

In The Circuit Court for Baltimore City
CIVIL

57/0/88/210

In the Matter of

HOWARD PERLOFF, ET AL

VS.

BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY

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125421

oc 23/6/45
-2691

Date filed:
03/16/94

Circuit Court for Baltimore City
111 North Calvert Street - Courthouse East
Clerk's Office - Room 462
Baltimore, Md. 21202

Md. Rule 7-210. Return of agency record.

After the time for seeking appellate review has expired, if no appellate review has been sought, the clerk shall return the record of the agency proceeding to the agency. If appellate review has been sought, the clerk, unless otherwise ordered by the appellate court, shall return the record of the agency proceedings to the agency upon the conclusion of the appellate review.

Civil Title Perloff, Etal Vs. Board of Liquor License

Civil Action Number: 24-C-94-004032

It is thereupon this 8th day of August 2005, that the record of the agency proceedings have been returned to:

Board of Liquor License Commision for Baltimore City -
10 South Street -
Suite 200 -
Baltimore, Maryland 21202
ATTN: Board of Appeals -

Record returned by Katia Babbitt, a Clerk for the Circuit Court for Baltimore City.

(Or)

Per written notification from the agency indicating that the return of the record of the agency proceeding(s) is/are not to be returned, the record has been forwarded to the Civil Records Department for proper disposal on _____ by _____, a clerk for the Circuit Court for Baltimore City.

Record returned by _____, a Clerk for the Circuit Court for Baltimore City.

3/8²⁰

2

IN THE CIRCUIT COURT FOR BALTIMORE CITY
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELS
POINT CAFE, INC. T/A FELS POINT CAFE
723 S. BROADWAY
BALTIMORE, MARYLAND 21231

FOR JUDICIAL REVIEW OF THE DECISION OF THE
BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE CITY
10 SOUTH STREET
SUITE 200
BALTIMORE, MARYLAND 21202

IN THE CASE OF BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY

VS.

HOWARD PERLOFF & ANDREW VOMVAS, &
APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELS
POINT CAFE, INC. T/A FELS POINT CAFE

CIVIL
ACTION
NO.: 94004032
CL174515

O R D E R

Upon the foregoing Petition and Agreement to Extend Time
for Decision under Article 2B, Section 175(e)(3), it is this 13th
day of May, 1994

ORDERED, that good cause is shown for the extension of
time under Article 2B, Section 175(e)(3) and that the time is
hereby extended until a decision is rendered in this case.

Allen R. Hollander
JUDGE

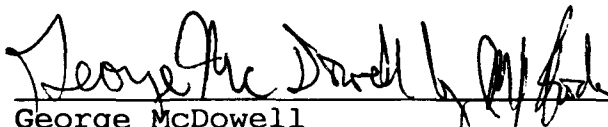
LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

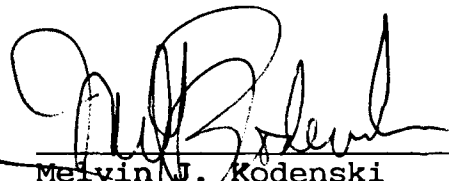
MJK\2196

3. That counsel for the Appellant has talked with George McDowell, Esquire, counsel for the Appellee, Board of Liquor License Commissioners for Baltimore City, and there is an agreement to extend the time until this Court can make a decision on the Appeal that was argued on May 5, 1994. George McDowell, Esquire, counsel for the Board of Liquor License Commissioners for Baltimore City, has authorized counsel for the Appellants, Melvin J. Kodenski, Esquire, to sign this Petition on his behalf.

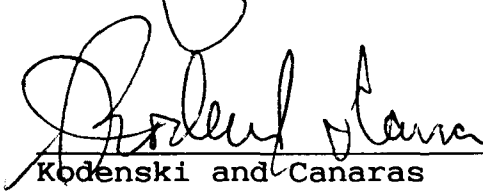
4. That inasmuch as the argument has been heard, there is good cause to extend the time until this Honorable Court may make a decision on the Appeal.

WHEREFORE, the Petitioners and Appellants pray that this Court extend the time under Article 2B, Section 175(e)(3), until a decision on the Appeal is rendered.


George McDowell
By: Melvin J. Kodenski, as per
telephone conversation and agreed
to.



Melvin J. Kodenski

1023 Cathedral Street
Baltimore, Maryland 21201
(410) 727-4131
Attorney for the Appellee
BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE
CITY


Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(410) 685-5100
Attorneys for the Petitioners
HOWARD PERLOFF AND ANDREW
VOMVAS, AND APPLICANTS, JUSTIN
D. WALTERS, THOMAS S. HICKS,
CHRISTOPHER M. FRANCIS, AND
FELLS POINT CAFE, INC. T/A FELLS
POINT CAFE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 13 day of May, 1994, a copy of the Petition and Agreement to Extend Time for Decision under Article 2B, Section 175(e)(3) and Order was mailed to George McDowell, Esquire, 1023 Cathedral Street, Baltimore, Maryland 21201, Attorney for the Appellee, Board of Liquor License Commissioners for Baltimore City.


Melvin J. Kodenski

MJK\2196

IN THE CIRCUIT COURT FOR BALTIMORE CITY)
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,)
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.)
HICKS, CHRISTOPHER M. FRANCIS, & FELLS)
POINT CAFE, INC. T/A FELLS POINT CAFE)
723 S. BROADWAY)
BALTIMORE, MARYLAND 21231)



FOR JUDICIAL REVIEW OF THE DECISION OF THE)
BOARD OF LIQUOR LICENSE COMMISSIONERS.)
FOR BALTIMORE CITY)
10 SOUTH STREET)
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NO.: 94004032
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IN THE CASE OF BOARD OF LIQUOR LICENSE)
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VS.)

HOWARD PERLOFF & ANDREW VOMVAS, &)
APPLICANTS JUSTIN D. WALTERS, THOMAS S.)
HICKS, CHRISTOPHER M. FRANCIS, & FELLS)
POINT CAFE, INC. T/A FELLS POINT CAFE)

.....


BOARD'S MOTION TO STRIKE APPEARANCE OF COUNSEL
AND ENTER APPEARANCE OF NEW COUNSEL

The Board of Liquor License Commissioners for Baltimore City, by its attorney George McDowell, respectfully asks this court to strike the appearance of Mark P. Keener, Esquire, and asks for leave to enter the appearance of George McDowell. In support of its motion, the Board states:

1. That subsequent to the entry of Mr. Keener's appearance, he resigned as appellate counsel for the Board.
2. That the Board wishes to be represented by its other appellate counsel, George McDowell.

3. That Mr. Keener has no objection to the striking of his appearance.

Respectfully submitted,

 9/2/95

George McDowell
1023 Cathedral Street
Baltimore, Maryland 21201
(410) 727-4131
Attorney for the Board

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May, 1994, a copy of the foregoing Motion was mailed, postage prepaid, to Melvin J. Kodenski, Esquire, Kodenski and Canaras, 19 E. Fayette Street, Suite 301, Baltimore, Maryland 21202, Attorney for Petitioners.



George McDowell

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RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
1994 MAY -2 A 9:23
CIVIL DIVISION

IN THE CIRCUIT COURT FOR BALTIMORE CITY)
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,)
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.)
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POINT CAFE, INC. T/A FELLS POINT CAFE)

.....

BOARD'S MEMORANDUM IN OPPOSITION
TO PETITION FOR JUDICIAL REVIEW

PROCEDURAL POSTURE OF THE CASE

On November 4, 1993 a hearing was held before the Board of Liquor License Commissioners on the application to transfer ownership (from Howard Perloff and Andrew Vomvas to Justin Walters, Thomas Hicks, and Christopher Francis) and the request to modify the restrictions on the liquor license at 723 South Broadway in Fells Point. The restrictions had been placed on the license by the Board as a result of a protracted battle between the licensees and the neighborhood residents over whether the licensed premises was being operated in a manner inconsistent with the privileges of

a Class B Restaurant license.

At this hearing, the Board approved the transfer of the license, and agreed to lift the old restrictions and substitute as new restrictions the provisions contained in a written agreement between the Licensees and the Fells Point Homeowners' Association (attached as Exhibit A).

During the November 4th hearing, Commissioner Baer insisted on questioning Mr. Walters, Mr. Hicks, and Mr. Francis, on whether each was aware of the past violations of Board rules at the licensee premises, and whether each intended to operate the premises in the future in obedience of the restrictions contained in the written agreement. The colloquy between Commissioner Baer and Mr. Francis is at pp. 17-21 of the November 4 transcript, between Commissioner Baer and Mr. Hicks at pp. 46-48, and between the Commissioner and Mr. Walters at pp. 48-50. Each applicant appeared to understand that adherence to the restrictions was mandatory.

The premises opened for business on the evening of December 10, 1993, and was operated in violation of the License restrictions.

The hearing which is the subject of this appeal was held before the Board on December 30, 1993. The Board held that the Licensees had violated the restrictions placed on the License. Commissioner Baer voted to revoke the License. Chairman Brown and Commissioner Thompson voted to add the following restrictions to the License.

No live entertainment,
No dancing,
No Disco/DJ,
No music,
No confetti,
No dry ice,
No strobe lights or other light show,
No revolving crystal balls,

Can only be used for restaurant dining subject to revocation for failure to comply.

Since the decision of the Board was split as to the penalty for the violation, the majority vote sets the penalty. Therefore, the license currently has the additional restrictions as listed above.

ARGUMENT

In Eger v. Stone, 253 Md. 533, 1969, the Court set out the standard for judicial review of decisions made by administrative agencies;

"We have made it quite clear that if the issue before the administrative body is "fairly debatable", that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body, in the absence of an unconstitutional taking of private property for public use without payment of just compensation. [citations omitted]. This rule will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence." 253 Md. at 542.

Under this standard, the issue is framed; Did the Board have before it evidence from which a reasonable person could conclude that the License at 723 South Broadway was operated in violation of the license restrictions?

The Fells Point Cafe, Inc. Agreement, attached as Exhibit A, sets out the restrictions on the license. Section B.5 of the agreement covers the restrictions "when used for Sit Down Dining or Smorgisboard:

A. Front Room (smaller), (known as the Fell's Point Cafe).

1. Permitted use is only Sit Down Dining (Patrons are there primarily to eat meals, tables are set with silverware, menus are used, prepared hot and cold means are served).

2. Alcohol may be served only with sit down dining or while waiting to eat a meal or while waiting to attend a function in another room as defined in B below.

3. At least 60% of the revenue is to be derived from the sale of food. Reports are to made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios.

4. Dancing is not permitted.

5. Recorded background music is permitted.

6. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are not permitted.

B. Rear Large Room (theater) and Front Large Room (formally known as Sanctuary)

1. Permitted uses are only:

Comedy Club

Theatrical Performances

Jazz or Blues Group Performances

Sit Down Dining or Smorgisboard (Patrons are there primarily to eat meals, tables are set with silverware, prepared hot and cold foods are served).

Private Functions (meetings, weddings, parties)

2. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are not permitted in all cases and in all rooms.

3. At least 60% of the revenue in each room is to be derived from the sale of food. Reports are to be made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios. It is acknowledged that early on, due to the lack of automation, it will not be economically feasible to have information breakdowns by each room or use. Overtime, as automation is installed, such breakdowns will be available.

4. When used for Comedy Club, Theatrical Performances, and Jazz or Blues Group:

- a. Alcohol may be served only when prepared hot and cold food is available and being served.
- b. Public Dancing is not permitted.
- c. The last service of alcohol for a day will be no later than 30 minutes after the last performance on that day.

5. When used for Sit Down Dining or Smorgisboard:

- a. Alcohol may be served only with sit down dining or waiting to eat a meal or while waiting to attend a function in another room as defined in B above.
- b. Live music entertainment is not permitted.
- c. Recorded music is permitted.
- d. Public dancing is permitted only in conjunction with sit down dining. Patrons are not permitted to only dance and/or only consume alcohol.

6. When used for private functions:

- a. Alcohol may be served only in conjunction with prepared food.
- b. Dancing is permitted.
- c. Live and recorded music are permitted.

- d. Private use means there is no concurrent public use or public admittance to the room(s) being used for the private function, there is an easily identifiable host responsible for the function.
- C. No public entrance from rear of building. No public exit from rear of building except for emergencies. Handicap access is permitted through rear.

Mr. Thomas Durel, president of the Fells Point Homeowners Association, gave evidence before the Board at the December 30th hearing. He stated that he visited the premises on the opening night, December 10th, at around midnight. Tr. 5. He observed a line of people outside the door waiting to get in. Tr. ____.

People were carded [required to show proof of age] as they entered. Tr. ____.

Inside were approximately 250 to 300 people, the majority of whom were not dining, but only dancing and drinking. Tr. 10.

When Mr. Durel attempted to get someone to provide him with a menu so that he could order a meal, a woman employee became confused, and finally, after about 15 minutes, was able to supply a menu from a separate dining area from which Mr. Durel was invited to order. Tr. 12.

During the 15 minutes Mr. Durel waited for his menu, he did not see anyone eating food, but did see many people consuming alcohol and 60 or 70 people on the dance floor. Tr. 13.

Mr. Durel never saw a maitre d, but did see (and was greeted) by two men weighing between 250-275 pounds wearing skin-tight t-shirts marked "Staff". Tr. 23.

Mr. Durel was told by employees that the owners did not want him to take pictures of the inside of the club. Tr. 18.

Mr. Durel saw no place settings or silverware on any of the tables in the premises. Tr. 22.

Mr. Durel observed a buffet area

which contained two chafing dishes. One had broccoli and carrots in it, the other had one or two pieces of roast beef. Tr. 13.

Mr. Durel noticed on the next night, December 11th, that the premises was not open at 8:00 p.m. Tr. 31. He returned to the premises at 11:45 p.m., and it was open. Tr. 31. Mr. Durel was charged a \$5.00 cover charge, which he paid. Tr. 33. Upon entry, he saw approximately 250 people, of whom 60 or 70 were in the dancing area. Tr. 33. He continued to observe people entering the premises, and when people entered, they would pay the cover charge, go to the bar, get a drink, then go to the dance floor and begin dancing. Tr. 35.

While Mr. Durel was watching, he was standing near 5 other gentlemen. A young lady came to him and asked him if he would like to order food or a drink. She did not ask for orders from the other 5 men. Tr. 36.

While Mr. Durel stood watching the proceedings, he observed strobe lights, black lights, and confetti periodically ejected from the ceiling to fall on those dancing below. He also observed smoke blown over the dance floor.

The licensees presented testimony that these violations should be excused because it was the opening nights of the premises. They also presented a videotape showing the premises being operated in conformity with the existing restrictions.

The issue for this court's decision is whether there was evidence presented from which the Board could fairly conclude that the premises was operated in violation of the license restrictions.

Mr. Durel presented overwhelming evidence of violations of restrictions. B.5.a.;

"Alcohol may be served only with sit down dining or while waiting to eat a meal or while waiting to attend a function in another room ..."

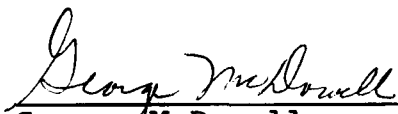
and of restriction B.5.d.;

"Public dancing is permitted only in conjunction with sit down dining. Patrons are not permitted to only dance and/or consume alcohol.

CONCLUSION

For at least 4 years the Board has worked hard to effect compromise between the licensees and the neighbors of this premises. Its factual findings of violation of the restrictions are supported by overwhelming credible evidence. The penalty cannot in any reasonable sense be deemed unfair, because it merely sets out restrictions which are a penalty only to a "megabar", not a Class B restaurant. For these reasons, the Board asks that its decision of December 30, 1993 be affirmed.

Respectfully submitted,


George McDowell
1023 Cathedral Street
Baltimore, Maryland 21201
(410) 727-4131
Attorney for the Board

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this *29th* day of April, 1994, a copy of the foregoing Board's Memorandum In Opposition To Petition For Judicial Review was mailed, postage prepaid, to Melvin J. Kodenski, Esquire, Kodenski and Canaras, 19 #. Fayette Street, Suite 301, Baltimore, Maryland 21202. Attorney for Petitioners.

