



1997

# Recent Developments: Board of Liquor License Commissioners for Baltimore City v. Fells Point Cafe, Inc.: Liquor Board May Not Impose Additional Restrictions on Licensee as Sanctions for Violations

John B. Bratt

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

### Recommended Citation

Bratt, John B. (1997) "Recent Developments: Board of Liquor License Commissioners for Baltimore City v. Fells Point Cafe, Inc.: Liquor Board May Not Impose Additional Restrictions on Licensee as Sanctions for Violations," *University of Baltimore Law Forum*: Vol. 27 : No. 2 , Article 7.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol27/iss2/7>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

## ***Board of Liquor License Commissioners for Baltimore City v. Fells Point Cafe, Inc.***

**I**n *Board of Liquor License Commissioners for Baltimore City v. Fells Point Cafe, Inc.*, 344 Md. 120, 685 A.2d 772 (1996), the Court of Appeals of Maryland clarified the scope of authority of the Baltimore City Board of Liquor License Commissioners. The court held that while restrictions imposed on an individual license with the licensee's consent will be upheld, the Board may not thereafter impose additional restrictions as a sanction when the prior license restrictions are violated.

In November of 1993, the current owners of the Fells Point Cafe ("licensees") appeared before the Board of Liquor License Commissioners for Baltimore City ("Board") in an attempt to gain approval for the transfer of the liquor license covering the establishment. The license was subject to certain restrictions consented to by the licensees in order to minimize neighborhood opposition to the license transfer. Neighborhood leaders had concerns stemming from a nightclub that previously occupied the same location and caused disruption to the community. In order to allay the community's fears and remove their opposition to the license transfer, the licensees agreed to operate the establishment under certain restrictions. Among the restrictions were limitations on what percentage of the establishment's revenue could be derived from liquor sales, allowable entertainment, and when dancing

### **Liquor Board May Not Impose Additional Restrictions On Licensee As Sanctions For Violations**

---

By John B. Bratt

would be permitted. The Board approved the license transfer conditioned upon these restrictions, and referenced the restrictions on the license itself.

Over a year later, on December 1, 1994, the licensees again appeared before the Board in response to alleged violations of the license restrictions. The licensees argued that the restrictions were binding only between themselves and the community, and could not be enforced by the Board. The Board concluded that since the limitations had been agreed to by both the licensees and the community, and had been included in the license with the licensee's consent, they were properly enforceable by the Board. The Board then found that the restrictions had been violated. As sanctions for these violations, the Board prohibited the licensees from featuring disk jockeys, dancing, exotic entertainment, or any type of live entertainment.

The licensees then appealed the Board's decision in the Circuit Court for Baltimore City. The circuit court found that the Board had

no authority to impose sanctions other than those specifically provided for in Article 2B, the Board's enabling statute. The Board then filed a Motion of Appeal to the Court of Special Appeals of Maryland. Before the court of special appeals could decide the case on the merits, the Court of Appeals of Maryland granted certiorari.

The court began its analysis by examining whether the Board filed a timely notice of appeal. *Fells Point Cafe*, 334 Md. at 126, 685 A.2d at 775. After determining that the Board had filed a timely appeal under the Maryland Rules, the court turned its attention to the substantive issues of the case. *Id.* at 134, 685 A.2d at 779.

First, the court considered whether the Board had the authority to impose additional license restrictions as sanctions for violation of the agreement between the licensees and the community. *Id.* at 135, 685 A.2d at 779. The court analyzed the restrictions imposed in this case by citing to its opinion in *Board of Liquor License Commissioners for Baltimore City v. Hollywood Productions, Inc.*, 344 Md. 2, 684 A.2d 837 (1996). In *Hollywood*, a nightclub was found to be in violation of the Board's rules, and in response the Board limited the club's hours of operation. *Fells Point Cafe*, 344 Md. at 135, 685 A.2d at 779. The *Hollywood* court held that the Board's action was outside the scope of its power under Article 2B, which limits

## Recent Developments

---

sanctions to the imposition of a monetary fine and license suspension or revocation. *Id.* at 136-37, 685 A.2d at 780.

