

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

In the Matter of)	
)	
HAUTE QUARTER GRILL, INC.,)	OAH No. 23-0586-ABC
DBA TABLE 6)	Agency No. AMCO-4847

DECISION

I. Introduction

Haute Quarter Grill, Inc. (Haute Quarter) is a business managed and co-owned by Alex Perez III.¹ Prior to the onset of the COVID pandemic Haute Quarter profitably operated the Table 6 restaurant in Anchorage, for which it held alcoholic beverage dispensary license #4847 (referenced herein as the “Table 6 license”). Unfortunately, by the end of 2020 the economic pressures of the pandemic had forced the closure of Table 6 with no plans to reopen.

When the Table 6 license came up for renewal at the end of 2020, Mr. Perez chose to let the license expire in lieu of paying a \$2,500 renewal fee. In doing so Mr. Perez contends he relied upon assurances from staff at the Alcohol and Marijuana Control Office (AMCO) that it would be relatively easy to later reinstate that license. While reinstatement of an expired beverage dispensary license is theoretically possible under regulations adopted by the Alcohol Beverage Control Board (the “Board”), a statutory cap on the number of those licenses within the Municipality of Anchorage made it doubtful that the Table 6 license could be reinstated if Haute Quarter failed to renew it.

The record here shows that AMCO staff offered guidance to Mr. Perez that was confusing in some respects, and that he was not advised of issues which could make it difficult for the Board to reinstate the Table 6 license if it was allowed to expire. However, this decision concludes that Haute Quarter is not entitled to any relief since: (1) the guidance provided by AMCO, though flawed in some respects, was sufficient to advise Mr. Perez that Haute Quarter would not retain any type of ownership right in the Table 6 license if it was allowed to expire; and (2) AMCO did not have the burden of warning Mr. Perez of circumstances that might prompt the Board to deny a reinstatement request. Accordingly, the Board’s denial of Haute Quarter’s reinstatement request is affirmed.

¹ Exhibit 11 at p. 4.

II. Facts

A. *The 2020 Surrender of the Table 6 License*²

Prior to the onset of the COVID pandemic, Table 6 was a thriving Anchorage restaurant operated by Haute Quarter. When opening Table 6, Haute Quarter purchased the establishment's beverage dispensary license from another Anchorage establishment that was closing its operations. From this experience, and his prior work in opening the Haute Quarter Grill, Mr. Perez understood that there is a set number of beverage dispensary licenses available in the Anchorage area and that the Board is not issuing any more.

Beginning in March 2020, a series of public health mandates either prohibited or greatly restricted dine-in service at bars and restaurants in the Municipality of Anchorage. Due to the resulting financial pressures Mr. Perez decided to permanently close Table 6. Despite this closure, Mr. Perez initially decided to renew the Table 6 license, which was set to expire on February 28, 2021.³ To that end, in October 2020 Mr. Perez submitted a renewal application to AMCO on behalf Haute Quarter, along with check for \$2,800 to cover the \$2,500 license fee and \$300 processing fee.⁴ AMCO Licensing Examiner Olivia Frank was assigned responsibility for processing this renewal application.

On November 2, 2020, Ms. Frank sent an email to Mr. Perez which sought clarification of some information he had provided in the application. Mr. Perez responded to Ms. Frank in emails dated November 2 and 5. Nothing in these responses suggested a desire on the part of Mr. Perez to withdraw the renewal application.⁵

At some point thereafter Mr. Perez began calling AMCO's offices to request that the renewal be cancelled and that the \$2,800 check be returned. While AMCO does not have any record showing how many times Mr. Perez may have called, there is evidence that he left a voice mail message on December 16 advising that he did not want to proceed with renewal of the Table 6 license.⁶

² Unless otherwise attributed to a different source, the facts related in this section are from the hearing testimony of Mr. Perez.

³ 3 AAC 304.160(a) (license renewal application due on or before December 31).

⁴ Exhibit 2.

⁵ Exhibit 3 at pp. 6-8.

⁶ Exhibit 4.

On December 20, 2020, Mr. Perez sent an email to Ms. Frank which began a series of back-and-forth messages regarding his desire to cancel the renewal of the Table 6 license and obtain a refund of the renewal fee. The key portions of those emails are set out below:⁷

Sunday, December 20, 2020

Mr. Perez (12:41 a.m.): I have called and left messages that I will not be renewing this license for 2021. I would like to be reimbursed the \$2,800 fee I paid in October.... Please contact me by phone at [telephone number] so we can discuss a reimbursement check being sent as soon as possible.