George McDowell

George McDowell



Fell's Point Cafe, Inc. AGREEMENT!

November 4, 1993

To be attached to license for as long as the license covers the property of 723 South Broadway.

A. Front Room (smaller), (known as the Fell's Point Cafe).

- 1. Permitted use is only Sit Down Dining (Patrons are there primarily to eat meals, tables are set with silverware, menus are used, prepared hot and cold meals are served).
- 2. Alcohol may be served only with sit down dining or while waiting to eat a meal or while waiting to attend a function in another room as defined in B below.
- 3. At least 60% of the revenue is to be derived from the sale of food. Reports are to made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios.
- 4. Dancing is *not permitted*.
- 5. Recorded background music is permitted.
- 6. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are *not permitted*.

B. Rear Large Room (theater) and Front Large Room (formally known as Sanctuary)

1. Permitted uses are only:

- Comedy Club
- Theatrical Performances
- Jazz or Blues Group Performances
- Sit Down Dining or Smogisboard (Patrons are there primarily to eat meals, tables are set with silverware, prepared hot and cold foods are served).
- Private Functions (meetings, weddings, parties)

2. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are *not permitted* in all cases and in all rooms.

3. At least 60% of the revenue in each room is to be derived from the sale of food. Reports are to made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios. It is acknowledge that early on, due to the lack of automation, it will not be economically feasible

to have information breakdowns by each room or use. Overtime, as automation is install, such breakdowns will be available.

4. When used for Comedy Club, Theatrical Performances, and Jazz or Blues Group:

- a. Alcohol may be served only when prepared hot and cold food is available and being served.
- b. Public Dancing is *not permitted*.
- c. The last service of alcohol for a day will be no later than 30 minutes after the last performance on that day.

5. When used for Sit Down Dinning or Smogisboard:


- a. Alcohol may be served only with sit down dinning or while waiting to eat a meal or while waiting to attend a function in another room as defined in B above.
- b. Live music entertainment is *not permitted*.
- c. Recorded music is permitted.
- d. Public dancing is permitted only in conjunction with sit down dinning. Patrons are not permitted to only dance and / or only consume alcohol.

6. When used for private functions:

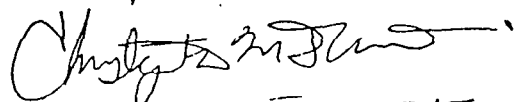
- a. Alcohol may be served only in conjunction with prepared food.
- b. Dancing is permitted.
- c. Live and recorded music are permitted.
- d. Private use means there is no concurrent public use or public admittance to the room(s) being used for the private function, there is an easily identifiable host responsible for the function.

No public entrance from rear of building. No public exit from rear of building except for emergencies. Handicap access is permitted through rear.

Accepted


FPHA.

Accepted 11-4-93


Fell's POINT CAFE.

13
AB

HOWARD PERLOFF, ET AL.

* IN THE

FILED

Petitioners

* CIRCUIT COURT

JUN 6 1994

v.

* FOR

CIRCUIT COURT FOR BALTIMORE CITY

BALTIMORE CITY BOARD OF LIQUOR LICENSE COMM'RS

* BALTIMORE CITY

* CASE NO. 94004032/CL174515

Respondents

* * * * *

MEMORANDUM OPINION AND ORDER

Introduction

Licenses Howard Perloff ("Perloff") and Andrew Vomvas ("Vomvas") (the "Licencees"), along with Applicants Justin Walters ("Walters"), Thomas Hicks ("Hicks"), Christopher Francis ("Francis") (the "Applicants"), and Fells Point Cafe, Inc., d/b/a/ Fells Point Cafe (together, the "Petitioners"), seek judicial review of the decision of the Board of Liquor License Commissioners ("Respondent" or the "Board") imposing various restrictions upon Petitioners' license.¹ On appeal, Petitioners challenge the Board's authority to impose these restrictions.²

¹Perloff and Vomvas are identified as licensees in the caption of the transcript of the hearing before the Board on December 30, 1993. However, the caption on the Board's decision of December 30, 1993 only names the Applicants. All pleadings filed in the Circuit Court include Perloff and Vomvas as "Petitioners." The record does not clearly explain whether Perloff and Vomvas are licensees, why they remain as captioned parties in this case, or what their current legal relationship is to Walters, Hicks, and Francis.

²The administrative record, on appeal, has not been sequentially numbered. Accordingly, documents in the record will be described herein by name, so as to permit their identification. References to the transcript of the Board's hearing held on November 4, 1993 are abbreviated by "Nov.T.", along with the particular page number of the transcript. References to the transcript of the Board's hearing held on December 30, 1993 are abbreviated by "Dec.T.", along with the particular page number of the transcript. References to the transcript of the Board's decision, announced on December 30, 1993 are referenced as "Decision", along with the particular page number.

Factual Summary

Prior to November 4, 1993, Perloff and Vomvas owned and operated the Fells Point Cafe, located at 723 South Broadway, with a valid liquor license for a class B restaurant. The Fells Point Cafe consists of three interconnected rooms: the small front room, also know as the "Cafe;" the large rear room; and the large front room, previously known as the "Sanctuary" and now known as "Seven23."³ Although all three rooms are interconnected, they operate as separate entities; the present dispute centers on the operation of Seven23.

On November 4, 1993, the Board held a hearing (the "November Hearing") on an application to transfer ownership of the liquor license from Perloff and Vomvas to Walters, Hicks, and Francis, and to modify the restrictions that had been placed on the license. The restrictions had been placed on the license as a result of a protracted battle between the neighborhood residents and Perloff and Vomvas over whether the Sanctuary was operating as a restaurant or as a bar. Nov.T.17-18, 46-51.

At the November Hearing, the Fells Point Homeowners' Association (the "Association") and Petitioners reached an agreement (the "Agreement") which was presented to the Board and incorporated into the liquor license. Nov.T.55-56, 60. At that time, only the Cafe was in use. However, the Agreement set terms under which Petitioners could use the other two rooms. Specifically, the Agreement permits Petitioners' use of the other rooms for theatrical, jazz, or blues performances, for a comedy club, for private functions, and for "Sit Down Dinning [sic] or Smogisboard [sic]." Agreement, at 1. Although the Agreement

³The room names appear in an agreement dated November 4, 1993, between Petitioners and the Fells Point Homeowners Association, which was made a part of the record on appeal.

prohibits "Exotic entertainment, go-go entertainment, rock & roll music, and hard rock music" at all times, Id., it expressly allows recorded music and public dancing in conjunction with use of the rear room and Sanctuary for sit down dining or a smorgasboard. Id. at 2. Also, it permits alcohol to be served, but "only with sit down dining [sic] or while waiting to eat a meal or while waiting to attend a function in another room." Id.

The Association vigorously opposed any use of the premises as a "mega bar," and apparently approved the Agreement with the understanding that the premises would function like a traditional restaurant.⁴ Before approving the license transfer, the Board questioned Petitioners at length to determine how the premises would be used. Nov.T.13-24, 46-50.

According to the testimony of the Applicants offered at the November hearing, the Cafe would be used for fine dining, with a capacity of about 60 people. Nov.T.15. The primary use for both the rear room and the Sanctuary was to serve food, not alcohol. Nov.T.16, 27. The rear room would be used for private parties, comedy shows on weekends, and live jazz or blues bands on weeknights. Nov.T.15, 26-27. They testified further that the Sanctuary would be used for larger shows, as a dinner theater, Nov.T.27, or for a smorgasboard restaurant. Nov.T.14. During the shows, tables would be set with cutlery and menus, the floorspace would be filled with tables and chairs (except for the stage area), and waiters would circulate. Nov.T.29-30, 44-45. When the Sanctuary was used for a smorgasboard, there would be bussing staff but no waiters. Nov.T.29-30. The capacity of the Sanctuary was decreased from 450 people to 325 people, Nov.T.34-35, and a maitre d'

⁴Whatever the apparent expectation of the Association, the Agreement itself is rife with ambiguities. Even under the interpretation most favorable to the Association, the Agreement authorizes at least a non-traditional restaurant.

would be hired to greet and seat patrons. Nov.T.31. The Applicants also agreed not to have mirrored walls, strobe lights, loud music, disc jockeys (except during private functions), wet T-shirt or drinking contests, or bouncers. Nov.T.33-34, 37-38.⁵

Petitioners opened "Seven23" (formerly the Sanctuary) and the "Comedy Caberet" (formerly the rear room) to the public on December 10, 1993. Almost immediately, Thomas J. Durel, President of the Association ("Durel"), filed a complaint with the Board, by a letter dated December 13, 1993, alleging violations of the Agreement by Petitioners at Seven23.

After an investigation, the Board charged Petitioners as follows:

. . . violation of the restriction appearing on License which in effect says, "Must operate in line with the conditions set forth in agreement with Fells Point Homeowners' Association dated November 4, 1993[;]" legislative violations on Friday, December 10, 1993; Saturday, December 11, 1993; on Friday, December 17, 1993, and on Saturday, December 18th, 1993[;] and from November 4, 1993 to the present[;] and also on Thursday, December 16, 1993

Dec.T.1. The Board also charged Petitioners with a violation of Rule 3.01 of the Rules and Regulations of the Board (April, 1993) (the "Board Rules")⁶ from November 4, 1993, to December 30, 1993.

A hearing was convened by the Board on the charges on December 30, 1993. Many

⁵The Applicants acknowledged that the absence of "tables, menus, cutlery . . . would be inconsistent with a restaurant operation," Nov.T.33, and that having a bouncer "is more consistent with a bar rather than a restaurant." Nov.T.37.

⁶Rule 3.01 states as follows:

Every licensee shall be the actual owner and operator of the business conducted on the licensed premises. The identity of any person, not a licensee, having any financial interest in said business shall be disclosed to the Board in writing.

witnesses testified at the hearing, including Durel, Martin, Perloff, Francis, the Cafe's general manager, the head chef, and two patrons.⁷ Sample menus, newspaper advertisements, a rough floor plan, the financial statement of the Fells Point Cafe, pictures, and a video tape were also presented to the Board.

Durel testified that he had visited Seven23 around midnight on December 10, 1993, and again around midnight on December 11, 1993, to see if Petitioners were operating in conformity with the terms of the Agreement. Dec.T.4. At length, Durel described the alleged peccadillos and violations by Seven23. Dec.T.4-64. In essence, he felt the Agreement obligated Seven23 to operate as a restaurant, but instead, it functioned as a bar. For example, Durel observed that there were about 200-300 people dancing or standing in Seven23, many of whom were just drinking and not eating; Dec.T.9-10; the smorgasboard on December 10 only had two chafing dishes (one with broccoli and carrots, the other with two slices of roast beef); Dec.T.13; on December 11, 1993, the smorgasboard had "chicken and vegetables and roast beef and I think ham[, and a] whole bunch of stuff;" Dec.T.37; there were 30 tables and between 75-90 chairs; Dec.T.39; on December 10, place settings or condiments had not yet been set on the tables; Dec.T.22; while people were dancing, confetti was falling from the ceiling, and strobe and black lights were flashing; Dec.T.38; there was no maitre d', but there were two people wearing "Staff" T-shirts, whom Durel described as "bouncers." Dec.T.23.

⁷In their Memorandum, Petitioners allege that 18 witnesses attended in support of the transfer application. While only a few witnesses testified, the Board accepted a proffer in lieu of the testimony of the others. Dec.T.143-67.

The Board sent J. Berry Martin ("Martin"), Inspector for the Board, to investigate.⁸ Martin testified as to his extensive observations of how Seven23 appeared on December 16, 17, and 18, 1993. Dec.T.65-87. Martin stated that he was greeted by a man and a woman each night at a greeting station by the door; Dec.T.65-7; he was told he could order anything from the Cafe menu with a credit of the \$5 smorgasboard charge; Dec.T.66-67; numerous people were sitting at tables conversing and eating after 10:30 p.m.; Dec.T.65-66, 69; the smorgasboard consisted of chafing dishes containing prime rib, chicken, steamed vegetables, two hot soups, a hot potato dish, a hot rice dish, and many desserts; Dec.T.66; the tables were provided with menus; Dec.T.69; and on December 17, 1993, somewhere between 25 and 40 (out of 150 to 200) people were dancing at any given time; Dec.T.74. Martin added that the buffet was "a great value." Dec.T.78.

The Board, in a split decision, imposed substantial restrictions on how Petitioners could operate the licensed premises.⁹ Specifically, Petitioners cannot have live entertainment, dancing, dee-jay, music, confetti, dry ice, strobe lights or other light show, or revolving crystal balls. Decision at 4. These restrictions, if upheld, will certainly change the entire character of Seven23.

Scope of Review

The Board's decisions concerning factual issues must be supported by "substantial

⁸Martin was sent by the Board to see if "the Sanctuary portion is not a restaurant and [if] it is operating as it formerly operated as a disco employing strobe lights, deejay, dancing, etc.'" Dec.T.68.

⁹Commissioner Baer voted to revoke the license altogether. See note II, infra.

evidence" on the record. A scintilla of evidence is not enough. Prince George's Co. v. Meininger, 264 Md. 148, 152 (1972). Moreover, this court may not engage in judicial fact-finding. Findings of fact made by the Board are binding upon the reviewing court, if supported by substantial evidence. See Baltimore Lutheran High Sch. Assoc. v. Emp't Sec. Admin., 302 Md. 649, 662 (1985); Board of County Comm'rs v. Holbrook, 314 Md. 210, 218 (1988). Any inference that can reasonably be drawn from the facts is also to be left to the Board. Snowden v. Mayor & City Council of Baltimore, 224 Md. 443, 448 (1961). "The Court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness." Id. Cf. Eger v. Stone, 253 Md. 533, 542 (1969) (court may not substitute judgment for that of the administrative body when a question is "fairly debatable"); Floyd v. County Council of P.G. Co., 55 Md. App. 246, 258 (1983) (court must give due deference to zoning agency, having particular expertise).

But the Board's authority is not unchecked. Where the action of the Board is arbitrary, capricious, or discriminatory, or if the Board has made an erroneous interpretation of law, the decision will not stand. See, e.g., Hardesty v. Zoning Board, 211 Md. 172, 177 (1956); Heath v. Mayor & City Council of Baltimore, 187 Md. 296, 304 (1946). In addition, "'[a]n agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.'" Bd. of Educ. of A.A. Co. v. Barbano, 45 Md. App. 27, 41 (1980) (quoting U.S. v. Heffner, 420 F.2d 809, 811 (4th Cir. 1979)); see also, Baines v. Bd. of Liquor Lic. Comm'rs, Slip Opinion No. 1221, at 5 (filed April 28, 1994) (quoting

Mandel v. U.S. Dep't of Health, Educ. & Welfare, 411 F.Supp. 542, 544 (D.Md. 1976)); Williams v. McHugh, 51 Md. App. 570 (1982); Hopkins v. Md. Inmate Griev. Comm'n, 40 Md. App. 329, 335-36 (1978). On review, then, this court must consider whether a reasoning mind could have reached the decision of the Board, Holbrook, 314 Md. at 218, and whether the Board properly applied the law.

Discussion

It is well established that this court cannot substitute its judgment for supported factual findings made by the Board. In this regard, what the Court said in Baines v. Bd. of Liquor Lic. Comm'rs, Slip Opinion No. 1221 (filed April 28, 1994) (hereinafter, "Baines"), is pertinent here:

Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing in the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action the court may not uphold the agency order unless it is *sustainable on the agency's findings and for the reason stated by the agency*.

Baines, at 6 (quoting United Steelworkers v. Bethlehem Steel, 298 Md. 665, 679 (1984)) (emphasis in Baines).

