

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

In the Matter of)
)
ISL ENTERPRISES LLC, dba) OAH No. 22-0129-ABC
ICY STRAIT LODGE) Agency No. 1290

DECISION

I. Introduction

ISL Enterprises, LLC has held and operated a beverage dispensary license at its Icy Strait Lodge in Hoonah, Alaska since 2000. The license has been operated without incident or concern, with ISL “managing member” Edwin Phillips managing the Lodge’s day-to-day operations essentially since its inception.

In the meantime, however, the LLC has become embroiled in a business dispute between Mr. Phillips and its other founding member, Donna Martin. When Mr. Phillips submitted ISL’s license renewal application for the 2021-2022 cycle, he listed himself as the sole member of the LLC. Because prior years’ documentation showed Ms. Martin holding a 51% interest in the LLC, this apparent change in LLC membership composition triggered a license review which eventually revealed a dispute between Ms. Martin and Mr. Phillips regarding the LLC membership and, relatedly, ownership of the Lodge and the beverage dispensary license.

The Board ultimately denied the renewal application based on uncertainty about the LLC’s status and its own ability to act on the application given those uncertainties. As suggested by the Board at the time of the denial, ISL, through Mr. Phillips, submitted an administrative appeal of the denial. After a full hearing on the merits and with further events having unfolded since the Board’s initial review, this decision concludes that ISL’s renewal application should be GRANTED. The Division did not establish that the business dispute between the LLC’s members makes renewal of ISL’s beverage dispensary license contrary to the public interest.

II. Facts

A. Entity history and ABC Board initial licensure

Edwin Phillips and Donna Martin are longtime residents of Southeast Alaska. In 2000, when Mr. Phillips and Ms. Martin were romantic partners, they and Ms. Martin’s brother Brian

Martin agreed to form a joint partnership to purchase and operate a lodge in Hoonah.¹ The trio formed ISL Enterprises, LLC for this purpose. The April 28, 2000 entity creation filing lists Mr. Phillips as the LLC's Chief Financial Officer and its registered agent.²

Shortly after the LLC was formed, with Mr. Martin unable to meet his financial obligations towards the enterprise, Mr. Phillips and Ms. Martin agreed to divide ownership in the LLC between them.³

The LLC first applied for what was then called an Alaska Liquor License for the Lodge in May 2000.⁴ The LLC's original liquor license application identified Mr. Martin as the LLC's Chief Executive Officer, Mr. Phillips as the Chief Financial Officer, and Ms. Martin as the Office Manager.⁵ In July 2000, however, Mr. Phillips notified the ABC Board staff that Mr. Martin was withdrawing from the LLC, and that the LLC's shares would be redistributed to Ms. Martin and Mr. Phillips.⁶ The Lodge was issued License No. 1290 on September 18, 2000.⁷

Likewise, as early as December 2001, the LLC's biennial reports with the Division of Corporations list Ms. Martin as holding a 51% ownership interest, with Mr. Phillips holding a 49% share and being designated as the managing member.⁸

B. Early years' financial difficulties

The Lodge's early years were financially difficult and, in addition to the LLC borrowing money, Mr. Phillips assumed considerable personal debt to keep the Lodge operating.⁹

In November 2002, the LLC defaulted on a \$483,000 Wells Fargo loan that was critical to the Lodge's operations.¹⁰ Because of Ms. Martin's status as an enrolled tribal member, the

¹ Ed Phillips test.; Ex. L (Phillips Supplemental Aff., pp. 3-4).

² ISL Enterprises LLC, Articles of Organization, April 7, 2000. Available online through <https://www.commerce.alaska.gov/cbp/main/search/entities>. Last accessed 1/5/2023.

³ Martin test.; Ed Phillips test.; R. 239-241.

⁴ Ex. T, p. 1.

⁵ Ex. T, p. 1.

⁶ Ex. T, p. 2. The LLC's first license renewal application listed Ms. Martin as CEO with a 67% ownership and Mr. Phillips as CFO with 33%. Ex. T, p. 3. By the second renewal, in 2002, the LLC membership was listed as 51% to Ms. Martin ("CEO/Member") and 49% to Mr. Phillips ("CFO/Member"). Ex. T, p. 4.

⁷ R. 236-237.

⁸ ISL Enterprises LLC, Biennial Report, December 24, 2001; January 30, 2004; December 27, 2006; December 28, 2008. All Biennial reports are available online through <https://www.commerce.alaska.gov/cbp/main/search/entities>, and were last accessed 1/5/2023.

⁹ Ed Phillips test.; Ex. L (Phillips Supp. Aff.), p. 7.

¹⁰ Ed Phillips test.; Ex. A, p. 1; Ex. J, p. 4; Ex. L (Phillips Supp. Aff.).

LLC obtained a commercial loan guarantee from the Bureau of Indian Affairs (BIA), suspending the defaulted loan.¹¹

In November 2004 the BIA offered the LLC a Forbearance Loan Agreement.¹² In the intervening years, Mr. Phillips had continued investing considerable time and money into the Lodge. By that time, however, Mr. Phillips and Ms. Martin had ended their romantic relationship, and Ms. Martin was considering rejecting the BIA Loan Agreement, which in turn would force an end to the LLC's involvement in the Lodge. Mr. Phillips, having put significant resources and effort into the Lodge, opposed "crash[ing] the loan."¹³

C. *December 2004 "Agreement to Separate Joint Assets"*

On December 2, 2004, Ms. Martin and Mr. Phillips entered into a 2-page written agreement titled "Agreement to Separate Joint Assets between Edwin Phillips & Donna Martin."¹⁴ The 2004 Agreement identified as its purpose "to separate assets that the parties jointly own," and summarized that "both parties wish to transfer their mutual interests so Ed ends up with the Lodge and Donna ends up with the Home."¹⁵

The agreement transferred all of Mr. Phillips's accumulated equity in their shared Juneau home to Ms. Martin. The Agreement required Mr. Phillips to vacate the parties' home, transfer a life insurance policy, and sign any documents needed to remove himself from the first mortgage.