Monday, December 21, 2020

Ms. Frank (8:25 a.m.): Please mail your current 2019-2020 license to our office...along with a written notice to expire the license. The statute and regulation below address surrender of licenses.

[Full text of AS 04.11.580]

3 AAC 304.195 Surrender of license

Within 10 days after the loss or surrender of the licensed premises, or if a licensee ceases to conduct business upon the licensed premises for a period expected to continue for one month or more, the licensee shall inform the director and surrender the license to the director. *The license will be reissued upon request when the conduct of business is resumed or upon transfer of the license.*

(Emphasis added.)

Mr. Perez (9:31 a.m.): Reading this information is a bit confusing. I'm not surrendering license ownership, correct?

I'm surrendering the ability to use this liquor license at its current location. Upon receiving this notification you will issue me another license saying it is not currently in operation.

Would this be accurate?

Ms. Frank (3:47 p.m.): No, we would only issue a new license if it's renewed & operating.

If you do not intend to renew the license, it will be expired after 2/28/21 & you will be required to surrender the license to our office.

⁷ Exhibit 3 at pp. 1-4.

If you wish to continue ownership of the license and operate it in the future or sell the license, you will have to complete the renewal process. (Emphasis added.) If the license is not operated for 30 consecutive days or longer, the license will need to be surrendered to our office & we will reissue it when needed.

Mr. Perez (4:17 p.m.): I guess my question is this. I own the license outright, correct. If and when I want to put it back in operation or [sell] it I would then need to reapply to have my license brought back to operating status. The state does not take ownership. The license is my property but will be inactive until I wish to change the status of its use. Is this correct?

The idea of spending \$2800 to have a license I cannot use at the present location seems like a bad decision considering Anchorage is and appears to be staying on lockdown.

Tuesday, December 22, 2020

Ms. Frank (12:41 p.m.): I apologize for the delay, I had to ask management a couple of questions before I could get back to you.

It's written into statute & regulations. *If you wish to continue ownership of the license and operate in the future or sell the license, you will have to complete the renewal process.* (Emphasis added). If the license is not operated for 30 days or more it will need to be surrendered to our office. You will still have the ability to operate or transfer the license after it's renewed.

If the license expires 2/28/21, you will have to go through the reinstatement process if you wish to operate again. The reinstatement would also need board approval. Please see 3 AAC 304.160(e) & (f). [The full text of subsections (e) and (f) followed.]

In addition to these email exchanges, Mr. Perez asserts that he had telephone communications with AMCO staff in this timeframe where was told that "renewing the license should not be an issue later and that many things were up in the air due to COVID."⁸

On December 28, 2020, AMCO Licensing Examiner Nathan Hall sent an email to Mr. Perez in response to a voicemail message he had left on December 16. In this email Mr. Hall

⁸ Exhibit 7 at p. 7; Mr. Perez also described having telephone conversations with AMCO staff during his hearing testimony.

asked Mr. Perez to send a reply email confirming his intention not to renew the Table 6 license and obtain a refund of the renewal fee.⁹ Notably, Mr. Hall did not mention anything about Mr. Perez having to immediately surrender the license. It can be readily inferred from the text of this email that Mr. Hall was unaware of the prior email communications that occurred between Mr. Perez and Ms. Frank prior to the Christmas holiday. There is no indication in the record that Mr. Perez responded to Mr. Hall's email.

Also on December 28, Mr. Perez surrendered the Table 6 license at the AMCO offices in Anchorage. With the license was a handwritten note from Mr. Perez which advised:

I am returning my license and will not be renewing it for 2021. I would like to be reimbursed my \$2,800 which cleared my bank in October.¹⁰

In response to this note, Carrie Craig – AMCO's then and current Records and Licensing Supervisor – sent a letter to Haute Quarter confirming receipt of the Table 6 license and advising that while the \$300 application fee was non-refundable, the \$2,500 license fee would be returned once a refund request form had been filled out and submitted.¹¹

B. Haute Quarter Unsuccessfully Pursues Reinstatement

In January 2022, Mr. Perez contacted an AMCO licensing examiner to request information on reinstating the Table 6 license.¹² For reasons not addressed in the record, another year went by before Mr. Perez submitted the paperwork required to start the reinstatement process. The documents he eventually submitted to AMCO in February 2023 consisted of applications for retroactive waivers of the operation requirements of AS 04.11.330 for 2021 and 2022, and a separate form requesting reinstatement of the Table 6 license.¹³ After the forms were processed by AMCO staff, the reinstatement request was considered by the Board at a meeting on August 22, 2023. Mr. Perez telephonically attended the meeting on behalf of Haute Quarter.

