

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)	OAH No. 12-0392-ABC
PATRICK M. PETERSON)	ABC Board No. 12-04
d/b/a Louies Douglas Inn)	
_____)	

DECISION AND ORDER

I. Introduction

On November 20, 2012 a formal hearing was held to hear the appeal of Patrick M. Peterson. Mark T. Handley, Administrative Law Judge from the Office of Administrative Hearings, conducted the hearing. This hearing was held after several status conferences. Patrick M. Peterson represented himself. Harriet Milks, assistant attorney general, represented the Alcohol Beverage Control Board (Board) staff. John Hartle, city attorney, represented the City and Borough of Juneau (CBJ). The CBJ has taken the lead in defending the CBJ’s protest. The record closed at the end of the hearing.

This case is Mr. Peterson’s appeal of the May 25, 2012 action of the Board, which set for hearing the denied continued operation of the license of Patrick M. Peterson, doing business as Louies Douglas Inn, after upholding a protest filed by the CBJ.

Having reviewed the record in this case the Administrative Law Judge concludes, based on his failure to pay sales taxes that he collected in the operation of Louies Douglas Inn, the protest should be upheld, and that the Board should deny Mr. Peterson’s application for his license renewal. The protest was valid, properly filed, and was not arbitrary, capricious or unreasonable.

II. Facts

A. History

Louies Douglas Inn is a bar located in downtown Douglas, Alaska within the City and Borough of Juneau. Mr. Peterson owns Louies Douglas Inn and its liquor license. The CBJ filed a protest against continued operation of this license.¹ The protest was based on Mr. Peterson’s failure to pay CBJ the sales taxes he collected from the operation of Louies Douglas Inn. Mr. Peterson appealed the protest. The Board referred the appeal to the Office of Administrative Hearings for a formal hearing before an Administrative Law Judge.

¹ CBJ’s protest in the portion of the letter from CBJ Deputy Clerk Beth McEwen to the Board dated February 14, 2012 that is part of the submission filed by the Alaska Department of Law with its letter of November 2, 2012.

An evidentiary hearing was held in order to provide Mr. Peterson with an opportunity to show that the CBJ's protest was arbitrary, capricious and unreasonable.

Prior to the hearing, the CBJ presented documentation of its history of problems with Mr. Peterson's failure to pay the city sale taxes he collected from his customers, and documentation showing Mr. Peterson's recent criminal convictions for collecting, but not paying these taxes to the CBJ.

At the hearing, Mr. Peterson did not dispute his failure to pay the city sales taxes he had collected from the operation of Louies Douglas Inn. Mr. Peterson explained that he intended to pay these taxes, but he would not be able to pay the taxes if his liquor license was revoked because that was how he planned to earn the money to pay the taxes he owed.

B. Findings

Mr. Peterson did not contest any of the evidence submitted by CBJ. Based on the evidence in the record, I conclude that it is more likely than not that:

1. Mr. Peterson was fined \$1000 by the Board in 2009 for late payment of CBJ city sales tax.²
2. After Mr. Peterson came back into compliance for the late payments that led to the fine in 2009, Mr. Peterson fell behind on remitting the sales taxes he was collecting again in February of 2010 and did not come back into compliance.³
3. Mr. Peterson was convicted of the crime of failure to remit city sales tax on March 26, 2003.⁴
4. Mr. Peterson was convicted of four counts of the crime of failure to remit city sales tax on October 5, 2012. As part of his sentence for these criminal convictions, Mr. Peterson is required to pay CBJ \$45,364.41 in restitution. This amount includes \$32,378.51 in unremitted sales tax; \$5,130.68 in interest; \$7,680.22 in penalties; and \$175 in late fees.⁵

III. DISCUSSION

A local governing body may file a protest with the Board to protest the continued operation of an alcoholic beverage dispensary license.⁶ The Board must deny continued operation unless the Board finds that the protest is arbitrary, capricious and unreasonable. The limit of the Board's inquiry is analogous to an appellate court's review of an appealed

² Letter to Mr. Peterson from the Board dated June 17, 2009.

³ Adjudication and Sentence dated March 26, 2012 in Alaska District Court case number 1JU-03-00069CR.

⁴ Affidavit of CBJ Sales Tax Compliance Accountant Clinton Sigletary.