As to Donna's interest in the Lodge, the Agreement notes that the BIA loan – "absolutely vital to [the Lodge's] survival" – required that Ms. Martin "must continue to technically own 51% of the lodge." Accordingly,

As a result of this agreement that ownership will become temporary and Donna will be considered to have been fully compensated for her interest in the Lodge. It is understood that Ed must continue to find another partner to replace Donna so she ultimately has no interest in the Lodge.¹⁶

As to the LLC, the Agreement provided that Mr. Phillips "is to be totally responsible for all aspects of ISL Enterprises, LLC," and "will also continue to be fully responsible for ISL

¹¹ Ed Phillips test.; Phillips Aff. (Ex. L), p. 1.

¹² Ed Phillips test.; Phillips Aff. (Ex. L), p. 1; Ex. A.

¹³ Ed Phillips test.; Ex. 17, p. 2.

¹⁴ Ex. C.

¹⁵ Ex. C, p. 1. The agreement further provides that any subsequent revisions "must fully retain the intent of this trade."

¹⁶ Ex. C, p. 1. The Agreement likewise provides that once Ms. Martin "acquires a first mortgage independent of Ed[,] then Ed will have no interest in the Home."

Enterprises, LLC's operation and fiduciary controls." As to Ms. Martin's role and obligations regarding the LLC, the Agreement provided:

Donna agrees to continue to act as the majority Limited Liability Partner of ISL Enterprises, LLC. As a Limited Liability Partner, Donna shall have no fiduciary responsibility to ISL except for the BIA loan. Donna shall have no compensation or interest resulting from any financial gain to the LLC. Donna's purpose in the LLC is to continue to make available the BIA loan to ISL. Donna agrees to withdraw and vacate her interest in ISL Enterprises, LLC for One dollar as soon as Ed finds a partner to replace her.¹⁷

The day after the parties executed the agreement, Mr. Phillips executed a quit claim deed giving Ms. Martin his interest in the parties' Juneau home.¹⁸ He then signed the BIA Forbearance Loan Agreement on behalf of ISL on December 17, 2004.¹⁹

D. Post-Agreement Lodge operations

After the parties' Agreement, Mr. Phillips continued to pour money and energy into the Lodge. Although the 2004 agreement provided that Mr. Phillips would find a new partner to replace Ms. Martin in the LLC, his efforts to find a new partner were stymied by the BIA lending rules governing the LLC's large existing loan obligation.²⁰

The Lodge's financial challenges persisted, and in 2008, the City of Hoonah brought a municipal foreclosure action against the Lodge for unpaid sales tax. Mr. Phillips ultimately quit his job in Juneau and cashed out \$85,000 from his PERS retirement account to settle the City's claim against ISL.²¹

At some point, the Lodge's financial outlook began to improve, and paying off the BIA loan through other financing became a possibility.²² In or around July 2019, the LLC finished paying off the BIA loan.²³ Mr. Phillips, believing that the parties' 2004 agreement terminated Ms. Martin's interest in the LLC upon satisfaction of the loan, then took a series of actions predicated on that belief.

¹⁷ Ex. C, p. 1.

¹⁸ Ed Phillips test.; Ex. U, p. 3.

¹⁹ Ex. A, p. 5.

²⁰ Ed Phillips test. Specifically, and apparently not envisioned by the parties when they entered the 2004 agreement, Mr. Phillips was advised that no changes could be made to the identified borrowers on the loan. So even if an otherwise eligible individual were willing and able to take Ms. Martin's place on the loan, BIA procedures would not allow that change, and the loan would instead become due immediately.

²¹ Ed Phillips test; Ex. J; ISL Enterprises, LLC Registered Agent Change of Address, Filed with Division of Corporations on 12/29/08. (Available online at <https://www.commerce.alaska.gov/cbp/main/search/entities>).

²² Total revenues for the first ten months of 2022 were in excess of \$1.1 million. Ex. V; Ed. Phillips test.

²³ Ed Phillips testimony; Ex. D.

Since its inception, the LLC's biennial reports with the Division of Corporations had identified Ms. Martin solely as a "member" of the LLC, while listing Mr. Phillips as a "member," "Manager," and "CFO."²⁴ On July 30, 2019, Mr. Phillips submitted to the Division a Notice of Change of Officials for ISL Enterprises, LLC. The notice reflected that Ms. Martin was no longer a member of the LLC, and that Mr. Phillips was now the 100% owner.²⁵ The LLC's December 2019 biennial report, filed by Mr. Phillips, likewise lists him as the 100% owner.²⁶

E. Operation of License 1290

While the LLC owns the Lodge and the liquor license, the day-to-day operation of both have been carried out by Mr. Phillips for nearly two decades. Indeed, Ms. Martin has not been to the Lodge since 2004 and has no operational knowledge of the Lodge.²⁷

It is undisputed – indeed, the Division has stipulated – that the Lodge currently operates its beverage dispensary license without issue or concern.

