned whether the Sunshine Law was violated in the Board’s hearing and whether the Board misconstrued the meaning of R19-1-309.

Mr. Raine argued that the consent agreement expressly applied to only the August 2015 violations. There was no formal allegation regarding the March 2016 undercover operation visit until the State issued its Complaint and Notice of Hearing on October 2, 2017. Mr. Raine stated that the language in the consent agreement supports the Department’s interpretation that it did not intend to resolve a pending investigation that the Licensee was unaware of, which resulted in numerous serious charges that were not
brought until a year and a half after the consent agreement. Mr. Raine argued that the record does not support Hi-Liter’s claim that it thought the consent agreement resolved the March 2016 violations. He added, the Department’s complaint in this case clearly referenced the March 2016 violations and the prior consent agreement, putting Hi-Liter on notice that the Department did not consider the March events resolved. Mr. Raine argued that having the March 2016 facts addressed at the hearing was not prejudicial to Hi-Liter and did not materially affect its rights under A.A.C. R19-1-703(C). Mr. Raine countered the arguments presented that Hi-Liter was “materially prejudiced” under Rule 703(C). Mr. Raine concluded that the penalty was appropriate.

The Board recessed from 11:07 a.m. to 11:17 a.m.

Mr. Widener and Mr. Oravits had questions for Mr. Raine and Mr. Murray. Mr. Campbell stated for the record that Board members did not violate Open Meeting Law as Mr. Murray alleged.

Motion to deny request for reconsideration or rehearing
Reconsideration - Oravits
Seconded - Campbell
Yay - Oravits, Campbell, Troyan, Widener, Jahn
Nay - None
Abstained - None
Disposition - Motion for rehearing or reconsideration denied

Mr. Yee argued that the ALJ, the Director and the Board do not understand the lienholder’s position, and the only remedy is to send the matter back to the ALJ and have a full examination of the lienholder’s position. Mr. Raine presented the Department’s response. There was discussion between Mr. Yee and Mr. Widener. There were questions from the Board for Mr. Yee.

Motion to deny request for reconsideration or rehearing
Or Rehearing - Campbell
Seconded - Jahn
Yay - Campbell, Jahn, Troyan, Widener, Oravits
Nay - None
Abstained - None
Disposition - Motion for reconsideration or rehearing denied

The Board recessed from 12:36 p.m. to 12:45 p.m.

6. **Beer and Wine Bar Liquor License, Application No. 26002 - Original Application**

Maria I. Teran, Agent
El Sinaloa Cafe & Bar
432 E. Michigan
Tucson, AZ 85714

This matter is set for hearing because of public protest. The Applicant and Agent, Maria I. Teran, appeared at the hearing and was not represented by counsel. Claudia Teran was present to interpret for the Applicant. Protestors Jerry Dean Kirchner, Dorothy Lucero and Marcos Lucero were not present and were not represented by counsel. There were questions from the Board.

Mr. Widener made a motion: In the matter of El Sinaloa Café and Bar, I move that the Board approve Application Number 26002. I do note the existence of public protests, but if memory serves me correctly the Tucson City Council actually recommended approval for this license, so apparently the folks in both jurisdictions didn’t think this was an excessive reason for opposition. And I would point out that this cafe has a long history in that part of Tucson and is a somewhat consequential part of the community.
Motion to grant license -
Seconded -
Yay -
Nay -
Abstained -
Disposition -
Widener
Jahn
Widener, Jahn, Troyan, Oravits
Campbell
None
License granted

7. **Bar Liquor License No. 06040027 – Person Transfer Application**

Ross Lee Tucker, Agent
Black Breeze, LLC
Pour House Bar & Grill
3870 E. Highway 260
Star Valley, AZ 85541

This matter is set for hearing because the Town of Star Valley recommended disapproval. The Applicant, Black Breeze, LLC, and its Agent, Ross Lee Tucker, did not appear at the hearing and were not represented by counsel. The Town of Star Valley did not appear at the hearing and was not represented by counsel.

Mr. Oravits made a motion to deny the application based on Star Valley recommended disapproval and the Applicant failed to appear and did not meet its burden of proof.

Motion to deny license -
Seconded -
Yay -
Nay -
Abstained -
Disposition -
Oravits
Jahn
Oravits, Jahn, Troyan, Campbell, Widener
None
None
License denied

C. **Minutes: Review, consideration and action**

- August 2, 2018, General Session and Executive Session
- September 6, 2018, General Session and Executive Session
- October 4, 2018, General Session and Executive Session

Motion to accept minutes of August 2, September 6, and October 4, 2018 -
Seconded -
Yay -
Nay -
Abstained -
Disposition -
Campbell
Oravits
Campbell, Oravits, Troyan, Jahn
None
Widener
Minutes approved

D. **2019 Hearing Schedule: Review, consideration and action**

Motion to approve 2019 Hearing Schedule -
Seconded -
Yay -
Nay -
Abstained -
Disposition -
Campbell
Jahn
Campbell, Jahn, Troyan, Oravits
None
Widener
2019 Hearing Schedule approved
E. **Reports on Current Events, Matters of Board Procedure, Requests and Items for Future Agenda**
   
The next meeting will be January 10, 2019.

F. **Call to the Public**

   None.

The Board adjourned at 1:08 p.m.

[Signature]

Denise M. Bale
Administrator of the
Arizona State Liquor Board

[Date] 5/2/19