In Baines, the Petitioner appealed a revocation of a liquor license. Although the Board made no findings of fact as to abandonment of the property by the licensee, the circuit court, on appeal, ruled that the licensee had abandoned the premises. Accordingly, pursuant to Md. Code of 1957 Ann., Art. 2B, § 75 (1990), the trial court affirmed the Board's

revocation. The Court of Special Appeals reversed, holding that when "[t]he circuit court made its own findings of fact . . . [the court] exceed[ed] [its] authority to review decisions of an administrative agency." Baines, at 7.

The Board did not find Petitioners in violation of any statute or Board Rule. Indeed, notwithstanding the voluminous and contradictory testimony and evidence, *the Board did not make a single finding, as to any specific fact or as to which particular terms of the Agreement, license, statute or Board rules Petitioners had violated.* The necessity and importance of factual findings cannot be overstated; this case cries out for specific factual resolutions, which this court is not empowered to make.¹⁰

Clearly, the Board's ultimate action reflects a general conclusion that Petitioners were not operating Seven23 in compliance with the Agreement.¹¹ Although the frustration of Association and the Board is understandable based on Petitioners' testimony at the November

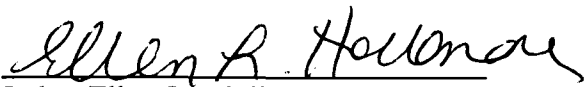
¹⁰For example, does Durel's testimony support a finding of a violation of the Agreement? Does Martin's testimony establish that the Petitioners were in substantial compliance with the Agreement? Were the patrons just drinking, or were they eating as well? What kind of music was played on December 10, 11, 16, 17, and 18, and did that music violate the Agreement? Were the employees "bouncers" or "waiters?" How many tables did Petitioners have, and were they properly set with menus and condiments? Did Petitioners always provide food, either by smorgasboard or sit-down dining, in Seven23? What weight does the data in the financial statement carry? Were strobe lights, confetti, or dry ice present in Seven23?

¹¹At oral argument, counsel for Respondent described Commissioner Baer as "apoplectic" at the December Hearing. A review of the December transcript suggests that the Commissioner was indeed angry and frustrated. T.123-24, 129; Decision, at 3. At the November Hearing, Commissioner Baer took pains to ensure that each Applicant knew the troubled history of the Sanctuary, and threatened that "if the nature of the operation of [the Sanctuary] doesn't change significantly from what it was, to everything [Applicants] promise that is going to be and should be, I for one am going to recommend that we hold a hearing immediately and I'm going to vote to revoke this place." Nov.T.17-18; see also Id. at 46-50 (making sure Walters and Hicks would follow the Agreement "to the letter").

Hearing, review of the Agreement leaves open the question of whether the Association had the right to expect a restaurant-style operation from a place in Fells Point designed to hold 325 people and expressly permitted to provide music, alcohol, dancing, and buffet food until 2:00 a.m. Even if Petitioners' conduct did not measure up to their representations at the November Hearing, and even assuming Seven23 was not functioning as a "restaurant," it is problematic that the Board has failed to specify what acts or omissions constituted a violation of the Agreement or license.¹² In addition, although the Board charged Petitioners with violating Rule 3.01, no one testified or presented relevant evidence as to that Rule, and the Board made no findings regarding that Rule.

Conclusion

The Decision contains absolutely nothing for this court to review for substantial evidentiary support or fair debatability. Consequently, this court finds that the action of the Board was arbitrary and capricious, and cannot stand.¹³ Accordingly, it is, this 2nd day of June ~~May~~, 1994, by the Circuit Court for Baltimore City, ORDERED that the decision of the Board be, and the same hereby is, REVERSED. Costs to be paid by Respondent.


Judge Ellen L. Hollander

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¹²Commissioner Baer attempted to make factual findings in his minority opinion, but the majority did not do so.

¹³Certainly, this court's ruling does not preclude future charges based on future violations of the license.

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By J HOLLANDER'S STAFF

PRESIDING JUDGE

COURTROOM CLERK

STENOGRAPHER

ASSIGNMENT FOR THURSDAY MAY 05, 1994

CASE NUMBER - 94004032

CASE TITLE - PERLOFF, ETAL VS BOARD OF LIQUOR LICENSE CL174515

CL

CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY

PROCEEDING - COURT TRIAL - FAST TRACK

KEENER, MARK P
KODENSKI, MELVIN

DEFENSE ATTORNEY 727-7702
PETITIONER'S ATTORNEY 685-5100

TYPE OF PROCEEDING: (___ JURY) (NON-JURY) (___ OTHER)

DISPOSITION (CHECK ONE)

- (___ SETTLED) (___ CANNOT SETTLE) (___ NEXT COURT DATE)
- (___ VERDICT) (___ REMANDED) (___ NON PROS/DISMISSED)
- (___ JUDGEMENT NISI) (ORDER/DECREE SIGNED) (___ OTHER)
- (___ JUDGEMENT ABSOLUTE) (___ ORDER/DECREE TO BE SIGNED)
- (___ POSTPONED) (___ MOTION GRANTED)
- (___ SUB CURIA) (___ MOTION DENIED)

PLEASE EXPLAIN:

JUDGE SIGNATURE Allen Hollander DATE 6/2/94

RESIDING JUDGE

COURTROOM CLERK

STENOGRAPHER

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KCDENSKI, MELVIN

DEFENSE ATTORNEY 727-7702
PETITIONER'S ATTORNEY 685-5108

TYPE OF PROCEEDING: (___) JURY () NON-JURY (___) OTHER

DISPOSITION (CHECK ONE)

() SETTLED (___) CANNOT SETTLE (___) NEXT COURT DATE

(___) VERDICT (___) REMANDED (___) NON PROS/DISMISSED

(___) JUDGEMENT NISI () ORDER/DECREE SIGNED (___) OTHER
PLEASE EXPLAIN:

(___) JUDGEMENT ABSOLUTE (___) ORDER/DECREE TO BE SIGNED

(___) POSTPONED (___) MOTION GRANTED

(___) SUB CURIA (___) MOTION DENIED

JUDGE SIGNATURE

Allen J. Holtzner
154

DATE

6/2/94

JUDGE

STROOM

STENOGRAPHER

ASSIGNMENT THURSDAY MAY 05, 1994

USE NUMBER - 94001000

USE TITLE - BERLOFF, ETAL VS BOARD OF LIQUOR LICENSE CL174515
- APPEAL FROM ADMINISTRATIVE AGENCY
- COURT TRIAL - FAST TRACK

CL

KEENER, MA
KORANSKI, N

PLAINTIFF'S ATTORNEY
DEFENDANT'S ATTORNEY

727-7704
695-9107

PROCEEDING: () JURY () NON-JURY () OTHER

PROPOSITION (CHECK ONE)

() CANNOT BE TRIED () NOT TRIED

() VERDICT () REMANDED () NON PROS/DIS

() JUDGEMENT NISI () ORDER/DECREE SIGNED ()

PLEASE EXPLAIN:

() JUDGEMENT

() POSTPONED

() NOT TRIED () ACTION DENIED

George J. ...

FILE

CLERK

STENOGRAPHER

ASSIGNMENT THURSDAY MAY 25,

DOCKET - 11002
TITLE LOFF, ETAL VS BOARD OF LIQUOR LICENSE CL174 CL
TYPE - APPEAL FROM ADMINISTRATIVE AGENCY
TAG - COURT TOTAL - FAST TRACK

KEENEY, MA DEFENSE ATTORNEY 727-77
KOOTENSKI, PETITIONER'S ATTORNEY 438-81

PROCEEDING: () JURY () NON-JURY () OTHER

SPECIES (CHECK ONE)

() SETTLED ()
() VERDICT () DEMANDED ()
() JUDGEMENT NISI () ORDER/DECREE SIGNED () OTHER ()
() JUDGEMENT () WRIT ()
() MOTION DE ()
() SUB CURIA () MOTION DE

PRESIDING JUDGE

COURTROOM CLERK

STENOGRAPHER

ASSIGNMENT THURSDAY MAY 05, 1994

CASE NUMBER - 94004032

CASE TITLE - PERLOFF, ETAL VS BOARD OF LIQUOR LICENSE CL174515

CL

CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY

PROCEEDING - COURT TRIAL - FAST TRACK

KEENER, MARK P
MOORENSKI, MELVIN

DEFENSE ATTORNEY 727-7700
PETITIONER'S ATTORNEY 685-5100

TYPE OF PROCEEDING: (___) JURY () NON-JURY (___) OTHER

DISPOSITION (CHECK ONE)

- (___) SETTLED (___) CANNOT SETTLE (___) NEXT
- (___) VERDICT (___) REMANDED (___) NON PROS/DISMISSED
- (___) JUDGEMENT NISI () ORDER/DECREE SIGNED (___) OTHER PLEASE EXPLAIN:
- (___) JUDGEMENT ABSOLUTE (___) ORDER/DECREE TO BE SIGNED
- (___) POSTPONED (___) MOTION GRANTED
- (___) SUB CURIA (___) MOTION DENIED

SIGNATURE _____ DATE _____

IN THE CIRCUIT COURT FOR BALTIMORE CITY)
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,)
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.)
HICKS, CHRISTOPHER M. FRANCIS, & FELLS)
POINT CAFE, INC. T/A FELLS POINT CAFE)
723 S. BROADWAY)
BALTIMORE, MARYLAND 21231)

FOR JUDICIAL REVIEW OF THE DECISION OF THE)
BOARD OF LIQUOR LICENSE COMMISSIONERS)
FOR BALTIMORE CITY)
10 SOUTH STREET)
SUITE 200)
BALTIMORE, MARYLAND 21202)

CIVIL)
ACTION)
NO.: 94004032)
CL174515)

IN THE CASE OF BOARD OF LIQUOR LICENSE)
COMMISSIONERS FOR BALTIMORE CITY)

VS.)

HOWARD PERLOFF & ANDREW VOMVAS, &)
APPLICANTS JUSTIN D. WALTERS, THOMAS S.)
HICKS, CHRISTOPHER M. FRANCIS, & FELLS)
POINT CAFE, INC. T/A FELLS POINT CAFE)

.....

BOARD'S MEMORANDUM IN OPPOSITION
TO PETITION FOR JUDICIAL REVIEW

PROCEDURAL POSTURE OF THE CASE

On November 4, 1993 a hearing was held before the Board of Liquor License Commissioners on the application to transfer ownership (from Howard Perloff and Andrew Vomvas to Justin Walters, Thomas Hicks, and Christopher Francis) and the request to modify the restrictions on the liquor license at 723 South Broadway in Fells Point. The restrictions had been placed on the license by the Board as a result of a protracted battle between the licensees and the neighborhood residents over whether the licensed premises was being operated in a manner inconsistent with the privileges of

a Class B Restaurant license.

At this hearing, the Board approved the transfer of the license, and agreed to lift the old restrictions and substitute as new restrictions the provisions contained in a written agreement between the Licensees and the Fells Point Homeowners' Association (attached as Exhibit A).

During the November 4th hearing, Commissioner Baer insisted on questioning Mr. Walters, Mr. Hicks, and Mr. Francis, on whether each was aware of the past violations of Board rules at the licensee premises, and whether each intended to operate the premises in the future in obedience of the restrictions contained in the written agreement. The colloquy between Commissioner Baer and Mr. Francis is at pp. 17-21 of the November 4 transcript, between Commissioner Baer and Mr. Hicks at pp. 46-48, and between the Commissioner and Mr. Walters at pp. 48-50. Each applicant appeared to understand that adherence to the restrictions was mandatory.

The premises opened for business on the evening of December 10, 1993, and was operated in violation of the License restrictions.

The hearing which is the subject of this appeal was held before the Board on December 30, 1993. The Board held that the Licensees had violated the restrictions placed on the License. Commissioner Baer voted to revoke the License. Chairman Brown and Commissioner Thompson voted to add the following restrictions to the License.

No live entertainment,
No dancing,
No Disco/DJ,
No music,
No confetti,
No dry ice,
No strobe lights or other light show,
No revolving crystal balls,

Can only be used for restaurant dining subject to
revocation for failure to comply.

Since the decision of the Board was split as to the penalty for the violation, the majority vote sets the penalty. Therefore, the license currently has the additional restrictions as listed above.

ARGUMENT

In Eger v. Stone, 253 Md. 533, 1969, the Court set out the standard for judicial review of decisions made by administrative agencies;

"We have made it quite clear that if the issue before the administrative body is "fairly debatable", that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body, in the absence of an unconstitutional taking of private property for public use without payment of just compensation. [citations omitted]. This rule will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence." 253 Md. at 542.

Under this standard, the issue is framed; Did the Board have before it evidence from which a reasonable person could conclude that the License at 723 South Broadway was operated in violation of the license restrictions?

The Fells Point Cafe, Inc. Agreement, attached as Exhibit A, sets out the restrictions on the license. Section B.5 of the agreement covers the restrictions "when used for Sit Down Dinning or Smorgisboard:

A. Front Room (smaller), (known as the Fell's Point Cafe).

1. Permitted use is only Sit Down Dinning (Patrons are there primarily to eat meals, tables are set with silverware, menus are used, prepared hot and cold means are served).
2. Alcohol may be served only with sit down dinning or while waiting to eat a meal or while waiting to attend a function in another room as defined in B below.
3. At least 60% of the revenue is to be derived from the sale of food. Reports are to made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios.
4. Dancing is not permitted.
5. Recorded background music is permitted.
6. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are not permitted.

B. Rear Large Room (theater) and Front Large Room (formally known as Sanctuary)

1. Permitted uses are only:

- Comedy Club
- Theatrical Performances
- Jazz or Blues Group Performances
- Sit Down Dinning or Smorgisboard (Patrons are there primarily to eat meals, tables are set with silverware, prepared hot and cold foods are served).

Private Functions (meetings, weddings, parties)

2. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are not permitted in all cases and in all rooms.

3. At least 60% of the revenue in each room is to be derived from the sale of food. Reports are to be made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios. It is acknowledged that early on, due to the lack of automation, it will not be economically feasible to have information breakdowns by each room or use. Overtime, as automation is installed, such breakdowns will be available.

4. When used for Comedy Club, Theatrical Performances, and Jazz or Blues Group:

- a. Alcohol may be served only when prepared hot and cold food is available and being served.
- b. Public Dancing is not permitted.
- c. The last service of alcohol for a day will be no later than 30 minutes after the last performance on that day.

5. When used for Sit Down Dining or Smorgisboard:

- a. Alcohol may be served only with sit down dining or waiting to eat a meal or while waiting to attend a function in another room as defined in B above.
- b. Live music entertainment is not permitted.
- c. Recorded music is permitted.
- d. Public dancing is permitted only in conjunction with sit down dining. Patrons are not permitted to only dance and/or only consume alcohol.

6. When used for private functions:

- a. Alcohol may be served only in conjunction with prepared food.
- b. Dancing is permitted.
- c. Live and recorded music are permitted.

- d. Private use means there is no concurrent public use or public admittance to the room(s) being used for the private function, there is an easily identifiable host responsible for the function.
- C. No public entrance from rear of building. No public exit from rear of building except for emergencies. Handicap access is permitted through rear.

Mr. Thomas Durel, president of the Fells Point Homeowners Association, gave evidence before the Board at the December 30th hearing. He stated that he visited the premises on the opening night, December 10th, at around midnight. Tr. 5. He observed a line of people outside the door waiting to get in. Tr. _____. People were carded [required to show proof of age] as they entered. Tr. _____. Inside were approximately 250 to 300 people, the majority of whom were not dining, but only dancing and drinking. Tr. 10. When Mr. Durel attempted to get someone to provide him with a menu so that he could order a meal, a woman employee became confused, and finally, after about 15 minutes, was able to supply a menu from a separate dining area from which Mr. Durel was invited to order. Tr. 12. During the 15 minutes Mr. Durel waited for his menu, he did not see anyone eating food, but did see many people consuming alcohol and 60 or 70 people on the dance floor. Tr. 13. Mr. Durel never saw a maitre d, but did see (and was greeted) by two men weighing between 250-275 pounds wearing skin-tight t-shirts marked "Staff". Tr. 23. Mr. Durel was told by employees that the owners did not want him to take pictures of the inside of the club. Tr. 18. Mr. Durel saw no place settings or silverware on any of the tables in the premises. Tr. 22. Mr. Durel observed a buffet area

which contained two chafing dishes. One had broccoli and carrots in it, the other had one or two pieces of roast beef. Tr. 13.