Mr. Phillips takes great pride in the Lodge's role in the Hoonah community. Both he and his wife, Barbara Phillips, testified credibly about the seriousness and care with which they approach the obligations of licensure. Both also testified credibly about the Lodge's positive impacts in the community, including donating to community causes and hosting community events, housing elders and visiting professionals, and providing catering to visiting production companies and nearby forest service personnel. The Lodge is also a major taxpayer for the City of Hoonah.²⁸

The bar operation is a significant revenue source for the Lodge, with alcohol and cigarette sales making up 32% of revenues in 2022. Given the proportion of the Lodge's overall

²⁴ ISL Enterprises LLC, Biennial Report, December 24, 2001 (Martin: Member; Phillips: Member, Manager, CFO); January 30, 2004 (Phillips: CFO/member; no other titles on form); December 27, 2006 (Martin: Member; Phillips: Member, Manager, CFO); December 28, 2008 (same); August 11, 2010 (same); July 26, 2012 (Phillips listed as "Manager" and "Managing General Partner"); November 20, 2013 (Phillips as "Manager, Member;" Martin as "Member"); December 16, 2015 (same); January 14, 2018 (same).

²⁵ Ed Phillips test. See also, ISL Enterprises, LLC Notice of Change of Officials, filed with Division of Corporations on 7/30/19. (Available online at <https://www.commerce.alaska.gov/cbp/main/search/entities>).

²⁶ Ed Phillips test. See also, ISL Enterprises, LLC Notice of Change of Officials, filed with Division of Corporations on 12/20/19. (Available online at <https://www.commerce.alaska.gov/cbp/main/search/entities>).

²⁷ Martin testimony.

²⁸ Ed Phillips test.; Ex. V.

revenues generated by alcohol sales, the Phillipses have serious concerns about its continued viability without a beverage dispensary license.²⁹

F. 2021 License Renewal Application

ISL's beverage dispensary – tourism license must be renewed every two years. Mr. Phillips has prepared and submitted each renewal application since the Lodge's initial licensure.³⁰ The current case arises out of the renewal application for the 2021-2022 period, submitted January 4, 2021.

Beginning with the 2006 license renewal, Ms. Martin was listed on the license renewal applications as "Member," with a 51% share, and Mr. Phillips as "Manager/Member," with 49%.³¹ On the January 2021 application – the first renewal application submitted since the LLC loan payoff – Mr. Phillips listed himself as the sole owner of the LLC, with a 100% share, and listed Ms. Martin as an "Ex Partner" with a 0% share.³²

Because this breakdown of LLC ownership did not match AMCO's internal records, Licensing Examiner Kristina Serezhenkov opened an investigation.³³ Upon a review of the entity's registered history with the Division of Corporations, Business and Professional Licensing, Ms. Serezhenkov found the 2019 filing indicating that Ms. Martin's 51% share had been transferred to Mr. Phillips, giving him a 100% share.³⁴

On May 4, 2021, Ms. Serezhenkov emailed the LLC that its renewal application was considered incomplete:

It appears that Icy Strait Lounge located at 435 Airport Road had an unreported change of members in 2019 which is a violation of AS 04.11.050 and an unreported change in controlling interest in 2019 which is a violation of AS 04.11.040(c). Upon review it appears that there was a change of interest and it was transferred from Donna Martin 51 % owner to Edwin Phillips 100% owner.³⁵

²⁹ Ed Phillips test.; Barbara Phillips test.; Ex. V.

³⁰ Ed Phillips testimony; Martin test.; Exhibit T.

³¹ Ex. T, p. 6. On the 2008 renewal application, Mr. Phillips listed himself as CEO and 100% member of the LLC, with Ms. Martin listed as "51%*", followed by the notation: "* In process of withdrawing." R. 211. It appears that a Division licensing examiner informed Mr. Phillips that this "change in controlling interest" of the LLC would necessitate a transfer application for the liquor license, but then paused this requirement upon clarifying that Ms. Martin had not yet withdrawn. R. 335, 334.

³² Ex. 19, p. 3.

³³ For staffing reasons, the LLC's January 4 application was not reviewed or acted upon by AMCO staff until May 2021. Serezhenkov test.

³⁴ Ex. 19.

³⁵ Ex. 19.

Ms. Serezhenkov noted that the renewal Application, AMCO records, and CBPL records all differed in identifying the LLC's composition. AMCO records reflect the LLC's ownership structure as Ms. Martin being "Member and Manager – 51%" and Mr. Phillips being "Member and Manager 49%."³⁶ However, the renewal Application identified the ownership structure as Mr. Phillips being "Managing General Partner – 100%", with Ms. Martin listed as "Ex Partner – 0%," and Division of Corporations records similarly identify Mr. Phillips as "Member and Manager – 100%."³⁷

Ms. Serezhenkov informed the LLC that the renewal application would not be deemed complete unless/until the LLC reverted its Division of Corporations ownership structure back to the structure previously approved by AMCO.³⁸ The email also directed the LLC to then update its renewal application to "add the AMCO approved members with the AMCO approved titles and percentages owned."³⁹ However, Ms. Serezhenkov's email also directed the LLC to submit a "Transfer License Application" in light of the apparent "unreported change in controlling interest."⁴⁰

In a May 17 response to the Notice of Violation (NOV) issued over these same concerns, Mr. Phillips apologized for "not initially notifying the ABC when I was finally able to formalize my full ownership of the Lodge." Mr. Phillips offered the following explanation:

- That he has "always been the Managing General Partner,"
- That Ms. Martin's majority ownership percentage in the LLC had been related to the LLC's BIA guaranteed loan,
- That Ms. Martin had not been to the Lodge in 18 years,
- That the parties had agreed in 2004 to a "Purchase Option,"
- That he had "promptly notified the Alaska Division of Corporations" of the change in ownership, and
- That given this history and the parties' 2004 agreement, he "simply cannot put Ms. Martin back on the Division of Corporations as the 51% owner."⁴¹

³⁶ Ex. 19.

³⁷ These discrepancies also initiated a Notice of Violation, which is not at issue in this case. Serezhenkov test.; Ex. 18.

³⁸ Ex. 19, p. 2.

³⁹ Ex. 19, p. 2.

⁴⁰ Ex. 19, pp. 1, 2.

⁴¹ Ex. 17.