At the outset of the Board's consideration of the reinstatement request, the chairman noted:

This is a difficult situation because, as it's a beverage dispensary license in the Municipality of Anchorage, there is a cap due to population on the number of those license types, and currently...Anchorage is over that cap. So...any license

⁹ Exhibit 4.

¹⁰ Exhibit 5.

¹¹ Exhibit 6.

¹² Exhibit 7.

¹³ Exhibits 9 and 11.

that fails to renew, essentially goes away and cannot be reissued to another license type.¹⁴

In response, Mr. Perez explained to the Board, there were two reasons why Haute Quarter had not renewed the Table 6 license: (1) because of the pandemic the decision had been made to close the restaurant; and (2) he was told by AMCO staff that “if and when I was ready to renew the license that I would be able to renew the license by going through the processes, which is why I did it.”¹⁵ In response to these statements, the Board chair went through the email exchanges detailed above and commented, “I’m confused, it seems like you just kind of changed your mind.”¹⁶ In responding to this, Mr. Perez explained that throughout his communications with AMCO staff in December 2020, “I was never given any doubts that I would be able to renew my license.”¹⁷ In response to a comment by a Board member, Mr. Perez stressed that, “I was never told you’ll never get to use your license again.”¹⁸

While the Board members were sympathetic, they focused on the email communications which, in their view, appropriately set out the applicable laws and regulations without offering any assurances as to what might happen in the future if the Table 6 license was not renewed. Concerns were also expressed about the wisdom of allowing a licensee to seek reinstatement two years after deliberately choosing not to renew.¹⁹ After discussion was closed, the renewal application was denied by a 5-0 vote under 3 AAC 304.160(f)(2)(D), which provides that the Board will deny a request for reinstatement of an expired license if it finds the licensee’s actions constituted a “failure to operate the business for which the license was issued.”²⁰

C. *The Hearing on Haute Quarter’s Appeal*

Haute Quarter timely requested an administrative hearing on September 7, 2023.²¹ At the hearing, which was held by videoconference on December 6, 2023, AMCO introduced 16 exhibits that were admitted into evidence and offered the testimony of Ms. Craig. In her testimony, Ms. Craig reviewed the 2020 email exchanges between AMCO staff and Mr. Perez

¹⁴ Exhibit 14, timestamp 3:41:19.

¹⁵ *Id.* at timestamp 3:42:59.

¹⁶ *Id.* at timestamp 3:46:29.

¹⁷ *Id.* at timestamp 3:46:50.

¹⁸ *Id.* at timestamp 3:56:48.

¹⁹ *Id.* at timestamp 3:57:10 – 4:02:23.

²⁰ *Id.* at timestamp 4:12:31.

²¹ Exhibit 16.

and explained why she believed that the information provided to Mr. Perez was accurate. Notably, Ms. Frank – who is no longer employed by AMCO – did not testify.

Mr. Perez appeared on behalf of Haute Quarter, and he testified as to the circumstances leading up to his decision to surrender the Table 6 license, his understanding of the information AMCO staff provided via email, and telephone conversations with unnamed AMCO staff in which he claimed to have been reassured that, if he surrendered the Table 6 license, getting it reinstated in the future would be a relatively simple administrative matter .

III. Discussion

A. *Legal framework of review.*

Beverage dispensary licenses issued are issued for periods of two calendar years, with applications to renew due by December 31 of the second year.²² A licensee has until February 28 of the following year to submit a delinquent application with the payment of an additional \$500 late fee.²³ Regardless of whether a licensee applies for a renewal, its license does not expire until 12:00 midnight on February 28 following the end of the second calendar year.²⁴

There is no provision in the Alaska Statutes addressing the reinstatement of a license for which a renewal application was not submitted prior to the February 28 deadline. To fill that gap the Board adopted 3 AAC 304.160(e), which allows a licensee to seek reinstatement of an expired license by submitting a written application to the board, paying required fees and penalties, and providing “proof of good cause for the failure to file and pay by February 28.” With this, at 3 AAC 304.160(f) the Board set out a series of scenarios where reinstatement requests will be denied regardless of the surrounding circumstances. The portions of this regulation that are relevant here are set out below:

(f) The board will deny a request for reinstatement submitted under (e) of this section if

- (1) the license became available in accordance with 3 AAC 304.100(2) and was issued to a different applicant, unless the limit of licenses under AS 04.11.400 has not been reached; or
- (2) the board finds that the failure to timely file or pay was caused by

* * * *

²² See AS 04.11.090(b); AS 04.11.270(b)(2).