Mr. Durel noticed on the next night, December 11th, that the premises was not open at 8:00 p.m. Tr. 31. He returned to the premises at 11:45 p.m., and it was open. Tr. 31. Mr. Durel was charged a \$5.00 cover charge, which he paid. Tr. 33. Upon entry, he saw approximately 250 people, of whom 60 or 70 were in the dancing area. Tr. 33. He continued to observe people entering the premises, and when people entered, they would pay the cover charge, go to the bar, get a drink, then go to the dance floor and begin dancing. Tr. 35.

While Mr. Durel was watching, he was standing near 5 other gentlemen. A young lady came to him and asked him if he would like to order food or a drink. She did not ask for orders from the other 5 men. Tr. 36.

While Mr. Durel stood watching the proceedings, he observed strobe lights, black lights, and confetti periodically ejected from the ceiling to fall on those dancing below. He also observed smoke blown over the dance floor.

The licensees presented testimony that these violations should be excused because it was the opening nights of the premises. They also presented a videotape showing the premises being operated in conformity with the existing restrictions.

The issue for this court's decision is whether there was evidence presented from which the Board could fairly conclude that the premises was operated in violation of the license restrictions.

Mr. Durel presented overwhelming evidence of violations of restrictions. B.5.a.;

"Alcohol may be served only with sit down dining or while waiting to eat a meal or while waiting to attend a function in another room ..."

and of restriction B.5.d.;

"Public dancing is permitted only in conjunction with sit down dining. Patrons are not permitted to only dance and/or consume alcohol.

CONCLUSION

For at least 4 years the Board has worked hard to effect compromise between the licensees and the neighbors of this premises. Its factual findings of violation of the restrictions are supported by overwhelming credible evidence. The penalty cannot in any reasonable sense be deemed unfair, because it merely sets out restrictions which are a penalty only to a "megabar", not a Class B restaurant. For these reasons, the Board asks that its decision of December 30, 1993 be affirmed.

Respectfully submitted,

JS
George McDowell
1023 Cathedral Street
Baltimore, Maryland 21201
(410) 727-4131
Attorney for the Board

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 1994, a copy of the foregoing Board's Memorandum In Opposition To Petition For Judicial Review was mailed, postage prepaid, to Melvin J. Kodenski, Esquire, Kodenski and Canaras, 19 #. Fayette Street, Suite 301, Baltimore, Maryland 21202. Attorney for Petitioners.

18
George McDowell



Fell's Point Cafe, Inc. AGREEMENT!

November 4, 1993

To be attached to license for as long as the license covers the property of 723 South Broadway.

A. Front Room (smaller), (known as the Fell's Point Cafe).

1. Permitted use is only Sit Down Dinning (Patrons are there primarily to eat meals, tables are set with silverware, menus are used, prepared hot and cold meals are served).
2. Alcohol may be served only with sit down dinning or while waiting to eat a meal or while waiting to attend a function in another room as defined in B below.
3. At least 60% of the revenue is to be derived from the sale of food. Reports are to made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios.
4. Dancing is *not permitted*.
5. Recorded background music is permitted.
6. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are *not permitted*.

B. Rear Large Room (theater) and Front Large Room (formally known as Sanctuary)

1. Permitted uses are only:

- Comedy Club
- Theatrical Performances
- Jazz or Blues Group Performances
- Sit Down Dinning or Smogisboard (Patrons are there primarily to eat meals, tables are set with silverware, prepared hot and cold foods are served).
- Private Functions (meetings, weddings, parties)

2. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are *not permitted* in all cases and in all rooms.

3. At least 60% of the revenue in each room is to be derived from the sale of food. Reports are to made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios. It is acknowledge that early on, due to the lack of automation, it will not be economically feasible

to have information breakdowns by each room or use. Overtime, as automation is install, such breakdowns will be available.

4. When used for Comedy Club, Theatrical Performances, and Jazz or Blues Group:

- a. Alcohol may be served only when prepared hot and cold food is available and being served.
- b. Public Dancing is *not permitted*.
- c. The last service of alcohol for a day will be no later than 30 minutes after the last performance on that day.

5. When used for Sit Down Dinning or Smogisboard:


- a. Alcohol may be served only with sit down dinning or while waiting to eat a meal or while waiting to attend a function in another room as defined in B above.
- b. Live music entertainment is *not permitted*.
- c. Recorded music is permitted.
- d. Public dancing is permitted only in conjunction with sit down dinning. Patrons are not permitted to only dance and / or only consume alcohol.

6. When used for private functions:

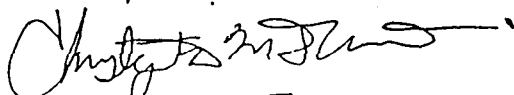
- a. Alcohol may be served only in conjunction with prepared food.
- b. Dancing is permitted.
- c. Live and recorded music are permitted.
- d. Private use means there is no concurrent public use or public admittance to the room(s) being used for the private function, there is an easily identifiable host responsible for the function.

No public entrance from rear of building. No public exit from rear of building except for emergencies. Handicap access is permitted through rear.

Accepted


EPHA.

Accepted 11-4-93


Fell's JOINT CASE.



Fell's Point Cafe, Inc. AGREEMENT!

November 4, 1993

To be attached to license for as long as the license covers the property of 723 South Broadway.

A. Front Room (smaller), (known as the Fell's Point Cafe).

- 1. Permitted use is only Sit Down Dining (Patrons are there primarily to eat meals, tables are set with silverware, menus are used, prepared hot and cold meals are served).
- 2. Alcohol may be served only with sit down dining or while waiting to eat a meal or while waiting to attend a function in another room as defined in B below.
- 3. At least 60% of the revenue is to be derived from the sale of food. Reports are to made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios.
- 4. Dancing is *not permitted*.
- 5. Recorded background music is permitted.
- 6. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are *not permitted*.

B. Rear Large Room (theater) and Front Large Room (formally known as Sanctuary)

1. Permitted uses are only:

- Comedy Club
- Theatrical Performances
- Jazz or Blues Group Performances
- Sit Down Dining or Smogisboard (Patrons are there primarily to eat meals, tables are set with silverware, prepared hot and cold foods are served).
- Private Functions (meetings, weddings, parties)

- 2. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are *not permitted* in all cases and in all rooms.
- 3. At least 60% of the revenue in each room is to be derived from the sale of food. Reports are to made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios. It is acknowledge that early on, due to the lack of automation, it will not be economically feasible

to have information breakdowns by each room or use. Overtime, as automation is install, such breakdowns will be available.

4. When used for Comedy Club, Theatrical Performances, and Jazz or Blues Group:

- a. Alcohol may be served only when prepared hot and cold food is available and being served.
- b. Public Dancing is *not permitted*.
- c. The last service of alcohol for a day will be no later than 30 minutes after the last performance on that day.

5. When used for Sit Down Dinning or Smogisboard:


- a. Alcohol may be served only with sit down dinning or while waiting to eat a meal or while waiting to attend a function in another room as defined in B above.
- b. Live music entertainment is *not permitted*.
- c. Recorded music is permitted.
- d. Public dancing is permitted only in conjunction with sit down dinning. Patrons are not permitted to only dance and / or only consume alcohol.

6. When used for private functions:

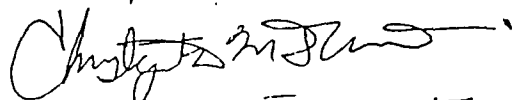
- a. Alcohol may be served only in conjunction with prepared food.
- b. Dancing is permitted.
- c. Live and recorded music are permitted.
- d. Private use means there is no concurrent public use or public admittance to the room(s) being used for the private function, there is an easily identifiable host responsible for the function.

No public entrance from rear of building. No public exit from rear of building except for emergencies. Handicap access is permitted through rear.

Accepted


FPHA.

Accepted 11-4-93


Fell's POINT CAFE.

CASE NUMBER: 94026005 OLIVER ET AL VS.BD. OF LIQUOR LICENSE CL175296
CATEGORY: APPAA
ORIG COURT: CL AMOUNT OF SUIT :\$ LAST PLEA DATE : 04/19/94
DATE FILED: 01/26/94 TRANSCRIPT PAGES : 117 TERMINATION DATE: 04/19/95
STATUS: A CONSOLIDATED CASE: BOOK NUMBER :
STATUS CODE: 02/22/94 PROTRACTED: PAGE NUMBER :
WHO PAYS COSTS :
LAST MODIFIED ON: 04/26/94

DATE	CODE	AMOUNT	BAD CK/	BANK	CHECK
			RECPT #	NUMBER	NUMBER
01/26/94	CLERK	\$ 80.00			
01/26/94	LIBRA	\$ 10.00			
01/26/94	PAYMT	\$ 90.00	9219		

DATE	CODE	TIME	PART	ROOM	SCHED	ACTUAL	DISP	REAS	JUDGE	ID
05/05/94	CAL	09:30		219W	CTF					
01/26/94	FILE									
01/26/94	MEMO									

NEXT PAGE P/N PAGE: 001
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94
MSV523 CASE INQUIRY TIME: 11:19
CASE NUMBER: 94026005 OLIVER ET AL VS.BD. OF LIQUOR LICENSE CL175296

02/16/94 PLEA TRANSCRIPT OF TESTIMONY FROM THE LIQUOR BOARD (2)
02/22/94 ANSW DEFTS BY THE APP. OF ATTY MARK P. KEENER FOR DEFTS SAMEDAY RE-
02/22/94 SPONSE TO PETITION FD. (4)
02/24/94 PLEA NOTICE SENT IN ACCORDANCE WITH MD RULE 7-207 (3)
03/08/94 PLEA CIVIL TRIAL POSTPONEMENT APPROVED (BYRNES, J.) (4)
03/24/94 CAL 09:30 219W CTF CONF POST PJ BYRNES, J C 8835
03/25/94 PLEA PETITIONERS MEMORANDUM IN SUPPORT OF PETITION FOR JUDICIAL REVIEW
03/25/94 & EXHIBITS FD. (5)
04/18/94 MOTN INTERVENORS MOTION TO INTERVENE (6)
04/18/94 ANSW INTERVENORS ANSWER TO PETITION FOR APPEAL (7)
04/19/94 ANSW PLTFF OPPOSITION TO MOTION TO INTERVENE (8)
05/09/94 TRIG ENTRY #6
12/31/99 MEMO PLEADING #2 TO LARGE TO ENCLOSE- SEE STORAGE AREA

NEXT PAGE P/N PAGE: 002
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94
MSV523 CASE INQUIRY TIME: 11:19
CASE NUMBER: 94026005 OLIVER ET AL VS.BD. OF LIQUOR LICENSE CL175296

CONN NAME IDENT
DEF *BOARD OF LIQUOR LICENSE COMMISSIONERS IDENT J36254
10 SOUTH STREET
SUITE 200
BALTIMORE MD 21202
TAD *WHARF RAT FELLS POINT IDENT D29818
NO ADDRESS ON RECORD
ADF KEENER, MARK P IDENT 917476
218 NORTH CHARLES STREET PHONE 410 727-7702
SUITE 400
BALTIMORE MD 21201
ADF DRURY, RICHARD W IDENT 912810
300 ALLEGHENY AVENUE PHONE 301 337-8702
TOWSON MD 21204

NEXT PAGE P/N PAGE: 003
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94
MSV523 CASE INQUIRY TIME: 11:19
CASE NUMBER: 94026005 OLIVER ET AL VS.BD. OF LIQUOR LICENSE CL175296

TAP *HARRY OLIVER MANAGEMENT COMPANY INC IDENT I19909
NO ADDRESS ON RECORD 301
PLA OLIVER, HARRY IDENT V58868
801-803 S. ANN STREET 301
BALTIMORE MD 21231
PLA OLIVER, MARK T IDENT 018147
801-803 S. ANN STREET 301
BALTIMORE MD 21231
APL BAUM, JOHN IDENT 704435
SUITE 2000-CHARLES CENTER SO PHONE 301 385-0202
36 S CHARLES ST SSN 416-70-4435
BALTIMORE MD 21201

NEXT PAGE P/N PAGE: 004
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94
MSV523 CASE INQUIRY TIME: 11:19
CASE NUMBER: 94026005 OLIVER ET AL VS.BD. OF LIQUOR LICENSE CL175296

APL KODENSKI, MELVIN IDENT 421254
19 E FAYETTE STREET PHONE 410 685-5100
SUITE 301 SSN 216-42-1254
BALTIMORE MD 21202

IN THE CIRCUIT COURT FOR BALTIMORE CITY)
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,)
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.)
HICKS, CHRISTOPHER M. FRANCIS, & FELS)
POINT CAFE, INC. T/A FELS POINT CAFE)
723 S. BROADWAY)
BALTIMORE, MARYLAND 21231)

FOR JUDICIAL REVIEW OF THE DECISION OF THE)
BOARD OF LIQUOR LICENSE COMMISSIONERS)
FOR BALTIMORE CITY)
10 SOUTH STREET)
SUITE 200)
BALTIMORE, MARYLAND 21202)

CIVIL
ACTION
NO.: 94004032
CL174515

IN THE CASE OF BOARD OF LIQUOR LICENSE)
COMMISSIONERS FOR BALTIMORE CITY)

VS.)

HOWARD PERLOFF & ANDREW VOMVAS, &)
APPLICANTS JUSTIN D. WALTERS, THOMAS S.)
HICKS, CHRISTOPHER M. FRANCIS, & FELS)
POINT CAFE, INC. T/A FELS POINT CAFE)

.....

BOARD'S MOTION TO STRIKE APPEARANCE OF COUNSEL
AND ENTER APPEARANCE OF NEW COUNSEL

The Board of Liquor License Commissioners for Baltimore City, by its attorney George McDowell, respectfully asks this court to strike the appearance of Mark P. Keener, Esquire, and asks for leave to enter the appearance of George McDowell. In support of its motion, the Board states:

1. That subsequent to the entry of Mr. Keener's appearance, he resigned as appellate counsel for the Board.
2. That the Board wishes to be represented by its other appellate counsel, George McDowell.

3. That Mr. Keener has no objection to the striking of his appearance.

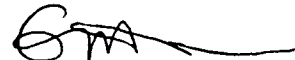
Respectfully submitted,



George McDowell
1023 Cathedral Street
Baltimore, Maryland 21201
(410) 727-4131
Attorney for the Board

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May, 1994, a copy of the foregoing Motion was mailed, postage prepaid, to Melvin J. Kodenski, Esquire, Kodenski and Canaras, 19 E. Fayette Street, Suite 301, Baltimore, Maryland 21202, Attorney for Petitioners.



