

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of)	
)	
<u>CORDOVA HOTEL AND BAR</u>)	OAH No. 18-0070-ABC
)	Agency No. 277 & 278

DECISION GRANTING SUMMARY ADJUDICATION

I. Introduction

This case involves a dispute over the Alcohol Beverage Control Board’s (Board) denial of the renewal of two liquor licenses owned by Dorene Wickham d/b/a the Cordova Hotel and Bar. The facts of this case, however, demonstrate that the licenses had already been renewed by the Board’s staff. As a result, the Board cannot deny renewal of these previously renewed licenses, even if the renewal was done in error by Board staff. Instead, the recourse is for Board staff to initiate revocation proceedings, at which point Ms. Wickham may request a hearing to challenge those proceedings. As a result, Board’s denial of the renewals for these two liquor licenses is reversed on purely procedural grounds.

II. Facts and Procedural History

Dorene Wickham d/b/a the Cordova Hotel and Bar is the owner of both an alcohol beverage dispensary liquor license (license 277) and a package store liquor license (license 278). She applied to renew both of those liquor licenses. Board staff received the applications on March 3, 2017.¹ On March 6, 2017, Board staff sent the City of Cordova (City) notice that Ms. Wickham had submitted renewal applications for both liquor licenses and that the City had 60 days to protest those license renewals.² Only two days thereafter, before the time for protesting the renewals had passed, Board staff issued both renewed liquor licenses on March 8, 2017.³

The City filed a protest to the liquor license renewals on April 20, 2017. Its protest was conditioned upon payment of delinquent sales taxes.⁴ On May 31, 2017, Board staff again issued renewed licenses for the two liquor licenses.⁵

There is nothing in the record stating or otherwise providing that either the March 8 or the May 31 renewals were temporary or contingent upon subsequent Board approval. Instead, each

¹ Administrative Record (AR) 9 – 13, 16 – 20.
² AR 14, 21.
³ AR 1, 3.
⁴ AR 22.
⁵ AR 2, 4.

of the issued licenses read that they are for “2017 – 2018” and the entry area on each which could be filled in to indicate they expired before December 31, 2018 is blank.⁶

The Director placed the renewal of Ms. Wickham’s two liquor licenses before the Board during the Board’s July 11, 2017 meeting. In that meeting, the Board was notified that the City had filed a conditional protest, and the Board approved renewal of the liquor licenses with delegation to the Alcohol & Marijuana Control Office’s director (Director).⁷ On July 19, 2017, the Director sent Ms. Wickham notice that her liquor licenses had been approved for renewal, subject to the payment of the City’s delinquent sales taxes by September 15, 2017.⁸ On September 19, 2017, the City informed Board staff that the “condition” (*i.e.* payment of delinquent sales taxes) had not been satisfied.⁹

On October 30, 2017, the Director sent Ms. Wickham notice that her two liquor licenses had expired because she had not paid the back taxes to the City, as required as a condition for renewal of those liquor licenses.¹⁰

Ms. Wickham requested a hearing to dispute the non-renewal of her two liquor licenses. After a review of the record, an Order to Show Cause was issued which required the parties to address the issue of whether summary adjudication should be issued in Ms. Wickham’s favor on solely procedural grounds. Ms. Wickham did not respond to the Order to Show Cause. The Director did not oppose granting summary adjudication in Ms. Wickham’s favor.¹¹

III. Discussion

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.¹² It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If facts that are undisputed establish that one side or the other must prevail, the evidentiary hearing is not required.¹³ There are no disputed facts in this case, which are drawn solely from a review of the administrative record.

⁶ AR 1 – 4.

⁷ AR 27.

⁸ AR 28.

⁹ AR 29.

¹⁰ AR 39 – 40.

¹¹ See *Agency Response to Order to Show Cause* dated June 21, 2018.

¹² See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

¹³ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 *Pierce, Administrative Law Treatise* § 9.5 at 813 (5th ed. 2010).

The undisputed facts show that Board staff issued both of Ms. Wickham’s renewed liquor licenses on two separate occasions, March 8 and May 31. This multiple renewal occurred before the Board’s meeting on July 11, 2017, wherein the Board approved the renewal subject to Ms. Wickham’s payment of the City’s delinquent sales taxes. Although the Board’s staff’s renewal of Ms. Wickham’s liquor licenses may have been done in error,¹⁴ this case raises the question of whether the Board can deny renewal of liquor licenses that had already been renewed. In essence, was the denial of the renewal by the Director, under delegation from Board, a *de facto* revocation of the previously renewed licenses?

Assuming, solely for the purposes of argument, that the March 8 and May 31 renewals of Ms. Wickham’s liquor licenses were done in error, this raises the question of whether a *de facto* revocation of an erroneously issued liquor license is procedurally proper: can the Board, and by extension the Director acting under delegation, decline to renew a previously erroneously renewed liquor license?

The pertinent licensing statutes and regulations do not contain a provision wherein once a liquor license has been renewed, even if erroneously, that allows the Board to revisit the renewal. The Board, or the Director acting on the Board’s behalf, does not have a “do over” on erroneously issued renewals. Instead, once renewed, a liquor license is valid for “the time period prescribed by the board. The period shall be clearly designated on the permit.”¹⁵ In this case, the renewal period expires on December 31, 2018.¹⁶

This does not mean that there is no remedy for erroneously issuing a license. However, the only process for terminating or rescinding an erroneous renewal is through the revocation process. Liquor license revocations are required to follow the procedures set out in the Administrative Procedure Act.¹⁷ This requires that the Director must first file an accusation containing the reasons why revocation is requested, and the statutory/regulatory justification for the revocation.¹⁸ That accusation must be then served upon the respondent, who may then contest

¹⁴ Board staff issued the March 8, 2017 renewal before the deadline had passed for filing protests. The May 31, 2017 renewal was issued despite the City’s protest. Neither renewal appears to have been approved by the Board.

¹⁵ AS 04.11.680(b).

¹⁶ AR 1 – 4; AS 04.11.680(a).

¹⁷ AS 04.11.510(c). There is one notable exception to this requirement, which is when a licensee has been convicted of a violation of an applicable statute, regulation, or ordinance. AS 04.11.370(a)(4); AS 04.11.510(c).

¹⁸ AS 44.62.360.

the accusation and have a hearing. If that hearing results in a decision against the respondent, then the liquor license is revoked.¹⁹

In this case, however, the Director did not begin a revocation action as required by the Administrative Procedure Act. Instead, the Director acted as though the liquor licenses had not been renewed. However, because the liquor licenses had already been renewed, the denial of the renewal is invalid. Summary adjudication is therefore entered in favor of Ms. Wickham. Her liquor licenses were renewed and remain active.

IV. Conclusion

Ms. Wickham's two liquor licenses were renewed by Board staff. As a result, they remain in full force and effect. If Board staff believes that the renewals were done in error, the appropriate procedure is for Board staff to initiate an Administrative Procedure Act compliant revocation action, at which point Ms. Wickham may request a hearing to challenge that action.

DATED: June 25, 2018.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

Adoption

The Alcoholic Beverage Control Board adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 14th day of August, 2018.

By: *Signed* _____
Signature
Robert Klein _____
Name
Board Chair _____
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

¹⁹ See AS 44.62.350 – 640 for the general rules governing hearings conducted pursuant to the Administrative Procedure Act.