²³ AS 04.11.270(b)(3); AS 04.11.540.

²⁴ AS 04.11.540.

(D) any other action of the licensee whether active or tacit that the board finds constitutes a failure to lawfully operate the business for which the license was issued.

When a reinstatement request is initially denied by the Board, the licensee may request a formal hearing before an administrative law judge (ALJ) conducted under the Alaska Administrative Procedure Act.²⁵ After the ALJ conducts that hearing and issues a proposed decision, the matter is returned to the Board for a final decision that is made with the benefit of the additional evidence and legal arguments presented during the formal hearing.²⁶ Since Haute Quarter is seeking to change the status quo by reinstating an expired license, under AS 44.62.460(e)(2) and 2 AAC 64.290(e) it bears the burden of proof in this proceeding.²⁷

As noted above, the Board denied Haute Quarter's reinstatement request under 3 AAC 304.160(f)(2)(D) based on its failure to lawfully operate the business for which the license was issued.²⁸ Since it is undisputed that Table 6 never operated following the restaurant's closure in 2020, this means the Board's decision should be upheld unless Haute Quarter can establish that it was provided inaccurate information by AMCO staff that excuses its failure to renew and operate the Table 6 license.

In its prehearing brief, AMCO argues that Haute Quarter's appeal should be denied since the information AMCO staff provided in the December 2020 emails was accurate, and that Mr. Perez's decision to surrender the license was primarily driven by pressing short-term financial concerns.²⁹ Not addressed in AMCO's brief was the extent to which Haute Quarter would be entitled to reinstatement of the Table 6 license if the guidance provided by AMCO was deemed misleading to some extent. While Haute Quarter did not submit a prehearing brief, at the hearing Mr. Perez argued that he would not have allowed the Table 6 license to lapse but for reassurances offered by AMCO staff that it would be a relatively simple matter to get the license reinstated at some future point.

²⁵ AS 04.11.510(b)(1).

²⁶ Although it may seem unusual for the Board to be effectively second guessing its first decision, this process is a well-established feature of Alaska administrative law. See *In re Fantasies on Fifth Avenue*, OAH No 16-0898-ABC (ABC Board 2016), at p. 22, quoting *In re Palmer*, OAH No. 09-0133-INS (Director of Insurance 2009), at pp. 6-7 (describing this decision-making paradigm in the context of professional licensing cases).

²⁷ See also *Rollins v. State, Department of Public Safety*, 312 P.3d 1091 (Alaska 2013) (holding that licensee seeking a waiver of the 30-day operating requirement bore the burden of proof).

²⁸ Exhibit 15.

²⁹ AMCO Prehearing Brief at 6.

As covered below, this decision will first address the extent to which Haute Quarter has proven that Mr. Perez was provided verbal assurances by AMCO staff that supplemented or expanded upon the information contained in the email exchanges set out above. From there, the decision will analyze whether the communications that indisputably occurred were so misleading that Haute Quarter is entitled to reinstatement of the Table 6 license.

B. *Haute Quarter failed to prove that Mr. Perez was provided any verbal assurances by AMCO staff regarding a future reinstatement of the Table 6 license.*

Consistent with comments he made to the Board, during his hearing testimony Mr. Perez asserted that, at some undefined point in late-2020, he had telephone conversations with unidentified AMCO staff in which he was advised that reinstatement would be a readily available option if he chose not to renew the Table 6 license. There are two reasons why that testimony cannot be credited here.

First, Mr. Perez offered little in the way of specifics regarding these alleged telephone conversations. Absent from his testimony were any details such as the time and date of these conversations, the identity of the individuals with whom he was conversing, or details as to the specific points that were discussed. In a setting where Haute Quarter carries the burden of proof, such ambiguous testimony is not enough to support a finding that AMCO staff offered any verbal assurances to him regarding a future reinstatement of the Table 6 license.