George McDowell

CIRCUIT COURT FOR BALTIMORE CITY
MSV523 C A S E I N Q U I R Y

DATE: 04/26/94
TIME: 11:01
TERMINAL: C136

CASE NUMBER: 88264032 EX PARTE: MARY HOOPER GLAESER CE86905
CATEGORY: OTHER
ORIG COURT: CE AMOUNT OF SUIT :\$ LAST PLEA DATE : 04/14/94
DATE FILED: 09/20/88 TRANSCRIPT PAGES : TERMINATION DATE: 04/14/95
STATUS: F CONSOLIDATED CASE: BOOK NUMBER :
STATUS CODE: 04/07/94 PAGE NUMBER :
PROTRACTED: WHO PAYS COSTS :
LAST MODIFIED ON: 04/14/94

DATE	CODE	AMOUNT	BAD CK/	BANK	CHECK
			RECPT #	NUMBER	NUMBER
09/20/88	CLERK	\$ 80.00			
09/20/88	LIBRA	\$ 10.00			
09/20/88	PAYMT	\$ 90.00	7410		

DATE	CODE	TIME	PART	ROOM	SCHED	ACTUAL	DISP	REAS	JUDGE	ID
03/94	CAL	09:30		219W	MOTF				SHOW CAUSE	
09/20/88	FILE								PETITION FOR GUARDIANSHIP OF THE PERSON AND PROPERTY AND	
09/20/88									PHYSICIANS' CERTIFICATES (1)	

NEXT PAGE P/N PAGE: 001
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94
MSV523 C A S E I N Q U I R Y TIME: 11:01
CASE NUMBER: 88264032 EX PARTE: MARY HOOPER GLAESER CE86905

09/20/88 ORDR ORDER OF COURT APPOINTING COUNSEL (2)
09/20/88 ORDR SHOW CAUSE ORDER (3)
09/27/88 PLEA AFFIDAVIT OF P.P.S. AS TO PIKESVILLE NURSING CENTER 9/23/88 (4)
09/27/88 PLEA AFFIDAVIT OF P.P.S. AS TO SOCIAL SECURITY ADM. ANNE PECORA, AND
09/27/88 THERESA JETER BALTIMORE COMM. ON AGING 9/22/88 (5)
10/05/88 ANSW ANSWER OF MARY HOOPER GLAESER TO THE PETITION (6)
10/06/88 PLEA REQUEST FOR HEARING (7)
10/18/88 PLEA REQUEST FOR HEARING (8)
11/10/88 CAL 09:30 219W CTF CTF ORSD WARD. T 8836
11/10/88 ORDR CASE SUBMITTED TO THE COURT FOR DETERMINATION WITHOUT THE AID
11/10/88 OF A JURY. WARD. J.
11/15/88 CLOS PETITION FOR GUARDIANSHIP OF THE PERSON & PROPERTY HEARD &
11/15/88 "GRANTED". BOND WAIVED ORDER FILED DATED 11/10/88. WARD. J. (9)
11/15/88 PLEA REPORT OF COURT APPOINTED COUNSEL (10)
01/23/89 PLEA INITIAL REPORT FILED. (11)
04/07/94 REOP
04/14/94 PLEA SHOW CAUSE ORDER ISSUED; HEARING MAY 3, 1994. (12)

NEXT PAGE P/N PAGE: 002
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94
MSV523 C A S E I N Q U I R Y TIME: 11:01
CASE NUMBER: 88264032 EX PARTE: MARY HOOPER GLAESER CE86905

04/14/94 PLEA CERTIFICATION OF MAILING BY THE TRUST CLERK. (13)
05/03/94 PPSN SUMMONS SENT TO PARTIES REPRESENTED AS PROPER PERSON
CONN NAME
PET ARNOLD, SARH BURR IDENT N20614 PROPER PERSON
1901 PARK AVE
BALTIMORE MD 21217
PET HALL, BEVERLY REINHART IDENT V26900 PROPER PERSON
2501 CREST ROAD
BALTIMORE MD 21215
DSP GLAESER, MARY HOOPER IDENT 007676
NO ADDRESS ON RECORD

END OF DISPLAY P/1 PAGE: 003

LAW OFFICES
KODENSKI AND CANARAS
19 E. FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202
TELEPHONE (410) 685-5100
FAX (410) 685-5825

MELVIN J. KODENSKI
BARRY T. CANARAS
CHRISTOPHER M. LEE

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
412 S. HIGHLAND AVENUE
BALTIMORE, MARYLAND 21224
PHONE 563-9000
CIVIL DIVISION

March 28, 1994

Clerk
Circuit Court of Maryland
for Baltimore City
111 N. Calvert Street
Baltimore, Maryland 21202

RE: Board of Liquor License Commissioners
for Baltimore City vs. Howard Perloff,
Andrew Vomvas and Applicants, Justin D.
Walters, Thomas S. Hicks, Christopher M.
Francis, and Fells Point Cafe, Inc. t/a
Fells Point Cafe
Civil Action No.: 94004032/CL174515

Dear Mr./Ms. Clerk:

Pertaining to the above-referenced case, we filed the Petitioners' Memorandum with the Court on Friday, March 25, 1994, and inadvertently left out Exhibit No. "1". I am enclosing Exhibit No. "1" which should be attached to the Petitioners' Memorandum.

Thank you for your kind cooperation in this matter.

Very truly yours,


Melvin J. Kodenski

MJK/sjk
Enclosure

cc: Mark P. Keener, Esquire



Fell's Point Cafe, Inc. AGREEMENT!

November 4, 1993

To be attached to license for as long as the license covers the property of 723 South Broadway.

A. Front Room (smaller), (known as the Fell's Point Cafe).

- 1. Permitted use is only Sit Down Dinning (Patrons are there primarily to eat meals, tables are set with silverware, menus are used, prepared hot and cold meals are served).
- 2. Alcohol may be served only with sit down dinning or while waiting to eat a meal or while waiting to attend a function in another room as defined in B below.
- 3. At least 60% of the revenue is to be derived from the sale of food. Reports are to made quarterly, within 30 days of the end of a quarter, to the Liquor Board. A statement will be provided to the Fell's Point Homeowners Association in the same time frame setting forth the food to alcohol ratios.
- 4. Dancing is *not permitted*.
- 5. Recorded background music is permitted.
- 6. Exotic entertainment, go-go entertainment, rock & roll music, hard rock music are *not permitted*.

B. Rear Large Room (theater) and Front Large Room (formally known as Sanctuary)

1. Permitted uses are only:

- Comedy Club
- Theatrical Performances
- Jazz or Blues Group Performances
- Sit Down Dinning or Smogisboard (Patrons are there primarily to eat meals, tables are set with silverware, prepared hot and cold foods are served).
- Private Functions (meetings, weddings, parties)

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to have information breakdowns by each room or use. Overtime, as automation is install, such breakdowns will be available.

4. When used for Comedy Club, Theatrical Performances, and Jazz or Blues Group:

- a. Alcohol may be served only when prepared hot and cold food is available and being served.
- b. Public Dancing is *not permitted*.
- c. The last service of alcohol for a day will be no later than 30 minutes after the last performance on that day.

5. When used for Sit Down Dinning or Smogisboard:

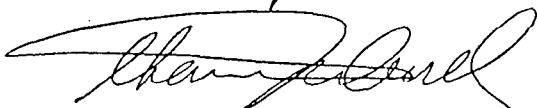
- a. Alcohol may be served only with sit down dinning or while waiting to eat a meal or while waiting to attend a function in another room as defined in B above.
- b. Live music entertainment is *not permitted*.
- c. Recorded music is permitted.
- d. Public dancing is permitted only in conjunction with sit down dinning. Patrons are not permitted to only dance and / or only consume alcohol.

6. When used for private functions:

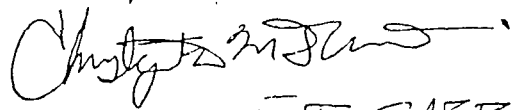
- a. Alcohol may be served only in conjunction with prepared food.
- b. Dancing is permitted.
- c. Live and recorded music are permitted.
- d. Private use means there is no concurrent public use or public admittance to the room(s) being used for the private function, there is an easily identifiable host responsible for the function.

No public entrance from rear of building. No public exit from rear of building except for emergencies. Handicap access is permitted through rear.

Accepted


FPHA.

Accepted 11-4-93


Fell's POINT CAFE.

IN THE CIRCUIT COURT FOR BALTIMORE CITY
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELLS
POINT CAFE, INC. T/A FELLS POINT CAFE
723 S. BROADWAY
BALTIMORE, MARYLAND 21231

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
MAR 25 PM 3:13
CIVIL DIVISION

FOR JUDICIAL REVIEW OF THE DECISION OF THE
BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE CITY
10 SOUTH STREET
SUITE 200
BALTIMORE, MARYLAND 21202

CIVIL
ACTION
NO.: 94004032
CL174515

IN THE CASE OF BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY

VS.

HOWARD PERLOFF & ANDREW VOMVAS, &
APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELLS
POINT CAFE, INC. T/A FELLS POINT CAFE

PETITIONERS' MEMORANDUM

Petitioners, Howard Perloff and Andrew Vomvas and Applicants, Justin D. Walters, Thomas S. Hicks, Christopher M. Francis, and Fells Point Cafe, Inc. t/a Fells Point Cafe, by their attorneys, Melvin J. Kodenski and Kodenski and Canaras, hereby submit the following Memorandum in support of their Appeal from the Decision of the Board of Liquor License Commissioners ("Liquor Board") for Baltimore City in which the Board of Liquor License Commissioners for Baltimore City restricted the liquor license of the Petitioners with regard to the area of the business known as 723 to the sum and extent that there would be no live entertainment, no dancing, no dee jay, no music, no special effect lighting, no graffiti, no dry ice, no strobe lights, revolving crystal balls, or light shows, and restricted that portion of the premises to be used only as a restaurant and for dining.

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

INCLUSIONS

The Petitioners hereby include in their Memorandum any and all Exhibits included in the Petition for Appeal as well as the Petition for Stay of the Liquor Board's Ruling as well as the Petitions themselves which contain some of the arguments which are to be included in this Memorandum by reference.

FACTS

The Petitioners received a Notice to appear on December 30, 1993 at 1:00 p.m. for the following charges: Violation of Restriction appearing on license: "Must operate in line with the conditions set forth in Agreement with Fells Point Homeowners' Association dated November 4, 1993" on Friday, December 10, 1993 and Saturday, December 11, 1993, and on Friday, December 17, 1993, and on Saturday, December 18, 1993, and from November 4, 1993 to present and on Thursday, December 16, 1993; Violation of Rule 3.01 "Every licensee shall be the actual owner and operator of the business conducted on the licensed premises. The identity of any person, not a licensee, having any financial interest in said business shall be disclosed to the Board in writing" from November 4, 1993 to date.

The Petitioners appeared, along with eighteen (18) other persons in favor of the Petitioners while, one protestant appeared Tom Durel who testified on Transcript Page Nos. 4 through 64, thereafter, Inspector Martin testified on Transcript Page Nos. 65 through 85, which testimony was followed by testimony by one of the Applicants, Christopher M. Francis, Transcript Page Nos. 88 through 142 and then again on Transcript Page Nos. 145 through 152.

Mark Bernstein testified on Transcript Page Nos. 143 through 144 and one Michael Horton testified on Transcript Page

Nos. 152 through 157, followed by Betty Nordoss who testified on Transcript Page Nos. 157 through 164 and thereafter, Thomas Johnson testified on Transcript Page Nos. 164 through 167.

After deliberation, the Board made the decision as hereinbefore stated, but made no actual findings as to the violations charged.

ARGUMENT

LACK OF SUBSTANTIAL EVIDENCE

The alleged violations as were charged being a violation of the restriction appearing on the license refers to an Agreement entered into dated November 4, 1993 by and between the licensees and the Fells Point Homeowners' Association, which Agreement is herewith attached and marked as Exhibit No. "1".

A review of this entire transcript as well as a review of all of the exhibits, pictures, video tapes, menus, Stipulations, and other evidence, fails to sustain any of the allegations as set forth and in fact, are directly contradicted by the testimony of the Board's own Inspector, Mr. Martin, who was on the premises on three different occasions and found no violations and in fact, found that the area known as 723, which is the only area in question for this Appeal mentioned in the Decision of the Board, was properly operated and in fact, was an area in operation that he could recommend to his friends.

It should be noted that the only testimony that had any direct relationship that may be considered unfavorable was the testimony made by Mr. Tom Durel, and as indicated earlier, he testified that he came into the area known as 723 on the first night that it had opened and that he came in at approximately 12:00 midnight as indicated on Transcript Page No. 5 and saw numerous

people dancing. He also saw a buffet or smorgasbord as indicated on Transcript Page No. 11. He asked for a menu as indicated on Transcript Page No. 12 and was told that he could either have a menu or the buffet and subsequently on Transcript Page No. 15, took photos around 12:30 a.m. or 12:45 a.m.

The next night would be December 11, 1993 and he again appeared on the premises around 11:30 p.m. or 11:45 p.m. and his testimony thereafter indicated that there was a Five Dollar (\$5.00) charge for the smorgasbord and in fact, on Transcript Page No. 37, he actually ate from the buffet at sometime after midnight and visibly noticed on Transcript Page No. 38 menus on the tables and saw salt and pepper shakers, and the like.

There is further testimony on Transcript Page No. 29 which indicates that he witnessed about thirty (30) tables on the second level with approximately seventy-five (75) to ninety (90) chairs and that he also, on the lower level, noted approximately fifteen (15) larger tables and maybe twelve (12) to eighteen (18) smaller tables.

On Transcript Page No. 41, Mr. Durel goes into a lengthy dissertation about alleged violations with the area known as 723 as to negotiated Agreement with the Fells Point Homeowners' Association which provides for sit down or a smorgasbord and public dancing in conduction with sit down dining.

All of the testimony made by Mr. Durel is consistent with the Agreement as herewith attached and he in fact made reference to the fact that the dee jay who was there made reference to the smorgasbord, to the Five Dollar (\$5.00) charge and if you wanted to order from the menu, then you would be given a credit for Five Dollars (\$5.00).

Mr. Durel acknowledges that December 10, 1993 was the first time that the area known as 723 was open and that testimony appears on Transcript Page No. 48. It seems that Mr. Durel goes to great length to try to give his interpretation of the Agreement when the Agreement speaks for itself and in fact, he acknowledges on numerous different occasions through his testimony that there was a buffet, he ate, that there was music, people were eating, and it is interesting to note that on both occasions when he went to the premises on the first two days that it was opened, that he went there around 12:00 midnight and in fact, he acknowledges on Transcript Page No. 62, that people do not generally go to dinner at 12:00 midnight, although, he admits that he actually ate food around that time of night and that he saw food as late as 12:15 a.m. or so on the premises known as 723.

Mr. Durel, finally on Transcript Page No. 60, admits that he has no expertise in running a restaurant after he goes into great length on the first fifty pages or so explaining why 723 is not a restaurant.

From Transcript Page No. 60 on, the Transcript for the next hundred pages or so has testimony from the licensees, customers, and more importantly from the Liquor Board's own Inspector who inspected the premises pursuant to the direction of the Liquor Board on December 16, 1993, December 17, 1993, and December 18, 1993, and on all of those occasions, felt that the area known as 723 was being operated as a restaurant.

On Transcript Page No. 65, Inspector Martin indicates that he was on the premises known as 723 on December 16, 1993 at 10:30 p.m. where he was greeted at the greeting station and he noticed numerous people sitting at tables and eating. On

Transcript Page No. 66, he indicated that there was approximately twenty feet of tables which had food consisting of prime rib, chicken, steamed vegetables, two hot soups, one hot potato dish, one hot rice dish, and many desserts, and that there was a line of people at the tables waiting to eat and that he then went upstairs and noticed numerous people eating, drinking, and conversing, and that he left the premises around 11:30 p.m.

This is consistent with the licensees' testimony and the Agreement of having a smorgasbord and along with the smorgasbord, having music and dancing.

Inspector Martin, on Transcript Page No. 66, indicated that on December 17, 1993 he again visited the area known as 723 at 10:45 p.m. and was greeted by a man and a woman and was told that there was a Five Dollar (\$5.00) smorgasbord charge, all you can eat, the smorgasbord was open all evening, and that you could also order from the menu and get a Five Dollar (\$5.00) credit. He then left at 11:20 p.m.

Inspector Martin then, on Transcript Page No. 67, visited the premises at 11:45 p.m. and was greeted again and paid the Five Dollars (\$5.00), observed the same as he did before on the other two nights, he actually got in line to eat, he was behind approximately fifteen people, and he ate around 1:00 a.m. Inspector Martin testified that he was sent to see if 723 operated as a restaurant and was directed to go there after 9:00 p.m. He testified that there was a greeting station and that there is a large kitchen that runs the length of the building and one kitchen services the entire area. Testimony was given concerning this on Transcript Page Nos. 65 through 72.

