

DISTRICT OF COLUMBIA COURT OF APPEALS

2461 Corporation t/a Madam's Organ Restaurant v. District of Columbia Alcoholic Beverage Control Board

950 A.2d 50 (D.C. 2008) · No. 06-AA-523 · Decided June 12, 2008

SUMMARY

The District of Columbia Court of Appeals reviewed sanctions imposed by the Alcoholic Beverage Control Board against a restaurant for allegedly increasing its occupancy without Board approval. The court held that the Board's finding was not supported by substantial evidence because the record did not establish that the restaurant's 99-seat certificate of occupancy limited the total number of patrons or that the restaurant had substantially changed its operations. The court reversed the Board's order.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Thompson, Associate Judge; Fisher, Associate Judge; Schwelb, Senior Judge
JURISDICTION	District of Columbia
DECIDED	June 12, 2008
DOCKET	06-AA-523
DISPOSITION	reversed
PROCEDURAL POSTURE	Petition for review of an order of the District of Columbia Alcoholic Beverage Control Board imposing a five-day license suspension and a \$500 fine for making a substantial change in the occupancy of a licensed establishment without Board approval.
STANDARD OF REVIEW	The court reviews the Board's factual findings for substantial evidence in the record as a whole, examines whether there is a rational connection between the facts found and the decision made, and reviews the agency's legal conclusions de novo. The court gives considerable weight to an agency's construction of statutes and regulations it administers when the language is unclear, but the judiciary remains the final authority on statutory and regulatory construction.
PRECEDENTIAL VALUE	published and precedential

PARTIES

2461 Corporation t/a Madam's Organ Restaurant v. District of Columbia Alcoholic Beverage Control Board

TOPICS

judicial review of agency action

standard of review

agency adjudication

administrative law

statutory interpretation

PRACTICE AREAS

administrative law

alcoholic beverage licensing

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appellate procedure

QUESTIONS PRESENTED

1. Whether the Board's finding that petitioner substantially changed its operations by increasing occupancy without Board approval was supported by substantial evidence.
2. Whether the references to capacity and seating in petitioner's license application, certificate of occupancy, voluntary agreement, and Class CR license established a limit of 99 total patrons rather than a limit on seated patrons.

HOLDINGS

1. The Board's finding that petitioner substantially changed its operations by increasing occupancy without Board approval was not supported by substantial evidence in the record as a whole and lacked a rational connection to the facts found.
2. The record did not establish that the references to a capacity of 99 or 99 seats imposed a limit of 99 total patrons who could be present in the establishment at one time.

KEY QUOTATIONS

"We are persuaded that the Board's decision in this case is not supported by substantial evidence in the record as a whole and that there is not a logical connection between the facts that the Board found in this case and its conclusion that petitioner made a substantial change in its operations, i.e., a change in the occupancy of its establishment, without Board approval." (950 A.2d at 53)

"In light of Mr. Duggan's uncontradicted and not-discredited testimony, the record does not contain substantial evidence supporting the Board's finding that petitioner made a substantial change in its operations without Board approval." (950 A.2d at 55)

FACTUAL BACKGROUND

2461 Corporation operated Madam's Organ, a District restaurant holding a Class CR alcoholic-beverage license. Its license application and certificate of occupancy referred to approximately 99 seats, while the restaurant also had standing areas and other spaces. During an April 23, 2005 inspection, an investigator estimated that approximately 203 patrons were present, but acknowledged that most were standing and that he could not determine whether more than 99 patrons were seated. The restaurant's president testified without contradiction

that its operations had remained unchanged for approximately ten years and that prior ABRA inspections had not found an occupancy violation.

PROCEDURAL HISTORY

Following an April 23, 2005 compliance inspection, the Board issued a notice to show cause alleging that petitioner had substantially changed its operations by increasing occupancy without approval. After a May 3, 2006 hearing, the Board imposed a five-day suspension and a \$500 fine. The District of Columbia Court of Appeals reviewed the Board's order and reversed it because the finding of an unapproved change in occupancy was not supported by substantial evidence.

DISPOSITION

reversed

CASES CITED

- *Levelle, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 924 A.2d 1030, 1035-1036 (D.C. 2007)
- *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1387 & n.26 (D.C. 1977)
- *Brewington v. District of Columbia Board of Appeals & Review*, 299 A.2d 145, 147 (D.C. 1973)
- *Citizens Ass'n of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment*, 337 A.2d 495, 496 (D.C. 1975)
- *In re Board of Zoning Adjustment Appeal No. 17439*, 54 D.C. Reg. 3359 (Apr. 13, 2007)
- *In re Bruce*, 97 N.C. App. 138, 387 S.E.2d 82, 83 (1990)
- *In re The Hair Club, Inc. t/a Nate's Comfort Zone*, 50 D.C. Reg. 7865, 7866, 7887 (Sept. 19, 2003)
- *In re Twins Lounge, Inc.*, 50 D.C. Reg. 7902, 7904 (Sept. 19, 2003)