A second reason for rejecting Mr. Perez's testimony is the lack of reference to any telephone conversations in the email exchanges of December 20-22. Notably, the first email Mr. Perez wrote begins with the statement, "I have called and left messages that I will not be renewing this license for 2021." From this statement it can be inferred that Mr. Perez was resorting to email communications because he was unable to speak with AMCO staff via telephone. Nor is there any reference to prior telephone conversations in the ensuing email exchanges. If any such conversations had occurred, it would have been odd for Mr. Perez and Ms. Frank to never mention those in the messages they exchanged.

Accordingly, the question of whether Haute Quarter was misled in some manner by AMCO staff must be resolved based solely on the email communications that were admitted into the evidence at the hearing.³⁰

³⁰ See Exhibits 3 and 4.

C. *AMCO provided some misleading information to Mr. Perez in the email exchanges of December 20-22, 2020.*

In reviewing the December 20-22 email exchanges, two key considerations quickly emerge. First, this is not a situation where Mr. Perez came to AMCO seeking advice as to what he should do with the Table 6 license. To the contrary, his email of December 20 clearly advises that he had already decided not to renew the Table 6 license and simply needed information on being reimbursed the \$2,800 that Haute Quarter paid AMCO in October of that year.³¹

Second, Ms. Frank erred when she responded by instructing Mr. Perez that 3 AAC 304.195 was the regulation which controlled his request. That regulation has no bearing whatsoever on the renewal or non-renewal of a license, or the refund of fees paid to AMCO. Instead, that regulation addresses the surrender of a license following: (1) the “loss or surrender of the licensed premises;” or (2) a cessation of operations at the licensed premises for a period expected to last more than a month. The regulation goes on to provide that in either of those scenarios the license should be surrendered to “the director” (i.e., AMCO), after which the license will be “reissued upon request.” The Alaska Supreme Court has previously held that a license surrendered to the director under this regulation is to be reissued by the director when “the business is resumed.”³²

Lacking the benefit of Ms. Frank’s testimony, the most plausible explanation for her reference to 3 AAC 304.195 is that she mistakenly believed that a decision not to renew a license was tantamount to a surrender of that license. Ms. Frank appears to have overlooked the fact that the Table 6 license remained valid until February 28, 2021, and that Mr. Perez’s decision to not seek a renewal did not cause that license to become immediately null and void, or otherwise trigger an obligation to immediately surrender the license to AMCO.³³

While one could theorize that Ms. Frank believed that the Table 6 license should be surrendered because the restaurant had closed, she quoted 3 AAC 304.195 to Mr. Perez without being told that had occurred. When Mr. Perez commented in a later email that he was unable to use the Table 6 license at the “present location” for unspecified reasons, Ms. Frank never

³¹ Exhibit 3 at p. 4.

³² *Rollins*, 991 P.2d at 209.

³³ It should be noted that Mr. Perez could have changed his mind and sought renewal of the license at any point prior to February 28, 2021, by re-submitting the renewal application and paying the \$500 penalty fee required by AS 04.11.270(b)(2). Demanding immediate surrender of the license was a course of action incompatible with that statutory right.

confirmed what he meant by that. Though it is conceivable that Ms. Frank made a general assumption that Table 6 had been closed because of the ongoing COVID health mandates, nothing in the record suggests that AMCO was telling licensees in the Municipality of Anchorage to immediately surrender their licenses after closing bars or restaurants in response to those mandates. Thus, the only apparent reason for Ms. Frank to quote 3 AAC 304.195 to Mr. Perez was because she incorrectly concluded that a licensee is obligated to promptly surrender a license upon deciding not to renew it.

It is thus not surprising that when Mr. Perez wrote back to Ms. Frank, he began with the comment, “Reading this information is a bit confusing.” That confusion was manifest in the remainder of his message as evidenced by comments such as, “I’m not surrendering license ownership, correct?” and “you will issue me another license saying it is not currently in operation.” If viewed in isolation those comments might seem odd, but when evaluated through the prism of 3 AAC 304.195 they make a great deal of sense given the regulation’s reference to a surrendered license being “reissued upon request.”³⁴

Apparently without realizing the cause of Mr. Perez’s confusion, Ms. Frank responded to him by correctly advising that Haute Quarter would have to renew the Table 6 license if it wanted to continue owning it. This did not completely clarify matters for Mr. Perez, however, as shown by the ensuing response where he sought confirmation that Haute Quarter would continue to “own the license outright,” and that he would just need to “reapply to have my license brought back into operating status.” Nothing in Ms. Frank’s emails suggests awareness on her part that Mr. Perez’s questions were logical given the language of the regulation she had previously quoted to him.