He indicated also, on Transcript Page No. 73, that there was no line to get into the establishment when he was there on the outside and that on Transcript Page No. 74, he saw no smoke, and there were some lights and a dee jay. On Transcript Page No. 74, testimony was given that the dee jay advertised the smorgasbord.

On Transcript Page No. 78, he further testifies that there are different uses of the entire premises and that during different hours, different parts of the building are being used for different purposes and this is not inconsistent. He further indicates that the Five Dollar (\$5.00) smorgasbord charge was a great value.

Inspector Martin also indicates on Transcript Page No. 85 that he saw no pulsating lights or mirrored balls.

On Transcript Page No. 84, Mr. Drury, the attorney representing Mr. Tom Durel, asked the Inspector whether or not he observed any people that came in off of the street and paid the Five Dollars (\$5.00), went in and bought a drink, and then began dancing without having any food and he never answered that question in the affirmative to Mr. Drury.

After Inspector Martin testified, one of the prospective licensees, Christopher M. Francis testified, beginning on Transcript Page No. 88 and actually played a video of the entire establishment with a comment from Commissioner Baer on Transcript Page No. 90 that the establishment looked very good.

He testified, on Transcript Page No. 93, that on the second floor there were approximately thirty-two (32) to thirty-three (33) tables with one hundred and thirty (130) to one hundred and forty (140) chairs, salt and pepper shakers, lighted candles, table cloths, sugar, nutra sweet, and all of the things that you

would normally find on a regular restaurant table.

On Transcript Page No. 96, Mr. Francis testified that they use tons of food, starting with one hundred and twenty pounds of prime rib, one hundred pounds of chicken, etc., and that the smorgasbord consists of prime rib, chicken breast, fettucini alfredo, mixed vegetables, potatoes, rice, Maryland crab cakes, desserts, soups, etc.

Mr. Francis also testified, on Transcript Page No. 98, that there really is no dance floor, but people do dance in an area which is actually on the floor, but it is not a dance floor, just a concrete floor, and it is not designated as a dance floor.

On Transcript Page No. 99, Mr. Francis goes through a description of the property itself and it is broken down into three (3) separate areas, one of which is known as the Fells Point Cafe which is more elegant dining, then in the rear there is the Comedy Cabaret, and then there is the area known as 723, which is much less formal so as not to compete with the other areas.

The more important part of his testimony is on Transcript Page No. 100, where it is indicated that the first couple of days were unusual with regard to the area known as 723 where they are trying to work the bugs out and they didn't expect the crowd that showed up. During the first couple of months of operation, they had over Forty Thousand Dollars (\$40,000.00) in food purchases and that the Five Dollar (\$5.00) smorgasbord is something that is made known to everybody that comes into the establishment and in fact, they sign a paper indicating same.

Mr. Francis, on Transcript Page No. 113, states that more tables and chairs have been added and that the area known as 723 is much different than the prior operation and in fact, they have a

tremendous investment of over Three Hundred Thousand Dollars (\$300,000.00) as indicated Transcript Page No. 116.

Mr. Francis further testifies that he is ready, willing, and able to adhere to the Agreement as indicated on Transcript Page No. 125 and in fact, indicates on Transcript Page No. 135, that documents submitted indicate that they are doing approximately Seventy-Four Percent (74%) food at that time and these are the documents which were submitted by the accountants for the licensees.

Mr. Francis also points out on Transcript Page No. 139 that the Agreement indicates that when the premises are used for sit down dining or a smorgasbord, public dancing is permitted and that is what they are doing. Mr. Francis consistently states that what he has is a restaurant with entertainment.

After Mr. Francis testifies or during his testimony, there are a couple of pages on which he indicates that they do not try to compare the present location to then former operation known as the Sanctuary and they were only indicating that their location is the same location where the Sanctuary operated and that they now have a Comedy Cabaret in addition to the restaurant at 723.

Thereafter, there is testimony basically of Mr. Michael Horton, on Transcript Page No. 152 who is the head chef and he has thirteen (13) years experience and he attended the Baltimore International Culinary College and his expertise is that this entire operation is consistent with the operation of a restaurant.

Next, on Transcript Page No. 157, Betty Nordoss testifies that during the past couple of months, she has visited the Fells Point Cafe and the area known as 723. She had eaten there and she thought that the Five Dollar (\$5.00) smorgasbord was quite a value,

and she felt very comfortable being there.

Thereafter, Mr. Thomas Johnson testifies on Transcript Page No. 164, that he was there four or five different occasions and the he has eaten both in the Fells Point Cafe and the area known as 723 and that he states that it is consistent with a restaurant operation.

A thorough review of the transcript indicates an overwhelming testimony given by the Liquor Board's own Inspector, the licensee, and the chef who is an expert in restaurants, who indicates that this area is being operated as a restaurant and is consistent with a restaurant operation. The other witnesses who have appeared have also testified that this area is being used as a restaurant. It is interesting to note that Mr. Tom Durel, only being there for a short period of time from the first two days that this areas was opened, never bothered to return to see if any changes were made or if there were any modifications, and never bothered to see if the operation was that as witnessed by the Inspector for the Liquor Board and the other individual.

The testimony of Mr. Durel was bent on being overwhelmingly negative, biased, and one sided against the licensee to the sum and extent that it really has no value.

After reading the entire transcript, it is evident that this operation has several forms that have different types of dining and ambiance, which appeals to different segments of the population and that all three of these forms can exist all at one time, although a person may enjoy one type, that is for example the comedy portion, and not the music portion, or the fine dining portion. The Board seems to want to take issue with the operation of the establishment as a restaurant within the terms of the

Agreement and having a smorgasbord with dancing and music when all of the testimony seemed to indicate that that is exactly what these gentlemen were doing and in fact, had a tremendous investment and were only in the opening stages during the first two days of the operation of the 723 portion when Mr. Durel visited the premises.

BOARDS' PREJUDICE AND PREJUDGING OF CASE

It is the Petitioners' assertion that the Board was very biased and prejudicial and prejudged this case which is evident through the transcript by the comments which were being made by the complete disregard of the testimony and the Board's Decision was not honestly and fairly exercised and was unreasonable.

From the first indications in the Transcript on Page No. 34, Commissioner Baer asked a question as to whether after Mr. Durel paid his cover charge which was a little odd to him, was there anybody to direct him to a table, give him a menu, or eat, or whether he was just thrown into the mass to wander around.

Right after that, Chairman Brown indicates that Mr. Durel could have joined in the frolic there if he had wanted to which was highly prejudicial and uncalled for.

Then, on Transcript Page No. 35, Commissioner Baer tries to direct Mr. Durel's testimony and was leading the questions to Mr. Durel, all of which was improper when Mr. Durel states that he was not there to eat and Commissioner Baer leads him to say that he was there only to make observations.

On Transcript Page No. 45, Commissioner Baer again leads and asks the question to Mr. Durel as to whether or not the list of food items that he had seen might be adjunct to a nightclub and he asked if that was what it looked like to Mr. Durel. Mr. Durel then said that it could as well a restaurant. Chairman Brown then tries

to make Mr. Durel indicate if the items could be found in a nightclub as well as a restaurant.

Thereafter, on the next few pages of the Transcript, Mr. Durel cannot testify that any of the nightclubs he ever went to, and that he doesn't visit nightclubs, that he was able to see those items. Commissioner Baer, on Transcript Page No. 48, admits that Mr. Durel is not an expert and then again on Page No. 50.

When Christopher Francis is testifying, on Transcript Page No. 114, Commissioner Baer insists on having verbal combat with Mr. Francis and then indicates on Line No. 8 as follows:

"What scares the living hell out of me right now is that you're telling me that."

Further statements thereafter indicate a very broad bias at this time against the licensee.

On the next few pages of the Transcript, there is various testimony and then all of a sudden, on Transcript Page Nos. 121 and 122, the Board goes into some sort of an executive session with the argument on the next two pages between counsel for the licensees, Mr. Kodenski and Mr. Yerman and that at the end of the Transcript, Page No. 123, Chairman Brown indicates that they are going to recess to consider something that Commissioner Baer wants to do, without explaining what it is, and then on Transcript Page No. 124, Commissioner Baer indicates that he needs some sort of vote and we are not really sure what this is about and what the session is about and why there needs to be a vote when the case is not finished. Nobody knows what the session is about, except that it was to determine some sort of a response to Commissioner Baer's concern. Then, on Transcript Page No. 124, Chairman Brown goes through a long dissertation about this location for prior years and

what a definition of a restaurant is and the legislature, etc. It is so jumbled and mumbled that the Petitioners find it difficult to believe that at this point they could get a fair hearing when the case was not even over with.

Shortly thereafter, after the testimony resumes on Transcript Page No. 123, and again on Transcript Page No. 148, there is a problem where Chairman Brown has asked Commissioner Baer not to speak, but Commissioner Baer is very disturbed and he is making gestures and saying something by the tone of this gestures to Chairman Brown and to the other Commissioner and they are already making a predisposition of the case indicating that the Board is unanimously agreeing at this time, before the testimony is completed, of their decision, all to the detriment of the licensees. Then on Transcript Page No. 164, Chairman Brown makes a statement that this particular operation does not operate as a restaurant, all of which indicates a bias, prejudging, and prejudice in light of the testimony, exhibits, and expert testimony given, all of which deprive the licensees of a fair and just hearing and indicate an arbitrary and capriciousness on behalf of the Commissioner.

BOARD'S CONCLUSION WITHOUT ANY FINDINGS OF VIOLATIONS

After the closing arguments, the Board then reconvenes in its Decision in which there is a split decision. Throughout both of the Decisions, even the minority and the majority Decision, there are really no findings as to alleged charges or violations in this case of the dates in question being December 10th, 11th, 16th, 17th, 18th and from November 4, 1993 to present date of the hearing, that being December 30, 1993. There was no findings of any violations with regard to these dates, because the evidence did

not indicate that there were any findings and there was no basis for any Decisions that the Board made. Also, the Board never made a ruling on the violation of Rule 3.01 which was charged.

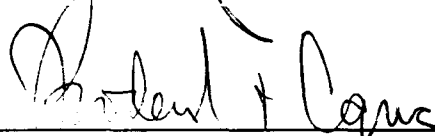
What the Board seems to be bent on doing was to stop the operation in the area known as 723 without any basis and without any findings, with bias, with prejudice, with arbitrariness, and with capriciousness to the licensees.

CONCLUSION

Taking into consideration, the sum total of the record transcript, all of the evidence, the individuals who have testified, the experts, and the Liquor Board's own Inspector, the Decision of the Board of Liquor License Commissioners for Baltimore City should be reversed.



Melvin J. Kodenski

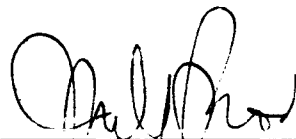


Kodenski and Canaras
19 E. Fayette Street, Suite 301
Baltimore, Maryland 21202
(410) 685-5100

Attorneys for the Petitioners
HOWARD PERLOFF AND ANDREW VOMVAS,
AND APPLICANTS, JUSTIN D. WALTERS,
THOMAS S. HICKS, CHRISTOPHER M.
FRANCIS, AND FELLS POINT CAFE, INC.
T/A FELLS POINT CAFE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 25th day of March, 1994, a copy of the Petitioners' Memorandum was mailed to Mark P. Keener, Esquire, Gallagher, Evelius & Jones, Park Charles, 218 North Charles Street, Suite 400, Baltimore, Maryland 21201, Attorneys for the Appellee, Board of Liquor License Commissioners for Baltimore City.



Melvin J. Kodenski

MJK\2159

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

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CIVIL POSTPONEMENT FORM

DATE: 3/8/94

Plaintiff(s) Howard Perloff et al

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

v.

Defendant(s) Board of Liquor
License Commissioners
for Balto City

Computer #: 74004032

File #: CL 174515

Jury _____ CT. CTF. _____ MOT. GEN
2-507

DOMESTIC JUDGE: _____ DOMESTIC MASTER: _____

PLEASE PRINT

To be postponed from: DATE: 3/23/94 PRIOR POSTPONEMENTS: Y N

Postponement requested by: Plaintiff

Postponement reason: (please specify):
Trial Date within Memorandum Date per rule
7-207 A will not have time to respond
per rule

Plaintiff(s) Attorneys:
Melvin J Kudeaster

Defendant(s) Attorneys:
Mark Keepler

New Trial Date: 5-5-94

Approved: Denied: _____ :


(JUDGE'S SIGNATURE)



NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE 7-207

Howard Perloff, etal

Docket:

vs.

Folio:

Board of Liquor License
Commissioners for Balto. City

94004032/CL174515
File:

Date of Notice: 2-24-94

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 16th day of February,
Nineteen Hundred and ninety-four, I received from the Administrative
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

MARYLAND RELAY SERVICE VOICE 1-800-735-2258



NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE 7-207

Howard Perloff, etal

Docket:

vs.

Folio:

Board of Liquor License
Commissioners for Balto. City

94004032/CL174515
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SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

MARYLAND RELAY SERVICE VOICE 1-800-735-2258



Circuit Court for Balto. City
111 N. Calvert St. Rm. 462
21202

Mark P. Keener
Suite 400, 218 N. Charles St.
Baltimore, Maryland 21201

Circuit Court for Balto. City
111 N. Calvert St. Rm. 462
21202

Melvin J. Kodenski, Esq.
Suite 301
19 E. Fayette Street
Baltimore, Maryland 21202

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RECEIVED

CIRCUIT COURT FOR BALTIMORE CITY

HOWARD PERLOFF & ANDREW VOMVA
APPLICANTS JUSTIN D. WALTERS,
S. HICKS, CHRISTOPHER M. FRANCIS, &
FELLS POINT CAFE, INC. T/A FELLS
POINT CAFE,

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

JAN 13 A 8 20

CIVIL DIVISION

Appellants,
vs.
THE BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY,
Appellees.

RESPONSE TO PETITION FOR APPEAL

The Board of Liquor License Commissioners for Baltimore City (the "Board"), by its attorney, Mark P. Keener, Esquire, pursuant to Rule 7-204 of the Maryland Rules of Procedure, in response to the Petition for Appeal, says:

- 1. That the Board intends to participate in the appeal.



Mark P. Keener
GALLAGHER, EVELIUS & JONES
Suite 400, 218 N. Charles Street
Baltimore, Maryland 21201
(410)727-7702

ATTORNEY for THE BOARD OF LIQUOR
LICENSE COMMISSIONERS FOR BALTIMORE
CITY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of January, 1994, a copy of the foregoing Response to Petition for Appeal was mailed, first class mail, postage prepaid, to Melvin J. Kodenski, Esq., Kodenski and Canaras, Suite 301, 19 E. Fayette Street, Baltimore, Maryland 21202.



Mark P. Keener



IN THE CIRCUIT COURT FOR BALTIMORE CITY
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELS
POINT CAFE, INC. T/A FELS POINT CAFE
723 S. BROADWAY
BALTIMORE, MARYLAND 21231

FOR JUDICIAL REVIEW OF THE DECISION OF THE
BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE CITY
10 SOUTH STREET
SUITE 200
BALTIMORE, MARYLAND 21202

IN THE CASE OF BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY

VS.

HOWARD PERLOFF & ANDREW VOMVAS, &
APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELS
POINT CAFE, INC. T/A FELS POINT CAFE

O R D E R

UPON the foregoing Petition for Stay of the Board of
Liquor License Commissioners for Baltimore City's Ruling of
December 30, 1993, it is this 6 day of January,
1994, by the Circuit Court of Maryland for Baltimore City;

ORDERED, that the ruling of the Board of Liquor License
Commissioners for Baltimore City of December 30, 1993, is hereby
stayed until a hearing can be held on the Appeal.