⁵ Affidavit of CBJ Assistant City and Borough Attorney August Petropulos regarding Alaska Court case number 1JU-C12-265CR.

administrative action. When reviewing a protest, the Board may not substitute its judgment for that of the local governing body.⁷

CBJ acted reasonably in filing its protest against Mr. Peterson's liquor license. The protest was neither arbitrary nor capricious. CBJ protested the continued operation of Mr. Peterson's alcoholic beverage dispensary license because his failures to timely transfer sales taxes to CBJ violated local law, which justifies denying continued operation of his alcoholic beverage dispensary license.⁸ CBJ found that Mr. Peterson had violated his local law by failing to pay the city sales tax. This finding was also well supported by the written record and the testimony at the hearing. Mr. Peterson has a history of failing to timely remit the sales taxes he collects in the operation of his alcoholic beverage dispensary license to CBJ, the local taxing authority.

The filing of a protest to the renewal of an alcoholic beverage dispensary license by a local governing body, such as CBJ, is governed by Alaska Regulation 3 AAC 304.145. Under 3 AAC 304.145(g), this regulation specifically provides for circumstances like Mr. Peterson's, where the protest is based on a failure to pay local sales taxes.

Alaska Regulation 3 AAC 304.145(g) provides in pertinent part:

In addition to the other grounds for protest set out in this section, a local governing body may protest the

- (1) renewal or transfer of a license based on nonpayment of delinquent taxes of at least \$200 arising in whole or in part from the conduct of the licensed business;

In addition, Alaska Regulation 3 AAC 304.147, which sets additional filing fees when late sales taxes are paid after a protest is filed, but before a final decision to deny renewal is adopted by the Board, provides that the failure to pay all the delinquent taxes before the Board is notified of the protest is additional grounds to deny renewal.⁹ The delinquent taxes Mr. Peterson collected from his customers in the operation of Louies Douglas Inn and failed to transfer to CBJ are far in excess of \$200. Mr. Peterson did not pay these taxes before the protest was filed. Mr.

⁶ AS 04.11.480(a).

⁷ 3 AAC 304.145(e) & *Stoltz v. City of Fairbanks* 703 P.2d 1155, (Alaska 1985).

⁸ Affidavit of CBJ Deputy Clerk Elizabeth J. McEwen. CBJ's protest in the portion of the letter from CBJ Deputy Clerk Beth McEwen to the Board dated February 14, 2012 that is part of the submission filed by the Alaska Department of Law with its letter of November 2, 2012.

Peterson had not transferred these funds to CBJ by the time the record in his appeal closed.

As stated earlier, a local governing body's protest based on these violations of local law is reasonable, and therefore, as supported by the evidence presented by the CBJ, would necessarily result in the Board's denial of the continued operation of Mr. Peterson's alcoholic beverage dispensary license.¹⁰ A protest is reasonable when based on "logical and traditional grounds" and those grounds are supported by the evidence.¹¹ Violations of law in connection with the operation of the license are logical and traditional grounds for denying continued operation under a license.¹²

IV. Conclusion

The CBJ's protest should be upheld and the Board should deny Mr. Peterson's application for the continued operation of an alcoholic beverage dispensary license. CBJ's protest was not arbitrary, capricious or unreasonable.

V. Order

The continued operation of the beverage dispensary license held by Patrick M. Peterson, doing business as Louies Douglas Inn, is denied based on a protest filed by the CBJ under AS 04.11.480(a).

DATED this 12th day of March, 2013.

By: Signed _____
Mark T. Handley
Administrative Law Judge

⁹ The statutory provision giving the Board authority to deny renewal for nonpayment of taxes is found at AS 04.11.330(b).

¹⁰ AS 04.11.480(a).

¹¹ *Stoltz v. City of Fairbanks* 703 P.2d 1155, (Alaska 1985).

¹² *Alaska Alcoholic Beverage Control Bd. v. Malcolm, Inc.*, 391 P.2d 441, (Alaska 1964).

Non-Adoption Options

B. The undersigned, on behalf of the Alcohol Beverage Control Board and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

The City and Borough of Juneau lifted the protest. A motion by the ABC Board of Directors was made to approve the license and was unanimously approved.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 30th day of May, 2013.

By: Signed
Signature
Robert Klein
Name
Chair Alcoholic Beverage Control Board
Title

[This document has been modified to conform to the technical standards for publication.]