Arizona State Liquor Board Hearing Minutes
July 14, 2022

Members Present: Troy L. Campbell – Chair, Lynn Shulman – Vice Chair, Jill Pernice, Matthew Roemer, Victoria Yarbrough and Paul David

Members Absent: None

Counsel Present: Mark Brachtl, Assistant Attorney General

Staff Present: Denise Bale, Board Administrator
Arlene Moreno, Interim Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on July 14, 2022 at 9:00 a.m. with Mr. Campbell presiding. Google Meet was utilized for facilitating the meeting. Board members, staff, and all parties participated either online or telephonically.

Roll Call

All members were present.

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

1. Restaurant Liquor License No. 0121400072822, Application No. 1844444 - Acquisition of Control Application.

Jeffrey Craig Miller, Agent
ACF Yuma LLC
Angry Crab Shack of Yuma
1530 S. Castle Dome Avenue
Yuma, AZ 85244

This matter is set for hearing because the Department is protesting the application. The Applicant, ACF Yuma LLC, and its Agent, Jeffrey Craig Miller, appeared at the hearing and were not represented by counsel. Assistant Attorney General Mark Brachtl appeared on behalf of the Department of Liquor Licenses and Control (Department). Assistant Attorney General Monique Coady was available to provide independent legal advice to the Board. Prior to the hearing, the Applicant filed a request to withdraw its application. The Department did not object to the Applicant’s request to withdraw its application.
Motion to grant request for withdrawal - Campbell
Seconded - Shulman
Yay - Campbell, Shulman, Pernice, Roemer, Yarbrough, David
Nay - None
Abstained - None
Disposition - Withdrawal of Application No. 184444 granted

2. **Bar Liquor License, Application No. 191119 - Original Application.**

Perry Charles Huellmantel, Agent
Who’s Tavern LLC
Who’s Tavern
707 S. Farmer Avenue
Tempe, AZ 85281

This matter is set for hearing because of public protest. Charles Huellmantel and Lauren Proper Potter appeared on behalf of the Applicant, Who’s Tavern LLC, and its Agent, Perry Charles Huellmantel. Public protestor Merrill F. Darcey appeared and was not represented by counsel.

Mr. Bracht brought some preliminary legal matters to the Board’s attention. Mr. Merrill as the protestor is the aggrieved party, and as such, he has the burden in this case of establishing his claim, which is the basis of his protest. The burden of persuasion in this case will fall on his claim. The second point is that the Applicant filed a motion, which is essentially a motion to dismiss on some statutory grounds. Lastly, there is a 15-day rule, A.A.C. 19-1-704, which states that materials must be submitted to the Board 15 days prior to the hearing, and a rebuttal would be submitted 5 days later. That did not occur in this matter. The Board has the ability to waive the 15-day requirement and accept both arguments, and the attachments to their arguments, and then proceed with the hearing. There was Board discussion.

Motion to waive the 15-day requirement
for submissions - Yarbrough
Seconded - Shulman
Yay - Yarbrough, Shulman, Campbell, Pernice, Roemer, David
Nay - None
Abstained - None
Disposition - Waive the 15-day requirement and proceed with hearing

Mr. Campbell called on Ms. Proper Potter and Mr. Huellmantel to present their argument. They believe that the written protest is invalid in two ways, either of which would be sufficient for the Board to invalidate the protest. First, the protest was erroneously filed by an individual. The owner of the property is a trust and a trust is an entity. Entities are required to file various documents to prove that an individual has authority to act on behalf of the entity. Mr. Darcey did not provide these required documents, and as Ms. Proper Potter argued, the written protest should be deemed invalid.

There is also a second ground under which the protest is not sufficiently filed and should be deemed invalid. A.R.S. § 4-201(E) states:

Any natural person residing or owning or leasing property within a one-mile radius of the proposed location may file a written protest with the director on a form prescribed by the director no later than fifteen calendar days after action by the local governing body or sixty days after the filing of the application, whichever is sooner.

The application was filed on February 22, 2022. The 60-day deadline for filing a protest is April 23, 2022. The protest was received on May 2, 2022, and that would make the written protest untimely. The plain language of the statute is the day the application was filed with the Department.
Mr. Darcey was sworn and testified. He recently changed his property to a living trust and he is a resident of the property. Mr. Darcey mailed his written protest to Denise Bale after the City Council meeting on April 28, 2022.

There was Board discussion. Ms. Yarbrough asked on what day a member of the public, who may or may not want to lodge a protest, know that an application existed. Ms. Bale was sworn and testified about Department procedures. Board discussion continued.

Mr. David made a motion:

I move to dismiss the protestor’s claim based on A.R.S. 4-201(E) and the basis of that is that it is not timely.

Motion to dismiss protestor’s claim - David
Seconded - Pernice
Yay - David, Pernice, Campbell, Shulman, Yarbrough, Roemer
Nay - None
Abstained - None
Disposition - Protestor’s claim dismissed

3. In State Microbrewery Liquor License, Application No. 179526 - Original Application.

Denise Marie Maurice, Agent
Barn Star Brewery LLC
Barn Star Brewery
23287 AZ-89
Yarnell, AZ 85362

This matter is set for hearing because the Yavapai County Board of Supervisors recommended disapproval. The Applicant, Barn Star Brewery LLC, and its Agent, Denise Marie Maurice, appeared at the hearing and were not represented by counsel. Director Jeremy Dye of Yavapai County Development Services appeared on behalf of Yavapai County. The County recommended the Applicant request a 60-day continuance of the hearing to allow time for the use permit process and approval prior to obtaining a liquor license. The Applicant affirmed the request for a 60-day continuance.

Motion to accept County’s request for
60-day continuance of hearing - Shulman
Seconded - Yarbrough
Yay - Shulman, Yarbrough, Campbell, Pernice, Roemer, David
Nay - None
Abstained - None
Disposition - Hearing continued to October Board meeting
C. Minutes: Review, Consideration and Action

Motion to approve minutes of
May 5, 2022 General and Executive Sessions,
June 2, 2022 General and Executive Sessions,
and June 9, 2022 - Yarbrough
  Seconded - Shulman
  Yay - Yarbrough, Shulman, Campbell, Pernice, Roemer, David
  Nay - None
  Abstained - None
  Disposition - Minutes approved

D. Reports on Current Events, Matters of Board Procedure, Requests and Items for Future Agenda

The next Board meeting is scheduled for August 4, 2022. Three matters are set for hearing.

The General Effective Date for the Fifty-fifth Legislature, Second Regular Session is September 24, 2022. Board Members will receive an updated Title 4 Book prior to September 24, 2022.

Mr. David introduced process improvement opportunities for the Board.

F. Call to the Public

Merrill F. Darcey addressed the Board.

Motion to adjourn meeting - Shulman
  Seconded - Roemer
  Yay - Shulman, David, Yarbrough, Pernice, Campbell, Roemer
  Nay - None
  Abstained - None
  Disposition - Meeting adjourned at 10:31 a.m.

[Signatures]
Denise M. Bale
Administrator of the
Arizona State Liquor Board

[Date]
August 4, 2022