In the final message of this email exchange sent to Mr. Perez on December 22, Ms. Frank again correctly advised that Mr. Perez would have to complete the renewal process if he wanted to “operate in the future or sell the license.” Ms. Frank concluded her message by accurately advising Mr. Perez that the Table 6 license remained valid until February 28, 2021, and that any subsequent reinstatement would be a matter for the Board to consider under 3 AAC 304.106.

³⁴ There is another regulation – 3 AAC 304.170 – that permits licensees to waive the operating requirement set by AS 04.11.330 while retaining ownership of the license. However, that regulation does not include the word “surrender” anywhere in its text, was never referenced by Ms. Frank in her communications with Mr. Perez and requires a licensee to pay the license renewal fee – something Mr. Perez clearly wanted to avoid here.

What Ms. Frank did *not* say is also important. As the Board chair immediately noted when Haute Quarter’s reinstatement request came up for consideration in August 2023, the fact there are more beverage dispensary licenses in the Municipality of Anchorage than is allowed under the statutory cap set by AS 04.11.400 arguably foreclosed the possibility of reinstatement. Whether Ms. Frank was personally aware of these circumstances is unknown, but her last email mentions that she had consulted with “management” at AMCO prior to writing it. An issue so immediately apparent to the Board’s chairman would presumably have been recognized by the “management” with whom Ms. Frank consulted prior to sending her final email.

D. *The inaccurate information AMCO provided to Mr. Perez does not entitle Haute Quarter to reinstatement of the Table 6 license.*

While Mr. Perez was correctly informed that the Table 6 license would have to be renewed if Haute Quarter wanted to sell or operate it in the future, some understandable confusion resulted when he was incorrectly advised that 3 AAC 304.195 applied in this context. Nor was Mr. Perez advised that the Board was unlikely to approve a reinstatement request so long as there was an excess of beverage dispensary licenses within the Municipality of Anchorage. Given these facts, it is necessary to analyze whether AMCO’s actions obligate the Board to grant reinstatement of the Table 6 license under the doctrine of equitable estoppel.

In the administrative law context, equitable estoppel comes into play when the facts support the following elements:

- (1) a public agency asserts a position by words or conduct;
- (2) a private party acts in reasonable reliance thereon;
- (3) the private party suffers resulting prejudice; and
- (4) the estoppel serves the interest of justice so as to limit public injury.³⁵

Under this last element, it has been held that equitable estoppel cannot be used to compel a state agency “to take unlawful or otherwise unauthorized action.”³⁶

This doctrine has been discussed in a number of Alaska Supreme Court cases where private parties claimed to have been harmed through their reliance upon misleading guidance provided by employees of state or municipal agencies.³⁷ Of those, the most instructive in this

³⁵ *North Slope Borough v. State*, 484 P.3d 106, 120 (Alaska 2021)

³⁶ *Alaska Trademark Shellfish, LLC v. State, Dep't of Fish & Game*, 91 P.3d 953, 960 (Alaska 2004).

³⁷ *See, e.g., Municipality of Anchorage v. Schneider*, 685 P.2d 94, 98 (Alaska 1984) (reinstating building permit issued by Municipal employees who were unaware of recent changes to zoning ordinances); *Alaska Trademark Shellfish*, 172 P.3d at 767 (estoppel not applied based on DNR representatives allegedly misstating the

context is *Veco International, Inc. v. Alaska Public Offices Comm'n*,³⁸ where the director of the Alaska Public Offices Commission incorrectly advised the chief executive of a corporation that a proposed employee funded political action committee would not be subject to contribution reporting requirements. Six months later the director issued a letter that largely countermanded the earlier advice she had given. The corporation was later fined by the Commission for violating contribution reporting requirements for periods both before and after that corrective letter was issued.³⁹

In resolving the corporation's subsequent appeal, the Alaska Supreme Court applied the doctrine of equitable estoppel to conclude that the corporation reasonably relied on the guidance it have been provided by the director up to the time it received the letter correcting the inaccurate information it was previously provided. From that point forward the court held that the corporation was no longer entitled to rely on the earlier mistaken guidance. The court accordingly found that corporation was excused from complying with applicable reporting requirements up to the time it received the corrective letter; thereafter, the corporation could be fined for its failure to comply.⁴⁰

Two key points emerge from this case. First, equitable estoppel may be applied against a board or commission based on the actions of its administrative staff.⁴¹ Second, even if a private party is offered misleading guidance by an agency employee, reliance on that guidance is not reasonable after the agency provides corrective information.