Apparently interpreting this letter as declining the “reversion” option in favor of the “transfer option,” AMCO’s licensing examiner responded with a notice that the renewal application had been deemed complete, but that a Transfer License Application needed to be submitted within thirty days.⁴² ISL was issued a temporary 2021-2022 Liquor License at that time.⁴³ The Board then granted the renewal license with delegation at its June 2021 meeting.⁴⁴

G. Transfer License Application

Upon receiving the email directing him to submit a transfer application, Mr. Phillips responded with a lengthy email on May 23, 2021, urging that he should not be required to obtain Ms. Martin’s signature “for the ‘Transfer’ that really is not.”⁴⁵ Mr. Phillips again referenced the parties’ 2004 Agreement (which he believed to have fully accomplished the transfer of interests in the LLC) and indicated his belief that he would not be able to compel Ms. Martin to separately sign a transfer application without initiating legal proceedings against her.⁴⁶

Mr. Phillips took issue with AMCO’s position that a transfer application is required under the circumstances of this license, where the license continues to be held by the LLC and he has been the managing member throughout the license’s operation. Noting that the change in membership was simply “removing a member that has never materially participated in the operation,” he argued that the change was mere “internal housekeeping” from AMCO’s perspective and should be able to be accomplished without a signature from that removed LLC member.⁴⁷

A June 10 response from Licensing Supervisor Carrie Craig reiterated AMCO’s position that the renewal of the license would require a transfer. Ms. Craig cited to AS 04.11.040(c):

A person may not receive or transfer controlling interest in a liquor license issued to a partnership, including a limited partnership, a limited liability organization, or a corporation under this title, except with the written consent of the board.

⁴² Ex. 16.

⁴³ Ex. 15.

⁴⁴ Ex. 12, p. 12; Serezhenkov test. Specifically, the application was approved as part of a “batch approval” of various applications where the Board delegated approval to AMCO upon satisfaction of some identified condition. In ISL’s case, the specified condition was timely submission of the license transfer application. *Id.*

⁴⁵ Ex. 14, p. 3.

⁴⁶ Ex. 15, pp. 13-14. It does appear that Mr. Phillips had published in the Juneau Empire a public notice of the proposed transfer. The notice, which ran on May 26, May 30, and June 8, 2021, described “a change in ownership” that “involves an ownership interest transfer from Donna M. Martin 51% to Edwin F. Phillips, 100%.” Ex. 10, p. 7.

⁴⁷ Ex. 14, p. 4.

As to the mechanics of a transfer, Ms. Craig explained that the transfer application would have to be signed by “the individual with controlling interest in the business,” which she identified – notwithstanding the LLC’s July 2019 CBPL filing – as “Donna Martin with 51% ownership.”⁴⁸ Ms. Craig encouraged Mr. Phillips “to retain legal counsel for your civil matters and possibly for the license transfer process,” and extended the transfer application deadline to July 23, 2021.⁴⁹

Two days later, Mr. Phillips wrote Ms. Martin a letter asking her to sign the transfer form. Mr. Phillips reiterated his view that the two had agreed in 2004 to exchange his 50% interest in their home for her 51% interest in the Lodge, and recounted the financial difficulties he had undertaken in order to keep the Lodge operating.⁵⁰ He also mentioned Ms. Martin having now taken the position that he should compensate her for interest saved via the BIA loan. Noting potentially “huge consequences if not resolved,” Mr. Phillips asked Ms. Martin to sign the transfer form in order to avoid the license renewal being denied. Otherwise, he cautioned, he would retain counsel and pursue legal recourse against Ms. Martin for breaching their 2004 contract.⁵¹

Ms. Martin declined to sign the transfer application form.⁵² Meanwhile, at some point during this time, Ms. Martin called AMCO and spoke with Licensing Examiner Serezhenkov, who recalls Ms. Martin being surprised to learn that AMCO records reflected her having an ownership interest in the license.⁵³ Ms. Martin then emailed AMCO on June 22, 2021, identifying herself as a licensee on the ISL license, asking that her contact information be added to the file, and requesting “a copy of our license.”⁵⁴

During July 2021 Mr. Phillips continued trying to secure Ms. Martin’s cooperation, as well as emailing AMCO staff, urging them “to convey to Donna the importance of properly executing the [license transfer application] form removing her from the liquor license in conformance with the Division of Corporations.”⁵⁵ He explained that Ms. Martin’s noncooperation would necessitate additional time to submit the application. However, he also

⁴⁸ Ex. 14, p. 1.

⁴⁹ Ex. 14, p. 1.

⁵⁰ Ex. E.

⁵¹ Ex. E.

⁵² Either before or after this letter, Mr. Phillips also visited Ms. Martin in person to ask her to sign the transfer application form, but she refused to do so. Ed Phillips test.; Martin test.

⁵³ Serezhenkov test. While Ms. Martin disagreed with this characterization of this conversation, Ms. Serezhenkov’s recitation of these events was significantly more credible than the version offered by Ms. Martin.

⁵⁴ Ex. 13.