All parties agree,

Eller
JUDGE

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* *(55) P/B*
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* **JAN 10 1994**
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* CIVIL
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LAW OFFICES
DEWENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

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1-11-94

CIRCUIT COURT FOR BALTIMORE CITY

DATE PRINTED / /

PRESIDING JUDGE Ellen Kellan

COURTROOM CLERK Jane Ermer

STENOGRAPHER Charles Madden

Liquor License
Commissioners

ASSIGNMENT FOR:

94004032/CL174515

Howard Perloff &
Andrew Vomvas et al

CASE NUMBER -
CASE TITLE -
CATEGORY -
PROCEEDING -

DEFENSE ATTORNEY -
PLAINTIFF ATTORNEY -

1-5-94 Petition for Stay of Liquor ~~License~~ Board's ruling
Heard & granted until a hearing can be held
on the Appeal

TYPE OF PROCEEDING: (___ JURY) (___ NON-JURY) (___ OTHER)

DISPOSITION: (CHECK ONE)

- (___ SETTLED) (___ CANNOT SETTLE) (___ NEXT COURT DATE)
- (___ VERDICT) (___ REMANDED) (___ NON PRUS/DISMISSED)
- (___ JUDGEMENT NISI) (___ ORDER/DECREE SIGNED) (___ OTHER)
- (___ JUDGEMENT ABSOLUTE) (___ ORDER/DECREE TO BE SIGNED)
- (___ POSTPONED) (MOTION GRANTED)
- (___ SUB CURIA) (___ MOTION DENIED)

PLEASE EXPLAIN:

JUDGE SIGNATURE Ellen DATE 1/6/94

CIRCUIT COURT FOR BALTIMORE CITY

DATE PRINTED / /

PRESIDING JUDGE *Ellen Heller*

COURTROOM CLERK *Jane Ermer*

STENOGRAPHER *Charles Madden*

Liquor License
Commissioners

ASSIGNMENT FOR:

94004032/CL174515

*Howard Perloff &
Andrew Vomvas et al*

CASE NUMBER -
CASE TITLE -
CATEGORY -
PROCEEDING -

DEFENSE ATTORNEY -
PLAINTIFF ATTORNEY -

*1-5-94 Petition for Stay of Liquor License Board's ruling
heard & granted until a hearing can be held
on the Appeal*

TYPE OF PROCEEDING: (___ JURY) (___ NON-JURY) (___ OTHER)

DISPOSITION: (CHECK ONE)

- (___ SETTLED) (___ CANNOT SETTLE) (___ NEXT COURT DATE)
- (___ VERDICT) (___ REMANDED) (___ NON PROS/DISMISSED)
- (___ JUDGEMENT NISI) (___ ORDER/DECREE SIGNED) (___ OTHER)
- (___ JUDGEMENT ABSOLUTE) (___ ORDER/DECREE TO BE SIGNED)
- (___ POSTPONED) (MOTION GRANTED)
- (___ SUB CURIA) (___ MOTION DENIED)

PLEASE EXPLAIN:

JUDGE SIGNATURE *Heller*

DATE *1/6/94*

CIRCUIT COURT FOR BALTIMORE CITY

PRINTED / /

JUDGE *Ellen H.*

COURTROOM CLERK *Jane Eames*

STENOGRAPHER *Charles W. Holden*

LIQUOR LICENSE

COMM.

ASSIGNMENT FOR:

9400405a/CL 17

*HOWARD PRIOTT v
ANDREWS VIGUAS et al*

CASE NUMBER -
CASE TITLE -
CATEGORY -
PROCEEDING -

DEFENSE ATTORNEY -
PLAINTIFF ATTORNEY -

*1-5-94 Petition for stay of ~~inquest~~ Board's ruling
nearly granted until a hearing can be held
on the Appeal*

TYPE OF PROCEEDING: (___ JURY) (___ NON-JURY) (___ OTHER)

DISPOSITION: (CHECK ONE)

- (___ SETTLED) (___ CANNOT SETTLE) (___ NEXT COURT DATE)
- (___ VERDICT) (___ REMANDED) (___ NON PROS/DISMISSED)
- (___ JUDGEMENT (ISI)) (___ ORDER/DECREE) (___ OTHER)
- (___ JUDGEMENT ABSOLUTE) (___ ORDER/DECREE TO BE SIGNED)
- (___ POSTPONED) (MOTION GRANTED)
- (___ SUB CURIA) (___ MOTION DENIED)

PLEASE EXPLAIN:

JUDGE SIGNATURE _____

DATE *1/6/94*

CIRCUIT COURT FOR BALTIMORE CITY

DATE PRINTED / /

PRESIDING JUDGE

Ellen Hill

COURTROOM CLERK

Jane Farmer

STENOGRAPHER

Charles W. Hester

LIQUOR LICENSE

Comm. ...

ASSIGNMENT FOR:

*HOWARD ... v ...
ANDREWS ... et al*

CASE NUMBER -
CASE TITLE -
CATEGORY -
PROCEEDING -

17004032/CL174515

DEFENSE ATTORNEY -
PLAINTIFF ATTORNEY -

*1-5-14 Petition for stay of ~~original~~ Board's ruling
heard & granted until a hearing can be held
on the appeal*

TYPE OF PROCEEDING: (___ JURY) (___ NON-JURY) (___ OTHER)

DISPOSITION: (CHECK ONE)

- (___ SETTLED) (___ CANNOT SETTLE) (___ NEXT COURT DATE)
- (___ VERDICT) (___ REMANDED) (___ NON PROS/DISMISSED)
- (___ JUDGEMENT NISI) (___ ORDER/DECREE SIGNED) (___ OTHER)
- (___ JUDGEMENT ABSOLUTE) (___ ORDER/DECREE TO BE SIGNED) PLEASE EXPLAIN:
- (___ POSTPONED) (MOTION GRANTED)
- (___ SUB CURIA) (___ MOTION DENIED)

JUDGE SIGNATURE _____

DATE *1/5/14*

IN THE CIRCUIT COURT FOR BALTIMORE CITY
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELLS
POINT CAFE, INC. T/A FELLS POINT CAFE
723 S. BROADWAY
BALTIMORE, MARYLAND 21231

FOR JUDICIAL REVIEW OF THE DECISION OF THE
BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE CITY
10 SOUTH STREET
SUITE 200
BALTIMORE, MARYLAND 21202

IN THE CASE OF BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY

VS.

HOWARD PERLOFF & ANDREW VOMVAS, &
APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELLS
POINT CAFE, INC. T/A FELLS POINT CAFE

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CIVIL
ACTION
NO.: _____

94004032
CL174515

O R D E R

UPON the foregoing Petition for Stay of the Board of
Liquor License Commissioners for Baltimore City's Ruling of
December 30, 1993, it is this _____ day of _____,
1994, by the Circuit Court of Maryland for Baltimore City;

ORDERED, that the ruling of the Board of Liquor License
Commissioners for Baltimore City of December 30, 1993, is hereby
stayed until a hearing can be held on the Appeal.

JUDGE

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

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CIRCUIT COURT FOR BALTIMORE CITY
MSV523 CASE INQUIRY

DATE: 01/05/94
TIME: 15:25
TERMINAL: V114

CASE NUMBER: 94004032 PERLOFF, ETAL VS BOARD OF LIQUOR LICENSE CL174515
CATEGORY: APPAA
ORIG COURT: CL AMOUNT OF SUIT :\$ LAST PLEA DATE : 01/04/94
DATE FILED: 01/04/94 TRANSCRIPT PAGES : TERMINATION DATE: 01/04/95
STATUS: F CONSOLIDATED CASE: BOOK NUMBER :
STATUS CODE: 01/04/94 PROTRACTED: PAGE NUMBER :
WHO PAYS COSTS :
LAST MODIFIED ON: 01/05/94

DATE	CODE	AMOUNT	BAD CK/ RECPT #	BANK CHECK NUMBER	CHECK NUMBER
01/04/93	PAYMT	\$ 90.00	7454		
01/04/94	CLERK	\$ 80.00			
01/04/94	LIBRA	\$ 10.00			

DATE	CODE	TIME	PART	ROOM	SCHED	ACTUAL	DISP	REAS	JUDGE	ID
01/04/94	FILE									
01/04/94										
01/04/94										

NEXT PAGE P/N PAGE: 001
CIRCUIT COURT FOR BALTIMORE CITY DATE: 01/05/94
MSV523 CASE INQUIRY TIME: 15:25
CASE NUMBER: 94004032 PERLOFF, ETAL VS BOARD OF LIQUOR LICENSE CL174515

01/04/94 T/A FELLE POINT CAFE FROM A DECISION OF THE BOARD OF LIQUOR
01/04/94 LICENSE COMMISSIONERS FOR BALTIMORE CITY; AND ORDER FILED. (1)
01/04/94 PLEA PETITION FOR STAY OF LIQUOR BOARD'S RULING, EXHIBITS AND
01/04/94 AFFIDAVIT. (2)
01/04/94 PLEA REQUEST FOR HEARING. (3)
01/04/94 MEMO COPY OF PETITION MAILED TO THE BOARD OF LIQUOR LICENSE COMMISSION
01/04/94 MEMO STAMPED COPIES TAKEN TO JUDGE HELLER.
01/05/94 MEMO CASE TAKEN TO JUDGE HELLER.

CONN NAME
DEF *BOARD OF LIQUOR LICENSE COMMISSIONERS FOR IDENT Q39071
BALTIMORE CITY
10 SOUTH STREET, SUITE 200
BALTIMORE MD 21202

NEXT PAGE P/N PAGE: 002
CIRCUIT COURT FOR BALTIMORE CITY DATE: 01/05/94
MSV523 CASE INQUIRY TIME: 15:25
CASE NUMBER: 94004032 PERLOFF, ETAL VS BOARD OF LIQUOR LICENSE CL174515

PET PERLOFF, HOWARD IDENT Z19781
NO ADDRESS ON RECORD

PET VOMVAS, ANDREW IDENT T75096
NO ADDRESS ON RECORD

PET WALTERS, JUSTIN D IDENT Q51958
NO ADDRESS ON RECORD

PET HICKS, THOMAS S IDENT P58536
NO ADDRESS ON RECORD

NEXT PAGE P/N PAGE: 003
CIRCUIT COURT FOR BALTIMORE CITY DATE: 01/05/94
MSV523 CASE INQUIRY TIME: 15:25
CASE NUMBER: 94004032 PERLOFF, ETAL VS BOARD OF LIQUOR LICENSE CL174515

PET FRANCIS, CHRISTOPHER M IDENT A08977
NO ADDRESS ON RECORD

PET *FELLE POINT CAFE INCORPORATE IDENT I03689
NO ADDRESS ON RECORD

PET *FELLE POINT CAFE IDENT J70426
NO ADDRESS ON RECORD

APT KODENSKI, MELVIN IDENT 421254
SUITE 301 PHONE 410 685-5100
19 E. FAYETTE STREET SSN 216-42-1254
BALTIMORE MD 21202

END OF DISPLAY P/1 PAGE: 004

business at 723 S. Broadway, Baltimore City, Maryland 21231.

2. That this Decision is presently being appealed by the Petitioners and an Appeal has been filed with this Honorable Court, a copy of which is herewith attached and marked as Exhibit No. "1".

3. That the Decision as set out in the Petition is arbitrary and capricious and the Board prejudged the case and was otherwise prejudicial, hostile, and inflammatory, and violated the due process rights of the Petitioners and never formally made a finding on the alleged violation of Rule 3.01.

4. That as a result of the Board's Decision, the Petitioners will suffer tremendous economic hardship and loss of their property rights, inasmuch as they will not be able to fully operate their business and that approximately forty (40) employees will be out of work, rent in the amount of Eight Thousand and Three Hundred Dollars (\$8,300.00) will not be able to be paid, and bills to include, but not limited to, Sales Tax, liquor bills, insurance bills, and Federal Taxes, will not be able to be paid and the business most surely will fail.

5. That the provisions for Appeal do not contemplate this type of result and the Petitioners will suffer irreversible harm pending an Appeal in which the Petitioners may be successful.

6. That previously a Petition was filed on an emergency basis due to the New Year's Eve weekend and the inability of the Courts to be opened which was signed by Judge McCurdy, a copy of said Petition and Order are herewith attached and marked as Exhibit No. "2".

7. That attached hereto is an Affidavit of Christopher M. Francis, Applicant, Licensee, and Officer of Fells Point Cafe, Inc., who attended the hearing and testified evidencing the facts and circumstances as hereinbefore mentioned.

8. That the chances for success on Appeal, because of the reasons hereinbefore stated, are very meritorious and there is sufficient evidence on behalf of the Petitioners to include video tape testimony of numerous witnesses, and the Board's own Inspector which will be more than sufficient to sustain the Petitioners' claim.

9. That in the interests of justice and fair play and to afford the Petitioners an opportunity to exist economically, a stay of the Board of Liquor License Commissioners for Baltimore City's Decision of December 30, 1993, is warranted, and the Petitioners pray that this Court pass an Order staying the ruling of the Board of Liquor License Commissioners for Baltimore City, until after a hearing of the Appeal in this matter.

10. That because of the urgency of time in this matter, and considering the fact that the Petitioners establishment is not operating, and in order to exist economically, an immediate Order is requested.

WHEREFORE, Your Petitioners pray:

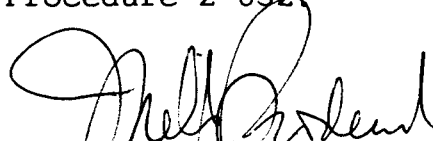
A. That this Honorable Court stay the ruling of the Board of Liquor License Commissioners for Baltimore City of December 30, 1993; and

B. That Your Petitioners be granted such other and further relief as the nature of their cause may require.

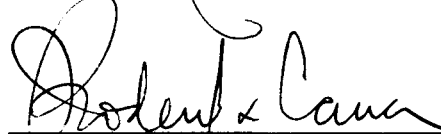
POINTS AND AUTHORITIES

Maryland Rules of Procedure 7-205.

Maryland Rules of Procedure 2-632.



Melvin J. Kodenski



Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(410) 685-5100
Attorneys for the Petitioners
JUSTIN D. WALTERS,
THOMAS S. HICKS,
CHRISTOPHER M. FRANCIS,
FELLS POINT CAFE, INC. T/A
FELLS POINT CAFE

G:\MJK\2049.1

2. That the Board never made a finding on the alleged violation of Rule 3.01 which was one of the issues and in fact, the other issue before the Board is not a violation of any rule or regulation or violation of Article 2B and in fact was an alleged violation of the Agreement with the Fells Point Homeowners Association and is in contravention of the Board's Rules and Regulations and particularly Rule 2.06(b).

3. That the Decision of the Board in this case is arbitrary and capricious and is not based on valid evidence.

4. That the Decision of the Board is illegal and the Board never made any official Decision concerning the alleged violations of the Board's Rule or Regulations in this matter.

5. That the evidence as solicited at the hearing was not entirely credible and worthy of consideration.

6. That the evidence as given by the Petitioner through witnesses and through the Liquor Board's own inspector supported additionally that the Petitioners were operating as a restaurant in the area known as 723 without any credible contradiction by any other witnesses.

7. That the Board prejudged this case and was otherwise prejudicial with regard to the Petitioners.

8. That the demeanor emanating from the Board from the very onset indicated a hostile and almost inflammatory attitude toward the Petitioners and comments made by various Commissioners, as it will be pointed out in the Memorandum after review of the transcript, certainly indicated the inability of the Petitioners to have a fair and just hearing and in fact, the comments included matters far outside the scope of this hearing all to the detriment

of the Petitioners.

9. That the alleged violations of the Agreement referred to as the date of December 17th and December 18th, were never proved and in fact, were contradicted by statements made by the Liquor Board's own Inspector Bernard Martin in the portion of the case put on by the Liquor Board and in fact, Inspector Bernard Martin indicated in his testimony in the Board's portion of the case that he was on the premises on December 16, 17, 18, and 19, 1993, and on all those dates the operation of the establishment was in conformity with the restaurant. Additionally, the violation of the Agreement from November 4, 1993 to the date of the hearing, as alleged, was not proven by any testimony, exhibits, or other facts.