Applying these principles here, the evidence shows that Mr. Perez was sent an email by AMCO staff which incorrectly cited a regulation suggesting that Haute Quarter could surrender the Table 6 license and later have it reissued upon request. However, the evidence also shows that in later emails Mr. Perez was twice informed that the license had to be renewed if Haute Quarter wanted to sell or operate it in the future. Additionally, the final email that Mr. Perez received accurately advised that if the license was not renewed, any future reinstatement request

scope of rights granted by shellfish farming permits); *Grunert v. State, Com. Fisheries Entry Comm'n*, 735 P.2d 118, 122 (Alaska 1987) (alleged statements made by Fish & Game employees did not bar State from denying a limited entry permit); *Hidden Heights Assisted Living, Inc. v. State, Dep't of Health & Soc. Servs.*, 222 P.3d 258, 269 (Alaska 2009) (State's alleged failure to warn providers about plans to enforce Medicaid recordkeeping requirements not a proper basis for invoking equitable estoppel).

³⁸ 753 P.2d 703 (Alaska 1988).

³⁹ *Id.* at 709-710.

⁴⁰ *Id.* at 710.

⁴¹ See also *In re Cordova Hotel & Bar*, OAH No. 18-0070-ABC (ABC Board 2018) (AMCO's erroneous renewal of two liquor licenses could not be undone by a later Board vote to disapprove those renewals).

would be a matter of discretion for the Board (as opposed to a purely ministerial act by AMCO staff). While the guidance AMCO provided to Mr. Perez was not ideal, it was sufficient to warn Mr. Perez that (1) a renewal was required if Haute Quarter wanted to sell or operate the Table 6 license in the future; and (2) there was no guarantee of Haute Quarter getting the license reinstated if it was not renewed.

Focusing further on the element of reliance, Haute Quarter has failed to show by a preponderance of the evidence that the confused guidance provided by AMCO was the primary factor motivating Mr. Perez's decision to forego renewal of the Table 6 license. The evidence instead shows that, prior to his communications with AMCO staff, Mr. Perez had already decided that the short-term economic benefit of getting the renewal fee refunded outweighed the future consequences of allowing the license to lapse. If Ms. Frank had responded to Mr. Perez's email of December 20 by simply advising him to submit a refund request – which is arguably all that she needed to do – a strong inference can be made that Mr. Perez would have gone forward with his plan to forego renewal of the license without any further questions.⁴²

Another consideration preventing the application of equitable estoppel here is the inability of the Board to reinstate the Table 6 license without violating the cap on beverage dispensary licenses imposed by AS 04.11.400.⁴³ The legislature has carefully limited the circumstances when the Board can issue a license without regard to the statutory cap.⁴⁴ Nothing in the statute suggests that the Board has the discretion to exceed that cap through the reinstatement of previously expired licenses.

Consistent with this, in adopting 3 AAC 304.160 the Board included language in subsection (f)(1) which prohibits reinstatement of any license that “became available...and was issued to a different applicant, unless the limit of licenses under AS 04.11.400 has not been reached.” The resulting effect of this regulation is to place a licensee seeking reinstatement in the same position as a party asking the Board to issue a new license – if there are no licenses available under the caps set by AS 04.11.400, the Board cannot grant any relief.

⁴² See *Boyd v. State, Dep't of Commerce & Econ. Dev., Div. of Occupational Licensing*, 977 P.2d 113, 116–17 (Alaska 1999) (to invoke equitable estoppel against the State, a party must show reasonable detrimental reliance).

⁴³ For beverage dispensary licenses issued within a unified municipality, AS 04.11.400(a)(2)(B) sets a cap of one license “for each 3,000 population or fraction of that population.”

⁴⁴ AS 04.11.400(d)-(j).