⁵⁵ Ex. F, pp. 1-2.

argued that there was not, in fact, a “transfer” taking place – that ISL had been and would continue to be the licensee, and that a change of interests among “previously vetted principals of a Licensee” should not be deemed a “transfer.”⁵⁶ Accordingly, on July 26, 2021, Mr. Phillips submitted a Transfer License Application for License 1290, with the LLC listed as both Transferrer and Transferee, and himself listed as Managing General Partner and 100% owner of the LLC.⁵⁷

On August 3, 2021, Ms. Martin wrote to AMCO staff that Mr. Phillips had “demanded” her signature on a transfer application and had not timely informed her of the May 5 NOV “or removing [her] from the LLC.” As to the LLC and its license, she wrote: “I have no intent of relinquishing my 51% ownership with ISL Enterprises LLC, or Alcohol License #1290.”⁵⁸

In October 2021, an attorney for Mr. Phillips sent a demand letter to Ms. Martin, accusing her of breaching the parties’ 2004 contract, and asking her to sign both the transfer application and a formal Consent to Withdrawal as Member of the LLC, retroactive to July 23, 2019.⁵⁹

In the meantime, the July 26 Transfer Application did not reach the front of AMCO’s queue until four months later. When Mr. Phillips had submitted the Application, Ms. Serezhenkov had cautioned that, “upon review, if we do not have the correct signatures on the AB-01 form, including the signature of Donna Martin, we will not be able to deem the application complete and move it to the board for consideration.”⁶⁰ On November 24, 2021, Ms. Serezhenkov returned the LLC’s Transfer License Application as incomplete.⁶¹ Of relevance to the current appeal, Ms. Serezhenkov directed that “Donna Martin as the 51% owner is the transferor and must sign and notarize” Section 8 of the application.⁶²

⁵⁶ Ex. F, p. 5.

⁵⁷ Ex. 10, pp. 1-3.

⁵⁸ Ex. 11.

⁵⁹ Ex. G. As Mr. Phillips had argued elsewhere, the letter denied that a true “transfer” was occurring, but requested Ms. Martin’s signature in an excess of caution given the Licensing Examiner’s position that it was required. *Id.*, p. 1.

On December 6, 2021, an attorney for Ms. Martin responded to the letter, arguing that by failing to promptly obtain a partner to replace her in the LLC, Mr. Phillips breached the spirit of the parties’ 2004 agreement, and that Ms. Martin should be compensated “for her unwilling participation in ISL over the past 18 years.” The letter states that Ms. Martin will only “sign over the interest in ISL to Mr. Phillips ... “upon receipt of adequate compensation for the benefit that she conveyed to him by remaining the 51% owner of ISL since 2003.” Ex. H.

⁶⁰ Ex. F, p. 6.

⁶¹ Ex. 8.

⁶² Ex. 8, p. 1.

H. Board's 2022 reconsideration and denial of ISL's 2021 Renewal Application

In an email accompanying the formal return of the transfer License Application, Ms. Serezhenkov informed both Mr. Phillips and Ms. Martin that in light of the transfer application not having been completed, the Board at its next meeting would review the LLC's previously-submitted renewal application.⁶³

The Board reconsidered the issue at its meeting in January 2022.⁶⁴ Both Mr. Phillips and Ms. Martin submitted written submissions for the Board's consideration, as well as addressing the Board directly, with both largely focusing on their business dispute around ownership of the LLC.

Mr. Phillips's letter described his personal and professional sacrifices to keep the Lodge afloat amidst "perilous uncertainty," as well as his perspective that Ms. Martin knowingly signed away her interest in the LLC in 2004. He also argued that since he had always managed the LLC, he had always had "the controlling interest" in it, and that a transfer application should not be required under these circumstances.⁶⁵ Mr. Phillips's testimony to the Board also described his central role in operating the Lodge, his 2004 agreement with Ms. Martin, and many of the Lodge's early economic challenges.⁶⁶

Ms. Martin submitted a letter which was read into the record, and also appeared during the videoconference and answered questions. Ms. Martin asserted that she continues to hold a 51% interest in the LLC, and denied having transferred her interest in ISL. Ms. Martin represented that she and Mr. Phillips were "engaged in ongoing negotiations" intended to "result in a transfer" of her ownership interest, but that "those negotiations are far from complete." Business dispute notwithstanding, Ms. Martin urged the Board to grant the LLC's license renewal application.⁶⁷

Thereafter the Board discussed the tangled procedural situation surrounding the renewal and transfer applications. The Board determined that the transfer application – having been returned to the LLC as "incomplete" – was not before it. Rather, the sole issue before the Board

⁶³ Ex. 7, p. 2.

⁶⁴ Ex. 2, pp. 4-5.

⁶⁵ Ex. 6.

⁶⁶ A great deal of Mr. Phillips' presentation centered around the LLC's very early history and disputes between himself and the Martins.

⁶⁷ Ex. 13.

was the January 2021 renewal application, which had been approved with delegation in June 2021, contingent upon the LLC submitting completed transfer of ownership paperwork.⁶⁸

The Board discussed possible mechanisms by which the LLC would be able to renew its license while Mr. Phillips and Ms. Martin worked through their business dispute. In frankness, this discussion was significantly complicated by both LLC members' persistent focus on their dispute with and accusations against one another. Ultimately, the Board elected to deny the renewal application, with an administrative appeal of that denial being cast as an opportunity to gather full facts on the operation of the license, as well as allowing the parties time to sort through their business dispute and/or otherwise get their paperwork in order.

Procedurally, the Board first voted on a motion to reconsider the earlier approval of the renewal application with delegation. That motion was unanimously approved. The Board then considered – and ultimately rejected – a motion to renew the license. During discussion of the motion,

- The Board's attorney first advised the Board of the regulatory factors the Board may consider in determining whether the public interest favors refusal to renew.
- Mr. Moore opined that the public interest was implicated by the parties' need to sort out the ownership and responsibility for the license, but also noted the Board's interest in allowing the business to continue to operate during that process.
- The Board Chair advised Mr. Phillips and Ms. Martin that the appeal right would give them some time "to get their ownership interest in order" while still being able to operate. The Chair spoke to the Board's interest in not disturbing peoples' employment, but also the need for LLC members to remedy the business issues.
- In explaining his vote, Member Cook identified the history of violations relating to not disclosing the apparent change in majority ownership interest, as well as trustworthiness concerns implicated by allegations of fraud.⁶⁹
- Ms. Hill explained that her vote was for the same reason and was meant to "send a clear message to the applicants but also give them a chance to straighten things out and come back to us."