Next, the court discussed the detailed system of regulation prescribed by the General Assembly for the alcoholic beverage industry and reached the conclusion that if the General Assembly intended to create a particular enforcement mechanism, the mechanism would have been statutorily provided. *Id.* at 136, 685 A.2d at 779. The *Hollywood* court concluded that since placing restrictions on the hours of operation of the club was not set forth as a statutory enforcement mechanism, the Board had overstepped its authority by imposing it as a restriction. *Id.* at 137, 685 A.2d at 780. Applying this analysis to the instant case, the court stated that both the language of Article 2B and the General Assembly's intent in empowering the Board indicated that the Board exceeded its authority. *Id.* at 136-37, 685 A.2d at 780. The court added that the sanctions the Board is authorized to impose are enumerated by statute, and thus the Board had no authority to impose any other sanctions.

Next, the court examined how the licensee's consent affected the Board's ability to restrict the license use. *Id.* at 136, 685 A.2d at 780. In this case, the Board approved the license transfer due to the licensee's stated intent to use the premises as a restaurant, rather than a bar. *Id.*

The licensees argued that even with consent, the Board is unable

to place restrictions on a particular license. *Id.* The court disagreed with this contention, stating that this agreement was proposed by the licensees and voluntarily entered into by them. *Id.* at 138, 685 A.2d at 780. Moreover, the court further noted that without the licensee's consent to the restrictions, the license would probably not have been transferred. In addition, the court pointed out that the licensees had enjoyed the benefits of this license for over three years, and stated that it is inequitable to allow a party who has received the advantages of an agreement to later attack the validity or propriety of the conditions attached to that agreement. *Id.* at 138-140, 685 A.2d at 781-82 (citing *Federal Power Comm'n v. Colorado Gas Co.*, 348 U.S. 492 (1955); *Zweitel Manufacturing Corp. v. City of Peoria*, 144 N.E.2d 593 (Ill. 1957); *Montgomery County v. Mossberg*, 228 Md. 555, 180 A.2d 851 (1962); *Charles Simons' Sons v. Maryland Telephone Co.*, 99 Md. 141, 57 A. 193 (1904)). In *Federal Power*, the United States Supreme Court held that because Colorado Gas had agreed to certain conditions relating to a merger, had never sought review of the conditions, and continued to accrue the benefits of the merger, it would not be allowed to attack the conditions of the merger. *Fells Point Cafe*, 344 Md. at 140, 685 A.2d at 782 (citing *Federal Power*, 348 U.S. at 501-02).

The Court of Appeals of Maryland emphasized that the facts in the instant case were

extremely similar to *Federal Power*. The licensees never protested the Board's decision at the time it was made and continued to enjoy the profits that the license produced. *Fells Point Cafe* at 141, 685 A.2d at 782. For these reasons, the court held that the licensees could not challenge the Board's decision. *Id.*

In so holding, the court explicitly stated that its holding did not imply that the Board could use its powers to force future licensees into consenting to restrictions, or that all such restrictions were necessarily enforceable. *Id.* The court noted that "[i]f a licensee feels aggrieved by the restrictions sought to be placed on his or her license, he or she should seek judicial review at the time the conditions are imposed." *Id.* at 137, 685 A.2d at 780.

By allowing the Board to enforce restrictions entered into voluntarily by licensees, the court has both clarified the role of the Board and given the Board another tool to use in ensuring that the regulation of liquor licenses meets the needs of both business owners and neighborhoods. By allowing the Board to enforce voluntary restrictions, however, the court may have opened the door to abuse of the power to require restrictions as a condition of transfer. Given the current political sensitivity of the Liquor Board and its members, it might have been desirable for the court to set forth standards to provide for the Board's equitable use of this power.