The fact the Table 6 license was not reissued to another party does not alter this analysis in a context where an overabundance of beverage dispensary licenses prevents the Board from issuing any more licenses of that type within the Municipality of Anchorage.⁴⁵ This approach is consistent with the legislature’s objective of preventing a licensee from “holding onto one of a limited number of licenses without operating it.”⁴⁶ Allowing Haute Quarter to control a beverage dispensary license for a period of years after choosing not to renew it is so contrary to this public policy, and the limitations set by AS 04.11.400 and 3 AAC 304.160(f), that it forecloses any argument for application of equitable estoppel here.⁴⁷

This in turn leads to the question of whether AMCO had an obligation to warn Mr. Perez that the excess number of beverage dispensary licenses within the Municipality of Anchorage might prevent the Board from reinstating the Table 6 license at some later date. The short answer to that question is “no.” This follows from the longstanding legal principle that a party claiming estoppel against the government must show more than a “mere failure to inform or assist” on the part of an agency’s employees.⁴⁸ A related proposition is that persons dealing with a public agency are deemed to know the limits of that agency’s authority and power.⁴⁹ This is particularly true for persons who work in businesses whose activities are subject to licensure and close government oversight.⁵⁰

It is also worth noting that December 2020 was a time when the future of the hospitality industry was an uncertain thing. COVID health mandates had pushed many bar and restaurant owners to the financial brink, and there was uncertainty as to the number of establishments that would still be in business when the pandemic finally ended. These unique circumstances would

⁴⁵ The benefit of reinstatement is that it allows a licensee to forego many of procedural hurdles that a party seeking a new license must reckon with. Haute Quarter’s reinstatement request consisted of applications to waive the operating requirements of AS 04.11.330(a)(3) for 2021 and 2022, and an application to retroactively renew the Table 6 license for those years. This is a much-abbreviated process as compared to an application for an entirely new license.

⁴⁶ *Rollins*, 991 P.2d at 209.

⁴⁷ See *North Slope Borough*, 484 P.2d at 120 (equitable estoppel cannot be utilized as a tool to accomplish a result that is forbidden by an agency’s governing statutes and regulations).

⁴⁸ *Alaska Limestone Corp. v. Hodel*, 614 F. Supp. 642, 647 (D. Alaska 1985) (citing *Lavin v. Marsh*, 644 F.2d 1378, 1382 (9th Cir. 1981)). See also *United States v. Ven-Fuel, Inc.*, 758 F.2d 741, 761 (1st Cir. 1985) (fact government employees demonstrated a “reluctance to be of assistance” an insufficient basis for invoking equitable estoppel).

⁴⁹ *King v. Alaska State Housing Authority*, 512 P.2d 887, 891 (Alaska 1973) (“all persons dealing with a public corporation ... are deemed to know its limitations”); *Schneider*, 685 P.2d at 96 (“a person dealing with a municipality is bound to take notice of the legal limits of its powers and those of its agents”).

⁵⁰ *Valkama v. Harris*, 575 P.2d 789, 792 (Alaska 1978) (a presumption exists that those “engaged in a licensed occupation” are aware of the rules and regulations governing that occupation).

have made it difficult for AMCO staff to confidently forecast the extent to which beverage dispensary licenses might be available in the future for issuance within the Municipality of Anchorage.


Finally, during the hearing Mr. Perez testified to his prior awareness that the Board had not issued any new beverage dispensary licenses within the Municipality of Anchorage for many years, and that the only way of obtaining that type of license (at least prior to the pandemic) was by purchasing one from another private party. Given Mr. Perez's awareness of the scarcity and value of beverage dispensary licenses in the Anchorage area, any belief on his part that the Table 6 license could be easily reinstated years after being surrendered would not have been objectively reasonable.⁵¹

Accordingly, though Mr. Perez was mistakenly advised by AMCO staff that 3 AAC 304.195 had some bearing on his request for a refund of the renewal fee for the Table 6 license, for both factual and legal reasons this does not entitle Haute Quarter to relief under the doctrine of equitable estoppel.

IV. Conclusion

While recognizing that that the guidance AMCO offered to Mr. Perez was not accurate in all respects, Haute Quarter has not met its burden of establishing that the Table 6 license should be reinstated under the doctrine of equitable estoppel. Accordingly, the Board's decision denying Haute Quarter's reinstatement request under 3 AAC 304.160(f)(2)(D) is affirmed.

Dated: January 18, 2024



Max Garnér
Administrative Law Judge

⁵¹ A question not raised during the hearing, or the Board's consideration of the reinstatement request, is whether Haute Quarter could demonstrate the "good cause" which is a precondition of reinstatement under 3 AAC 304.160(e) given the way it waited two years before pursuing reinstatement of the Table 6 license. While the reasons for this extended delay are unclear, the determination that there are insufficient grounds for invoking equitable estoppel eliminates the need for any evaluation of this issue here.

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 16 day of April, 2024.

By: 
Signature
Jana Wapikowicz
Name
Chairman
Title