⁶⁸ Ex. 16; Ex. 12, p. 12.

⁶⁹ Unfortunately, both Mr. Phillips and Ms. Martin exacerbated the Board's concerns by lobbing accusations of fraud at one another during the meeting, even as Board members were trying to identify a "path forward" for the license. See Ex. 3 at 35:00 (Mr. Phillips), 43 (Ms. Martin).

Against this backdrop, the Board unanimously voted against approving the renewal.⁷⁰

I. Procedural history of proceedings before OAH

As the Board had suggested, ISL (through Mr. Phillips) promptly requested a hearing to challenge the denial of its renewal application. The matter was referred to the Office of Administrative Hearings as provided for in AS 04.11.510(b)(1).

The administrative hearing was initially stayed while ISL (again, through Mr. Phillips) and the Division attempted to resolve the license dispute through mediation. Those efforts were ultimately unsuccessful, and the matter was returned to the hearing track and set for a December 2022 hearing.

In the meantime, in the two months before the scheduled hearing, two significant events occurred:

- On October 17, 2022, Ms. Martin filed with the CBPL a Notice of Change of Officials for ISL.⁷¹ As reflected in that filing, the LLC membership is once again reported as 51% to Ms. Martin, “member,” and 49% to Mr. Phillips, “Manager, Member.”⁷²
- In a November 8, 2022 filing in the administrative appeal, ISL (through Mr. Phillips) submitted a revised copy of the 2021-2022 renewal application’s Section 2 (“Entity or Community Ownership Information”), with Mr. Phillips listed as “Managing General Partner” owning 49%, and Ms. Martin as “Partner,” owning 51%.⁷³

AMCO took no action on ISL’s submission of this revision to its renewal application.

The evidentiary hearing on the denial of the January 4, 2021 renewal application was held on December 6, 2022 at the Office of Administrative Hearings in Anchorage. ISL was represented by Mr. Phillips, who appeared in person and testified on ISL’s behalf. AMCO was represented by an Assistant Attorney General, who participated telephonically. In addition to Mr. Phillips, his wife Barbara Phillips appeared in person and testified on behalf of ISL. Also

⁷⁰ Ex. 3.

⁷¹ Ex. R.

⁷² Ex. R.

⁷³ Exhibit M; Ex. S, p. 1. The revised application was submitted to the OAH, with copies sent to AMCO Director Joan Wilson and to the AAG representing AMCO in this matter. Ex. M, p. 2. When asked about these changes during the hearing, Licensing Examiner Serezhenkov was unaware that the LLC membership had reverted back to reflect the 51/49 ownership split in AMCO’s records.

participating telephonically were Ms. Martin, Licensing Examiner Kristina Serezhenkov, and witness Blake Kazama. All exhibits submitted by both parties were admitted by stipulation, and the matter was submitted for decision at the end of the hearing.

III. Discussion

The Board initially denied the renewal application based on the “public interest” factor, but urged the LLC to appeal while resolving its internal legal issues. AMCO’s position in this case is that the denial should be upheld based on the LLC members’ ongoing failure to resolve their internal disputes. The LLC, on the other hand, urges that the license has been operated in the public interest regardless of those internal disputes. The LLC further argues that the revised renewal application submitted in November addresses the concerns raised by Ms. Serezhenkov and should be accepted as a perfected renewal application.

A. Legal framework of review

Licenses issued under Title 4 are issued for two-year periods, after which the licensee must apply to renew the license.⁷⁴ If the Board votes to deny a renewal of a license, as it did here, the licensee is then entitled to an administrative hearing conducted under Alaska’s Administrative Procedure Act.⁷⁵ Because such a hearing concerns the denial of a renewal of a license, it is treated as the equivalent of taking away a license and AMCO bears the burden of proof.⁷⁶

Following the hearing, unless there is a delegation (which has not occurred here), the matter then returns to the Board for a final decision.

The decision at the end of the second round will be a more rigorously tested version of the first decision. If it differs from the first, the difference may not stem from any ‘errors’ in the initial round. Instead, it is simply a new decision made with a different and more complete body of evidence. The task is to make the best decision possible at the executive branch level.⁷⁷

⁷⁴ See AS 04.11.210(b); AS 04.11.270.

⁷⁵ AS 04.11.510(b)(1).

⁷⁶ AS 44.62.460(e); *Fantasies on Fifth Avenue*, OAH No. 16-0898-ABC (ABC Board 2017), at 22. AMCO’s pre-hearing brief erroneously asserted that the licensee has the burden of proof in a renewal denial. This is incorrect. AMCO’s citation to *Rollins v. State, Department of Public Safety*, 312 P.3d 1091 (Alaska 2013) is inapposite, as *Rollins* involved an application for waiver of the annual operating requirement. While the applicant for a waiver bears the burden of proof that the waiver should have been granted, a licensee in a license renewal case does not. *Fantasies on Fifth Avenue*, *supra*; *In re: Fromm*, OAH No. 14-0214-NUR (Board of Nursing 2015) at p. 6 and fn 52.

⁷⁷ *Fantasies on Fifth Avenue*, *supra*, at p. 21, 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).

The final decisionmaker in such cases – here, the Board – may defer to judgments made by agency staff, but is not required to do so.⁷⁸

B. Which Application is currently before the Board?

The LLC’s renewal application was first submitted on January 4, 2021. At that time, Licensing Examiner Serezhenkov informed Mr. Phillips that either he needed to revert the LLC documentation and application back to consistency with the AMCO files or submit a transfer application.

