

DISTRICT OF COLUMBIA COURT OF APPEALS

Aziken v. District of Columbia Alcoholic Beverage Control Board

29 A.3d 965 (D.C. 2011) · No. No. 08-AA-76 · Decided October 20, 2011

SUMMARY

The District of Columbia Court of Appeals affirmed the revocation of Smart Aziken's alcoholic beverage license following a shooting death and evidence of recurring criminal activity, underage drinking, controlled-substance use, and other regulatory violations at his nightclub. The court rejected Aziken's due process claims concerning discovery, witness subpoenas, and the testimony of the Police Chief. It also held that the three-member signing panel constituted a quorum and that substantial evidence supported the Board's findings.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Terry, Senior Judge; Pryor, Senior Judge; Steadman, Senior Judge
JURISDICTION	District of Columbia
DECIDED	October 20, 2011
DOCKET	No. 08-AA-76
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of the District of Columbia Alcoholic Beverage Control Board's final order revoking Aziken's alcoholic beverage license.
STANDARD OF REVIEW	The court reviews Board decisions for compliance with law and support by substantial evidence, does not substitute its judgment when substantial evidence supports the decision even if contrary evidence exists, and defers to the Board's interpretation of statutes it administers unless arbitrary, capricious, or an abuse of discretion.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Smart Aziken v. District of Columbia Alcoholic Beverage Control Board

TOPICS

judicial review of agency action

agency adjudication

administrative law

standard of review

statutory interpretation

PRACTICE AREAS

administrative law

alcoholic beverage licensing

agency adjudication

appellate review

QUESTIONS PRESENTED

1. Whether the Board denied Aziken a fair hearing by proceeding before all discovery was completed and by quashing his subpoena for Police Chief Lanier.
2. Whether the Board's final revocation order was invalid because it was signed by only three members and because one signing member had not personally attended every hearing.
3. Whether the Board's findings and license-revocation decision were supported by substantial evidence.
4. Whether the Board's amended March 2008 order was invalid because the initial January order did not mention the June 12 hearing.

HOLDINGS

1. The Board committed no reversible procedural error by proceeding with the hearings while discovery was still being completed or by refusing to require live testimony from Chief Lanier. Aziken showed no actual prejudice, had the opportunity to recall witnesses after receiving discovery, did not recall them, and did not identify testimony Chief Lanier could have added.
2. The final revocation order was valid because three members constituted a quorum under D.C. Code § 25-431(b), and the two members who personally heard all the evidence constituted a majority of the three-member quorum. Therefore, the additional proposed-order notice and argument required by D.C. Code § 2-509(d) did not apply.
3. Substantial evidence supported the Board's findings that Aziken knowingly permitted controlled-substance use, served alcohol to underage customers, and operated under an unapproved name; the revocation order was therefore sustainable.
4. The March 2008 amended order was the final order before the court and cured the omission by incorporating and discussing evidence from the June 12 hearing; the January order was no longer operative.

KEY QUOTATIONS

“Administrative and judicial efficiency require that all claims be first raised at the agency level to allow appropriate development and administrative response before judicial review.” (970)

“Absent statutory restrictions, the general rule is that a majority of a collective body constitutes a quorum, and a majority of the quorum is empowered to act for the body.” (971)

“When there is substantial evidence in the record to support the Board's decision, we will not substitute our judgment for that of the Board, “even though there may also be substantial evidence to support a contrary

FACTUAL BACKGROUND

Aziken operated Smarta Broadway, a nightclub holding a Retailer's Class CN alcoholic beverage license. After a seventeen-year-old patron was shot and killed inside the club, police and other witnesses described repeated violence, drug use, underage drinking, firearms, and security problems associated with the club. The Board credited testimony from police officers, a former security supervisor, and patrons that Aziken knowingly permitted controlled-substance use and served alcohol to underage customers, and it also found that he operated under an unapproved name.

PROCEDURAL HISTORY

After a shooting death and other reported criminal activity connected with Aziken's nightclub, the Board conducted hearings and issued a January 23, 2008 order revoking his Retailer's Class CN license. The Board later issued an amended and superseding order on March 19, 2008, incorporating evidence from the June 12 hearing without changing the revocation. Aziken petitioned the District of Columbia Court of Appeals for review, challenging the fairness of the hearings, the Board's quorum and notice procedures, and the sufficiency of the evidence.

DISPOSITION

affirmed

CASES CITED

- Hughes v. District of Columbia Department of Employment Services, 498 A.2d 567, 570-571 (D.C. 1985)
- Slye v. United States, 602 A.2d 135, 139 (D.C. 1992)
- District of Columbia v. Konek, 477 A.2d 730, 731 (D.C. 1984)
- Tiger Wyk, Ltd. v. District of Columbia Alcoholic Beverage Control Board, 825 A.2d 303, 307 (D.C. 2003)
- Upper Georgia Avenue Planning Committee v. Alcoholic Beverage Control Board, 500 A.2d 987, 992 (D.C. 1985)
- Smith v. District of Columbia Department of Employment Services, 548 A.2d 95, 97 (D.C. 1988)
- Mackabee v. United States, 29 A.3d 952 (D.C. 2011)