10. That the testimony of Tom Durel, who was the only other person to testify in the Board's portion of the case, revealed that he has no expertise with regard to the ownership or the running of a restaurant and in fact, his appearance was brief and he was there on the first two nights that the area known as 723 was open to the public which was a trial period for the Petitioners and in no way reflected the actual operation of the area known as 723. In that testimony, Tom Durel in fact testified that he was there for a short period of time and that he ate in the area known as 723 and visibly witnessed the kitchen area, etc.

11. That the Board violated due process of the Appellants to receive a "fair and just hearing".

12. That the hearing itself violated the basic and fundamental principles of fairness and justice.

13. That for other reasons to be stated in the Memorandum to be filed in this case and at the hearing on this

matter after review of the transcript.

WHEREFORE, Your Petitioners pray:

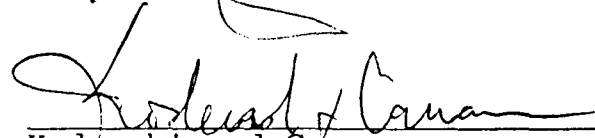
A. That their rights have been prejudiced by the Board's Decision.

B. That this Honorable Court reverse the December 30, 1993 Decision of the Board of Liquor License Commissioners for Baltimore City.

C. That Your Petitioners be granted such other and further relief as the nature of their cause may require.



Melvin J. Kodenski



Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(410) 685-5100

Attorneys for the Petitioners
JUSTIN D. WALTERS,
THOMAS S. HICKS,
CHRISTOPHER M. FRANCIS,
FELLS POINT CAFE, INC. T/A
FELLS POINT CAFE

G:\MJK\2048

IN THE CIRCUIT COURT FOR BALTIMORE CITY *
 PETITION OF HOWARD PERLOFF & ANDREW VOMVAS, *
 & APPLICANTS JUSTIN D. WALTERS, THOMAS S. HICKS *
 & CHRISTOPHER M. FRANCIS, FELLS POINT CAFE, INC. *
 t/a FELLS POINT CAFE *
 723 S. BROADWAY *
 BALTIMORE, MARYLAND 21231 *

FOR JUDICIAL REVIEW OF THE DECISION OF THE *
 BOARD OF LIQUOR LICENSE COMMISSIONERS *
 FOR BALTIMORE CITY *
 10 SOUTH STREET *
 SUITE 200 *
 BALTIMORE, MARYLAND 21202 *

CIVIL
 ACTION
 NO. : _____

IN THE CASE OF BOARD OF LIQUOR LICENSE *
 COMMISSIONERS FOR BALTIMORE CITY *

VS. *

HOWARD PERLOFF & ANDREW VOMVAS, *
 & APPLICANTS JUSTIN D. WALTERS, THOMAS S. HICKS *
 & CHRISTOPHER M. FRANCIS, FELLS POINT CAFE, INC. *
 t/a FELLS POINT CAFE *

PETITION FOR STAY OF LIQUOR BOARD'S RULING

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of Howard Perloff & Andrew Vomvas, &
 Applicants Justin D. Walters, Thomas S. Hicks & Christopher M.
 Francis, Fells Point Cafe, Inc. t/a Fells Point Cafe by Melvin J.
 Kodenski and Kodenski and Canaras, their attorneys, respectfully
 represents unto this Honorable Court that the Decision of the Board
 of Liquor License Commissioners for Baltimore City of December 30,
 1993, be stayed until Monday, January 3, 1994 and as reasons, state
 as follows:

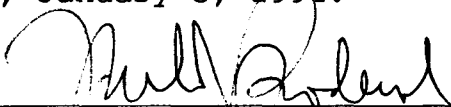
1. That this Decision will be appealed by the
 Petitioners on Monday, January 3, 1994.
2. That as a result of the Board's Decision, the
 Petitioners will suffer tremendous economic hardship and loss of
 their property rights, inasmuch as they will not be able to operate

their business through the New Year's Eve weekend and there is no judicial review available until after court reconvenes after the New Year's holiday on Monday, January 3, 1994.

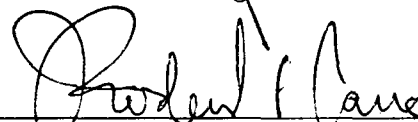
3. That in the interests of justice and fair play and to afford the Petitioners an opportunity to exist economically, especially in light of the importance of the New Year's Eve weekend and New Year's Eve, a stay of the Board of Liquor License Commissioners for Baltimore City's Decision of December 30, 1993 is warranted until Monday, January 3, 1994, when the Petitioners will have an opportunity to file for judicial review and a formal stay of the entire decision.

WHEREFORE, Your Petitioners pray:

A. That this Honorable Court stay the ruling of the Board of Liquor License Commissioners for Baltimore City of December 30, 1993 until Monday, January 3, 1994.



Melvin J. Kodenski



Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(410) 685-5100
Attorneys for the Petitioners

G:\MJK\Appeal

IN THE CIRCUIT COURT FOR BALTIMORE CITY
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,
& APPLICANTS JUSTIN D. WALTERS, THOMAS S. HICKS
& CHRISTOPHER M. FRANCIS, FELS POINT CAFE, INC.
t/a FELS POINT CAFE
723 S. BROADWAY
BALTIMORE, MARYLAND 21231

FOR JUDICIAL REVIEW OF THE DECISION OF THE
BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE CITY
10 SOUTH STREET
SUITE 200
BALTIMORE, MARYLAND 21202

IN THE CASE OF BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY

VS.

HOWARD PERLOFF & ANDREW VOMVAS,
& APPLICANTS JUSTIN D. WALTERS, THOMAS S. HICKS
& CHRISTOPHER M. FRANCIS, FELS POINT CAFE, INC.
t/a FELS POINT CAFE

CIVIL
ACTION
NO. : _____

O R D E R

UPON the foregoing Petition for Stay of the Board of
Liquor License Commissioners for Baltimore City's Ruling of
December 30 1993, and after discussion with attorney for the
Petitioners and Commissioner of the Liquor Board, it is this 31st
day of Dec., 1993, by consent of the
parties, ORDERED by the Circuit Court of Maryland for Baltimore
City;

ORDERED, that the ruling of the Board of Liquor License
Commissioners for Baltimore City of December 30, 1993, is hereby
stayed until January 3, 1994.

Joseph P. Mc Curry J.
JUDGE

IN THE CIRCUIT COURT FOR BALTIMORE CITY
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELLS
POINT CAFE, INC. T/A FELLS POINT CAFE
723 S. BROADWAY
BALTIMORE, MARYLAND 21231

FOR JUDICIAL REVIEW OF THE DECISION OF THE
BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE CITY
10 SOUTH STREET
SUITE 200
BALTIMORE, MARYLAND 21202

CIVIL
ACTION
NO.: _____

IN THE CASE OF BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY

VS.

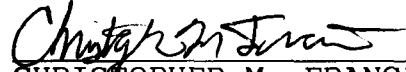
HOWARD PERLOFF & ANDREW VOMVAS, &
APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELLS
POINT CAFE, INC. T/A FELLS POINT CAFE

AFFIDAVIT

I, Christopher M. Francis, Applicant Licensee and Officer of Fells Point Cafe, Inc., do solemnly declare and affirm under the penalties of perjury that the following information is true and correct.

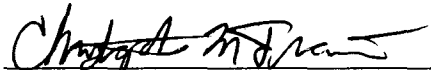
1. Christopher M. Francis, Applicant Licensee and Officer of Fells Point Cafe, Inc., hereby certify that I am one of the owners of the business known as Fells Point Cafe and the facts as set out in the Petition for Stay and Appeal are true and correct and that if the business is not able to be operated due to the Order of the Board of Liquor License Commissioners for Baltimore City, that there will be severe financial hardship and that the payments with regard to rent in the amount of Eight Thousand Three Hundred Dollars (\$8,300.00) per month will not be able to be made and bills to include, but not limited to, Sales Tax, liquor bills,

insurance bills, and Federal Taxes will not be able to be paid, and approximately forty (40) people will be out of work, and as a result, most probably the business will fail.



CHRISTOPHER M. FRANCIS
APPLICANT LICENSEE

FELLS POINT CAFE, INC.

BY: 

CHRISTOPHER M. FRANCIS
OFFICER

G: \MJK\2047

2. That the Board never made a finding on the alleged violation of Rule 3.01 which was one of the issues and in fact, the other issue before the Board is not a violation of any rule or regulation or violation of Article 2B and in fact was an alleged violation of the Agreement with the Fells Point Homeowners Association and is in contravention of the Board's Rules and Regulations and particularly Rule 2.06(b).

3. That the Decision of the Board in this case is arbitrary and capricious and is not based on valid evidence.

4. That the Decision of the Board is illegal and the Board never made any official Decision concerning the alleged violations of the Board's Rule or Regulations in this matter.

5. That the evidence as solicited at the hearing was not entirely credible and worthy of consideration.

6. That the evidence as given by the Petitioner through witnesses and through the Liquor Board's own inspector supported additionally that the Petitioners were operating as a restaurant in the area known as 723 without any credible contradiction by any other witnesses.

7. That the Board prejudged this case and was otherwise prejudicial with regard to the Petitioners.

8. That the demeanor emanating from the Board from the very onset indicated a hostile and almost inflammatory attitude toward the Petitioners and comments made by various Commissioners, as it will be pointed out in the Memorandum after review of the transcript, certainly indicated the inability of the Petitioners to have a fair and just hearing and in fact, the comments included matters far outside the scope of this hearing all to the detriment

of the Petitioners.

9. That the alleged violations of the Agreement referred to as the date of December 17th and December 18th, were never proved and in fact, were contradicted by statements made by the Liquor Board's own Inspector Bernard Martin in the portion of the case put on by the Liquor Board and in fact, Inspector Bernard Martin indicated in his testimony in the Board's portion of the case that he was on the premises on December 16, 17, 18, and 19, 1993, and on all those dates the operation of the establishment was in conformity with the restaurant. Additionally, the violation of the Agreement from November 4, 1993 to the date of the hearing, as alleged, was not proven by any testimony, exhibits, or other facts.

10. That the testimony of Tom Durel, who was the only other person to testify in the Board's portion of the case, revealed that he has no expertise with regard to the ownership or the running of a restaurant and in fact, his appearance was brief and he was there on the first two nights that the area known as 723 was open to the public which was a trial period for the Petitioners and in no way reflected the actual operation of the area known as 723. In that testimony, Tom Durel in fact testified that he was there for a short period of time and that he ate in the area known as 723 and visibly witnessed the kitchen area, etc.

11. That the Board violated due process of the Appellants to receive a "fair and just hearing".

12. That the hearing itself violated the basic and fundamental principles of fairness and justice.

13. That for other reasons to be stated in the Memorandum to be filed in this case and at the hearing on this

LAW OFFICES

KODENSKI AND CANARAS

19 EAST FAYETTE STREET

SUITE 301

BALTIMORE, MARYLAND 21202

matter after review of the transcript.

WHEREFORE, Your Petitioners pray:

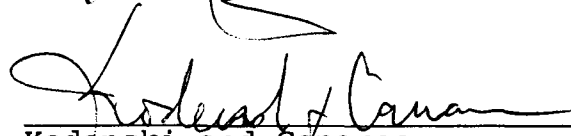
A. That their rights have been prejudiced by the Board's Decision.

B. That this Honorable Court reverse the December 30, 1993 Decision of the Board of Liquor License Commissioners for Baltimore City.

C. That Your Petitioners be granted such other and further relief as the nature of their cause may require.


Melvin J. Kodenski

421254



Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(410) 685-5100

Attorneys for the Petitioners
JUSTIN D. WALTERS,
THOMAS S. HICKS,
CHRISTOPHER M. FRANCIS,
FELLS POINT CAFE, INC. T/A
FELLS POINT CAFE

G:\MJK\2048

IN THE CIRCUIT COURT FOR BALTIMORE CITY
PETITION OF HOWARD PERLOFF & ANDREW VOMVAS,
& APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELLS
POINT CAFE, INC. T/A FELLS POINT CAFE
723 S. BROADWAY
BALTIMORE, MARYLAND 21231

FOR JUDICIAL REVIEW OF THE DECISION OF THE
BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE CITY
10 SOUTH STREET
SUITE 200
BALTIMORE, MARYLAND 21202

CIVIL
ACTION
NO.: _____

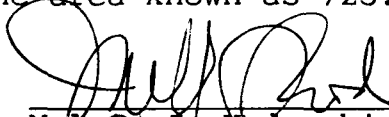
IN THE CASE OF BOARD OF LIQUOR LICENSE
COMMISSIONERS FOR BALTIMORE CITY

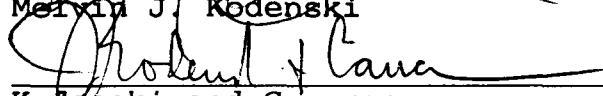
VS.

HOWARD PERLOFF & ANDREW VOMVAS, &
APPLICANTS JUSTIN D. WALTERS, THOMAS S.
HICKS, CHRISTOPHER M. FRANCIS, & FELLS
POINT CAFE, INC. T/A FELLS POINT CAFE

ORDER FOR APPEAL

The Petitioners, Howard Perloff and Andrew Vomvas and Applicants, Justin D. Walters, Thomas S. Hicks, Christopher M. Francis, and Fells Point Cafe, Inc. t/a Fells Point Cafe, by Melvin J. Kodenski and Kodenski and Canaras, their attorneys, being aggrieved by the Decision of the Board of Liquor License Commissioners for Baltimore City of December 30, 1993, resulting in the indefinite restriction of the liquor license of the Petitioners with regard to the area known as 723.



Melvin J. Kodenski


Kodenski and Canaras

19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(410) 685-5100
Attorneys for the Petitioners
JUSTIN D. WALTERS,
THOMAS S. HICKS,
CHRISTOPHER M. FRANCIS,
FELLS POINT CAFE, INC. T/A
FELLS POINT CAFE

LAW OFFICES
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19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

LAW OFFICES
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BALTIMORE, MARYLAND 21202
TELEPHONE (410) 685-5100
FAX (410) 685-5825

MELVIN J. KODENSKI
BARRY T. CANARAS
CHRISTOPHER M. LEE

HIGHLANDTOWN OFFICE
412 S. HIGHLAND AVENUE
BALTIMORE, MARYLAND 21224
PHONE 563-9000

January 4, 1994

Circuit Court of Maryland
for Baltimore City
111 N. Calvert Street
Baltimore, Maryland 21202

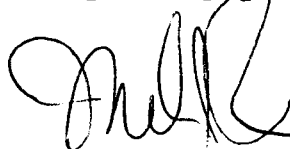
RE: Board of Liquor License Commissioners for
Baltimore City vs. Howard Perloff, Andrew
Vomvas & Applicants Justin D. Walters,
Thomas S. Hicks, Christopher M. Francis,
& Fells Point Cafe, Inc. t/a Fells Point
Cafe

Dear Mr./Ms. Clerk:

Enclosed herein please find a Petition for Appeal,
Order for Appeal, Petition for Stay of Liquor Board's Ruling
and Order, Affidavit, and Request for Hearing to be filed in
the above-referenced matter.

Due to the urgency of this matter, we are hand-
delivering a copy of these documents to the Board of Liquor
License Commissioners for Baltimore City and to the attorney
appointed for the Liquor Board, Mark P. Keener.

Very truly yours,



Melvin J. Kodenski

MJK/sjk
Enclosures

cc: Board of Liquor License Commissioners
for Baltimore City

Mark P. Keener, Esquire

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MSA SC 5458-82-150 - |

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System design by Dr. Edward C. Papenfuse and Nancy Bramucci.
Programmed in *Microsoft SQL Server* and *Cold Fusion 7.0* by Nancy
Bramucci.

Technical support provided by Wei Yang, Dan Knight, Tony Darden, and
Matt Davis.

Version 2.8.1