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Recent Developments: *Pridgeon v. Bd. of License Comm'rs for Prince George's County: Board of License Commissioners Was Statutorily Required to Hold a Hearing on Whether a Liquor License Should Be Renewed, Even Though the Protest Was Withdrawn Prior to the Hearing*

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RECENT DEVELOPMENT

PRIDGEON V. BD. OF LICENSE COMM'RS FOR PRINCE GEORGE'S COUNTY: BOARD OF LICENSE COMMISSIONERS WAS STATUTORILY REQUIRED TO HOLD A HEARING ON WHETHER A LIQUOR LICENSE SHOULD BE RENEWED, EVEN THOUGH THE PROTEST WAS WITHDRAWN PRIOR TO THE HEARING.

By: Neal Desai

The Court of Appeals of Maryland held that there were no standing or due process issues when the Board of License Commissioners for Prince George's County held a hearing on whether a liquor license should be renewed after a protest was filed, despite the fact that the protest was withdrawn prior to the hearing. *Pridgeon v. Bd. of License Comm'rs for Prince George's County*, 406 Md. 229, 958 A.2d 289 (2008). More specifically, the court stated that withdrawal of the protest had no effect on the rights of others attending the hearing to be heard. *Id.* at 236, 958 A.2d at 293.

In a letter dated February 26, 2006, the president of Hillside Civic Association of Capital Heights, Maryland and twelve other persons ("Civic Association"), signed a protest in opposition to the renewal of Senate Liquor Store's ("Senate Inn") liquor license. Prior to the protest hearing scheduled on May 10, 2006, counsel for the Civic Association and Frank G. Pridgeon, Sr. ("Pridgeon"), the liquor license holder for Senate Inn, entered into a voluntary agreement, whereby the Civic Association withdrew their protest in return for operating concessions. The Board of License Commissioners for Prince George's County ("Board") held a hearing despite the Civic Association's withdrawal of the protest pursuant to the agreement. On May 24, 2006, the Board refused to renew Senate Inn's beer, wine, and liquor license, and ordered the Senate Inn to cease the sale of alcoholic beverages.

Pridgeon appealed to the Circuit Court for Prince George's County, which affirmed the Board's ruling. Pridgeon appealed to the Court of Special Appeals of Maryland. Before the intermediate appellate court heard the case, the Court of Appeals of Maryland issued a writ of certiorari on its own initiative.

The court first looked at whether the protest hearing was rendered moot by the withdrawal of the protest, or whether viable issues remained before the Board. *Pridgeon*, 406 Md. at 234, 958 A.2d at 292. The court stated that under the plain language of Article 2B, Section 10-302(g)(2) of the Maryland Code (“Section 10-302(g)(2)”), the Board was required to conduct a full protest hearing once the protest was filed. *Id.* (citing MD. ANN. CODE art. 2B, § 10-302(g)(2)(West 1957)). Pursuant to Section 10-302(g)(2), if a protest is filed, the license shall not be renewed without a hearing before the Board. *Pridgeon*, 406 Md. at 234, 958 A.2d at 292 (citing MD. ANN. CODE art. 2B, § 10-302(g)(2)). The court also found that renewal of the license is not a matter between the licensee and the protestant. *Pridgeon*, 406 Md. at 235, 958 A.2d at 292. Rather, it is a matter between the licensee and the Board. *Id.* The Board shall then determine, among other things, whether the licensee and the licensed premises meet certain requirements. *Id.* Then, the Board must look at possible problems that may justify denying renewal of the license. *Id.*

Furthermore, the filing of a protest does not provide a protestant with any special standing. *Id.* at 235, 958 A.2d at 292-93. Therefore, despite withdrawal of the protest, the court found that the Board still was required to make the same determinations under Article 2B, Section 10-202(a)(2) of the Maryland Code that it was required to make at the time the protest was filed. *Id.* at 235, 958 A.2d at 293. None of these issues became moot when the Civic Association withdrew the protest. *Id.* Therefore, the court agreed with the Board’s interpretation of Section 10-302(g)(2) that if a protest is filed, a hearing must be held, and agreed that this is consistent with the words of the statute. *Id.* at 238, 958 A.2d at 294-95.

The Court of Appeals of Maryland then looked at whether the Civic Association was the only entity with standing to challenge the renewal of the license. *Id.* at 236, 958 A.2d at 293. The Civic Association’s withdrawal meant that only the Civic Association itself voluntarily declined to present its case against *Pridgeon*. *Id.* Any person, not just the protestants, shall be heard at a protest hearing. *Id.* (citing MD. ANN. CODE art. 2B, § 10-202(a)(1)(iv)(West 1957)). Furthermore, the court explained that a person may be heard and present evidence at the hearing even if they lack standing to file a protest. *Pridgeon*, 406 Md. at 236, 958 A.2d at 293.

The Court of Appeals of Maryland also addressed whether *Pridgeon* was denied his due process rights because he did not receive notice from everyone who may attend the license renewal hearing. *Id.*

The court found that the Board's decision to proceed without Civic Association and hear arguments from others was not a violation of Pridgeon's due process because once the hearing was scheduled, Pridgeon was put on notice that he may have to appear before the Board. *Id.* Furthermore, those who plan on attending the hearing are not required to give notice in advance. *Id.* Even though the applicant reached an agreement with all the protestants, the hearing is not prevented from going forward. *Id.* This is especially true if others who are opposed to the liquor license renewal plan to attend the hearing. *Id.* Pridgeon, as the applicant for the liquor license renewal, should have been aware of these procedural points. *Id.*

Pridgeon made two additional arguments. *Id.* at 239, 958 A.2d at 295. First, he argued that his license should have been renewed because the Board's denial resulted from changes of practices and policies in handling protest hearings, which required the adoption of appropriate rules and regulations. *Id.* The court rejected this argument because the Board has never adopted a policy, whether formal or informal, "obviating the need for a statutorily mandated hearing on a protested renewal for any reason." *Id.* Second, Pridgeon argued that under the Administrative Procedure Act, administrative agencies would declare the protest hearing moot upon withdrawal of the protest by the Civic Association. *Id.* The court also rejected this argument by stating that the Administrative Procedure Act is not applicable to proceedings before the liquor boards. *Id.* at 239-40, 958 A.2d at 295 (citing *Valentine v. Bd. of License Comm'rs*, 291 Md. 523, 530, 435 A.2d 459, 463 (1981)).

Pridgeon clarifies Maryland law in establishing that where a protest for renewal of a liquor license is withdrawn prior to the Board's hearing, the Board still is statutorily required to hold the hearing. As a result, according to Maryland law, once a protest is initiated, an agreement between the original protestants and the licensee will not suffice to prevent a hearing before the Board or to prevent the denial of one's liquor license. The Maryland practitioner representing the license holder should be prepared for any consequence resulting from the filing of a protest because arguments of standing and due process seem unlikely to prevail. Now, it seems the only way to prevent a hearing is to make negotiations before a protest is filed, thus preventing the protest. Once a protest is filed, Maryland practitioners should verify that those who signed the protest were authorized to do so.