

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

FANTASIES ON 5th AVENUE, LLC,

Appellant,

vs.

STATE OF ALASKA, ALCOHOLIC
BEVERAGE CONTROL BOARD,

Appellee.

CASE NO. 3AN-17-05294CI

ORDER

The Alcoholic Beverage Control Board denied the application of Fantasies on 5th Avenue, LLC for the renewal of a liquor license. Fantasies appealed and was afforded an evidentiary hearing. An administrative law judge upheld the denial and the board adopted that decision. Fantasies appeals to the superior court.

Alaska Statute 04.11.330 identifies the reasons the board might deny the renewal of a license. In addition to various specific reasons, there is a broad catchall: “(9) the license was issued under AS 04.11.400(g), and the board finds that the public convenience does not require renewal.”¹ Regulations identify the factors the board should consider in determining the public convenience. They include:

¹ AS 04.11.330(a)(9).

(1) the applicant's, the applicant's affiliates', the transferee's, or the transferee's affiliates' histories of commission of

...

B) a violation of AS 04 or regulations adopted by the board;

...

(2) whether the applicant, the applicant's affiliates, the transferee, or the transferee's affiliates are untrustworthy, unfit to conduct a licensed business, or a potential source of harm to the public; ... and;

(4) all other factors the board in its discretion determines relevant to the public interest.²

The board concluded that it would not be in the public interest to renew the license. Among the reasons were allegations of wage and hour law violations and the nearly complete abdication of the licensee from oversight of the operation of the bar.

Fantasies argues that the board cannot use wage and hour violations as a reason not to renew a liquor license and, if it can, that there was insufficient proof of any violation. Fantasies argues that there is no requirement that a licensee have any set or minimal level of involvement in the operation of the bar.

The Court concludes that wage and hour violations as well as a licensee's non- or minimal involvement can be factors in determining the public

² 3 AAC 304.180.

interest. The Court notes that the legislature had given the board broad authority in this field.³

The Court concludes that there is substantial evidence to support the board's factual findings and the board had a rational basis for concluding that renewal of Fantasies' license was not in the public convenience or public interest.

The Court adopts the reasoning put forth by the board in its brief.

DONE this 8th day of January 2018, at Anchorage, Alaska.



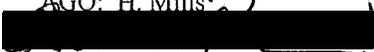
William F. Morse
Superior Court Judge

CERTIFICATE OF SERVICE

I certify that on 8 January 2018
a copy of the above was emailed/mailed to each of the
following at their addresses of record:

B. Stibitz

AGO: H. Mills


Ellen Bozzini
Judicial Assistant

³ *State v. Decker*, 700 P.2d 483, 487 (Alaska 1985) (“We recognize that AS 04.11.320(a)(1) vests the board with discretion to deny liquor licenses not in the public interest. According to the legislature, AS 04.11.320(a)(1) “authorize[s] broad discretion in denial [of liquor licenses] for any reason found incompatible with the public interest.”)(footnote omitted).