Most of what followed concerned attempts to comply with the transfer application requirements. Mr. Phillips submitted an incomplete transfer application, all while insisting that a transfer was not really required in this situation because he has always been the “controlling member” of the LLC for practical purposes. In any event, Mr. Phillips was unable to complete a transfer application because it would require Ms. Martin’s signature, which she refused/refuses to provide. The Division ultimately returned the transfer application to the LLC as incomplete, and when the Board took up the renewal application in January 2022, it concluded that the incomplete/returned transfer application was not before it.⁷⁹

After the Board’s preliminary action, but before the hearing in this case, two critical things occurred. First, on October 17, 2022, Ms. Martin filed an updated Notice of Officials, restoring the LLC membership under Division of Corporations records to its state prior to the BIA loan payoff.⁸⁰ While Mr. Phillips disagrees with Ms. Martin’s contention that she holds this interest in the LLC, it is undisputed that the LLC is now, in the eyes of the Division of Corporations, in the same membership and management structure as at the time of its previous license renewals.⁸¹

The second significant event is that one month before the hearing, Mr. Phillips transmitted to OAH and AMCO’s counsel a revised/updated Section 2 (“Entity or Community Ownership Information”) portion of the 2021/2022 renewal application.⁸² That revised application lists Ms. Martin and Mr. Phillips as holding 51% and 49% shares of the LLC,

⁷⁸ *Id.*

⁷⁹ Likewise, Mr. Phillips’ arguments about the transfer application requirements are not squarely before this tribunal or the Board on this appeal.

⁸⁰ Ex. R.

⁸¹ Ex. R, p. 2 (Martin: Member, 51%; Phillips: Member, Manager, 49%).

⁸² Ex. M; Ex. S.

respectively.⁸³ The revised application section accompanied a letter noting Ms. Martin’s recent changes to the Division of Corporations records and asking that the newly resubmitted application, consistent with those changes, “substitute and modify” the LLC’s January 4 renewal application.⁸⁴

The LLC, through Mr. Phillips, contends that this submission satisfies the Licensing Examiner’s May 4, 2021 directive that, for the renewal application to be deemed complete, the LLC must revert its Division of Corporations ownership structure back to the ownership structure previously approved by AMCO.

At hearing, counsel for AMCO intimated that the submission of the revised renewal application form was a settlement offer that should not be considered as evidence in this case.⁸⁵ On the one hand, Mr. Phillips’ November 8 letter – jointly addressed to the OAH, AMCO’s counsel, and the AMCO Executive Director – proposes that the substitution of the revised application be done “in full settlement of this appeal.”⁸⁶ At the same time, however, the letter transmitting that application and other documents requests, if submission of the documents as a resolution is “not acceptable,” that the documents be considered as exhibits in the case.⁸⁷

No motion in limine was filed seeking to preclude those exhibits; to the contrary, both parties stipulated to the admission of the others’ exhibits. OAH procedural and evidentiary rules are considerably more relaxed than those in formal judicial proceedings. Particularly given Mr. Phillips’ status as a self-represented licensee litigant, and his request to treat the application as an exhibit, there is no justifiable basis to exclude from evidence the most current version of the LLC’s application – and indeed one which directly cures the issue that initiated the entire licensing review.

Both Mr. Phillips and Ms. Martin – while vehemently disagreeing about the internal makeup of the LLC and their respective ownership interests in the LLC, the Lodge, and the

⁸³ Ex. M.

⁸⁴ Ex. S.

⁸⁵ *See generally*, Alaska R. Evid. 408 (Compromise and Offers to Compromise). However, as the commentary to the Rule notes, “the rule operates to exclude evidence of an offer to compromise a claim when offered to prove the validity, invalidity or amount of the claim.” Here, the revised application itself is not an offer to compromise the claim, and is not offered to prove anything about liability or claim validity; rather, it is offered operationally as a revision to the January 2021 application.

⁸⁶ Ex. S, p. 2.

⁸⁷ Ex. S, p. 1.

license –believe and urge that the LLC’s renewal application should be accepted in light of these changes.

At the time of the hearing, AMCO’s Licensing Examiner was unaware either that the LLC membership had been reverted, or that the revised application had been submitted.⁸⁸ However, this decision concludes that the updated application submitted in November 2022 should be considered the operative application for purposes of the current review. The Board denied the January 2021 renewal application at least in part because of inconsistencies between that application and the Division of Corporations’ records. The Board’s reconsideration of the application in this de novo review must take into account all evidence presented at the hearing – including the evidence that the LLC’s Division of Corporations records have now been reverted (as AMCO’s Licensing Examiner had requested) to reflect the same ownership structure as is reflected in AMCO’s records.

C. *Did AMCO meet its burden of showing that renewal of Icy Straits’ Beverage Dispensary – Tourism license is not in the public interest?*

In denying the license renewal application, the Board relied on AS 04.11.330(a)(1), which requires denial upon a finding that renewal would not be in the best interests of the public, and 3 AAC 304.180(a), which identifies the considerations for the Board’s best interests inquiry. Under that regulation, determination of whether renewal is in the public interest is a discretionary endeavor in which the Board considers numerous factors, including those specifically enumerated in the regulation – such as violations of Title 4 and its regulations, the applicant and affiliates’ trustworthiness, fitness to conduct a licensed business, and potential as a source of public harm – and also “all other factors the board in its discretion determines relevant to the public interest.”⁸⁹

1. Do the LLC parties’ mutual allegations of contractual breach and fraud justify a finding that renewal of ISL’s license is not in the public interest? (No).

AMCO primarily urges the Board to make a best interests finding based on (a)(3) – “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.” The basis for this argument appears to be the LLC owners’ sometimes virulent characterizations and criticisms of one another concerning their business dispute. Both in proceedings before the

⁸⁸ Serezhnikov test.

⁸⁹ 3 AAC 304.180(a)(1), (2), (4).

Board and in the evidentiary hearing, Ms. Martin and Mr. Phillips have accused one another of lying and referred to one another's actions in the business dispute as "fraud."

As was explained both at the Board meeting and at the evidentiary hearing, those accusations are unhelpful to the resolution of the issues currently before the Board in this administrative appeal. Plainly, these parties have a business dispute that, as of the date of the hearing, they have been unable to resolve. It may be necessary or at least advisable for one or both of them to seek legal resolution of that dispute. But as pertains to the only issue before this Board – continued operation of ISL's beverage dispensary license – both Mr. Phillips and Ms. Martin (as well as the Division) agree that the license has been and can be operated without concern, and indeed both Mr. Phillips and Ms. Martin urge renewal of the license.

These proceedings – both before the Board and before the OAH – would likely have gone more smoothly had the LLC parties been better able to focus here on the operation of the license, while addressing their business dispute in a more appropriate forum. But the fact of that business dispute does not -- or should not -- preclude the LLC entity from continuing to hold a license. While membership/ownership of the LLC is clearly contested, it is *uncontested* that the LLC (through Mr. Phillips) has been able to successfully operate the license. Whatever allegations of lying and fraud Mr. Phillips and Ms. Martin are lobbing against one another do not appear to have any bearing on or relationship to the actual operation of the license. Where that is the case, mere sweeping, generalized aspersions cast between parties in a legal dispute are not sufficient to establish that renewal of the license would be against the public interest.⁹⁰

2. Does Ms. Martin's ostensible status as the majority LLC member while not participating in the operation of the LLC's license justify a finding that renewal of the license is not in the public interest? (No).

In addition to the specifically enumerated public interest factors, AS 04.11.330(a)(5) also directs the Board to consider "all other factors the board in its discretion determines relevant to the public interest."⁹¹ One issue mentioned during the January 2022 Board meeting was whether Ms. Martin's effectively absentee status vis-à-vis the Lodge and its licensed operations implicated a possible public interest finding. This decision concludes it does not.

⁹⁰ The situation could well be different if the allegations (1) involved the actual operation of the license, and/or (2) involved, for example, credibly alleged crimes of moral turpitude. In either such instance, the Board might well conclude that the public interest disfavors renewal of the license. Here, on the other hand, the parties' verbal sparring over a business dispute does not warrant such a finding.

⁹¹ 3 AAC 304.180(a)(5).

When this Board declined to renew a beverage dispensary license in *Fantasies on Fifth Avenue*, one of the many public interest concerns raised by the operation of that license was the presence of a figurehead licensee who ostensibly held a 100% interest in the operating LLC but had no involvement in or knowledge of the business's operations and who had unreasonably delegated all authority under the license to an unlicensed third-party.⁹²

Here, we have a very different situation. Operation of the Lodge continues to be carried out by the LLC member who has been openly identified as the "Manager" in two decades of applications and renewals. There are many examples of corporate license holders where the controlling corporate interests are not involved in the day-to-day operation of licensed premises. The concern in *Fantasies* was that the identified 100% owner was offered as subterfuge to disguise the actual operator of the license. There is no such concern here. Ms. Martin's role as a financier of the LLC is not inherently problematic where the license is being operated without incident and by a covered licensee. Thus, Ms. Martin's lack of operational involvement in the LLC is not grounds for a finding that renewal is against the public interest.

3. Does the evidence otherwise show that renewal of ISL's license is not in the public interest? (No).

The legislature has vested this Board with broad discretion in determining whether renewal of a license is in the public interest.⁹³ In *Fantasies on Fifth Avenue*, where evidence established a pattern of serious wage-hour and safety violations at the licensed premises, the Board determined that the license was not being operated in the public interest. The Board's refusal to renew that license was upheld by the Alaska Supreme Court, which found substantial evidence of multiple violations relating to the operation of the license.⁹⁴

Here, on other hand, there appears to be no dispute about the actual operation of the license. No evidence was presented about alleged operational violations, and the Division has stipulated that there are no operational concerns. Both Edwin and Barbara Phillips testified credibly about the seriousness with which they approach the responsibilities of operating a licensed premises, and their efforts to do so safely and responsibly. Additionally, the undisputed evidence is that the Lodge is a major source of tax revenue for the City of Hoonah.

⁹² *Fantasies on Fifth Avenue, supra*, 446 P.3d at 368-369.

⁹³ *Id.*, 446 P.3d at 369.

⁹⁴ *Id.*, 446 P.3d at 367-368, 372-373.

In short, there is no evidence in the record to suggest any operational basis for concluding that renewal would be against the public interest.

IV. Conclusion

The procedural history of this application renewal is unusual, and has been complicated by the LLC parties' business dispute. By the time of the hearing, however, the LLC had taken the steps and submitted the materials requested by AMCO's Licensing Examiner in her original consideration of the renewal application. As AMCO did not meet its burden of showing that renewal of ISL's beverage dispensary – tourism license would not be in the best interest of the public, the Board's initial determination on this issue is reversed, and the renewal application granted.

Dated: January 11, 2023



Cheryl Mandala
Administrative Law Judge

Adoption

Pursuant to AS 44.64.060(e)(1) and (e)(4), the Alcoholic Beverage Control Board hereby adopts the foregoing decision as final.

The Board has modified a factual finding by substituting the corrected page 5 for the proposed decision's original page.

The Board further modifies the Conclusion of the decision at page 20 by adding the following statement:

"While continued questions of ownership of the LLC are troubling to the Board, those issues do not at this time rise to the level of a threat to public health or safety or the public interest."

With these changes, the Board now adopts as final the proposed decision as so modified. 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 3/9/2023 day of March, 2023.

By: _____

DocuSigned by:
Dana Walukiewicz
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Signature
Dana Walukiewicz
Name
Chair, Alcoholic Beverage Control
Board _____
Title