

STATE OF INDIANA

BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)
THE PERMIT OF)
ADEL GYROS, LLC) PERMIT NO. RR29-35146
10450 N. COLLEGE AVE.)
INDIANAPOLIS, INDIANA 46280)

PERMITTEE

ORDER ON TRIAL HEARING

Comes now the Hearing Judge, and this matter having come before the Indiana Alcohol and Tobacco Commission on appeal from the Hamilton County Local Alcohol Board (Board) where the Board denied the renewal for permit number RR29-35146 issued to Adel Gyros, LLC and now makes the following findings and orders.

BACKGROUND OF THE CASE

Adel Gyros, LLC (Permittee) was issued an alcohol permit under RR29-35146 in 2019 and was issued a notice of violation of the rules of the Indiana Alcohol Tobacco Commission (ATC) on or about February 28, 2020. It was stated at the time that the violation was for having an alcohol bottle on the serving bar after hours when there were no other patrons in the premises and, according to the owner, he and his wife were having an after-hours drink. Subsequently, on April 12, 2022, the Local Alcohol Board of Hamilton County (Board) denied the renewal of the alcohol permit of Permittee and this appeal resulted from that denial. This matter was set and heard as a pretrial on June 9, 2022. The subsequent delay between June 9, 2022, and the date of the hearing on March 2, 2023, was due to the scheduling of an interpreter. At the hearing on March 2, 2023, the Hearing Judge took judicial notice of the file of ATC regarding Permittee, the recording of the Board hearing on April 12, 2022, and the verbal testimony presented on March 2, 2023.

FINDINGS OF FACT

1. Permittee has a restaurant location in Hamilton County Indiana having been issued its permit on March 20, 2019.

2. Permittee received its alcohol permit and, according to the testimony presented on March 2, 2023, not understanding all of the rules and regulations of ATC regarding the right to sell alcoholic beverages, purchased a portion of its initial inventory of alcohol from Sam's Club, not, as required, from an authorized wholesaler.
3. An excise officer visited Permittee's location shortly thereafter and advised Permittee that it had violated the rules and regulations of its permit but did not issue a formal violation.
4. On or about February 28, 2020, an excise officer visited the premises of the Permittee and discovered that there was a bottle of alcohol— either gin or scotch— on the bar, after closing hours but that there were no patrons in the location and the owner testified that he and his wife were having an after-hours drink alone.
5. The file violation indicates that the alcohol located on the bar at the time of the visit was not purchased from a wholesale distributor.
6. A result of that action was that a formal violation was filed, and the Permittee paid a \$500 fine.
7. On March 2, 2023, the witnesses testified that after February 28, 2020, they have never had a drink after hours on the premises.
8. On or about December 08, 2020, there was a hearing before the Local Board in Hamilton County and the permit of the Permittee was renewed— this hearing was after the violation on February 28, 2020, indicating that the violation was not significant enough to deny the renewal of the permit in December 2020.
9. Subsequently, at the renewal hearing scheduled on April 19, 2022, it was clear that the permittee had filed a request for a "carryout license" and thought that the hearing in April 2022 was about the carryout request.
10. The Board clarified that the hearing on April 12, 2022, was actually about the renewal of the permit and the board, by a 3-0 vote, denied the renewal of the permit stating, in part, that the denial was for "repeated violations" and that someone had "repeatedly gone over the laws and rules" but that violations continued.
11. On April 19, 2022, ATC sent a letter to Permittee advising that the Commission Board had sustained the local Board's recommendation of denial of a renewal without a *de novo* hearing and that it could appeal within 15 days of receipt of the Commission's letter for a *de novo* hearing.
12. Permittee did timely file a notice of appeal of the finding of the Local Board and of the ATC.

13. Testimony on March 2, 2023, revealed that, in May 2022, one month after the Local Board denial of the renewal of the permit on April 12, 2022, there was an extensive fire on the premises of Permittee at 10450 N. College Ave., and that the premises has not, to this date, been reopened for the serving of food or alcohol beverages.
14. The hearing judge conducted an extensive review of the ATC files, records and particularly notes that of significant influence was the fact that the recording of the board hearing on April 12, 2022, is incomplete and apparently is unable to be reconstructed and therefore any statements not contained in the current available recording were unable to be reconstructed or considered.
15. Even though there was one violation filed in February 2020, there was a subsequent review of the Permittee's license in December 2020 and the license was renewed knowing of that violation.
16. It appears inconsistent that the Local Board would renew a license after a violation and at the next renewal hearing deny renewal of that permit for a violation that occurred and had been reviewed once before.
17. Permittee indicated that his intention is to reopen the restaurant and it would like to again serve alcoholic beverages and will pay particular attention to the rules and regulations of ATC and the permit issued to him.
18. Since there was only one violation filed on the record, and the hearing judge could not review all the testimony and comments presented at the Local Board hearing on April 12, 2022, it appears arbitrary and an abuse of discretion to deny the renewal of the license.
19. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

CONCLUSIONS OF LAW

1. The Indiana Alcohol and Tobacco Commission has jurisdiction over this matter pursuant to Ind. Code Sec 7.1-1-2-2 and Ind. Code Sec 7.1-2-3-7
2. The Indiana Alcohol and Tobacco Commission has jurisdiction to hear matters of enforcement of its rules and regulations. (Ind. Code Sec 7.1-2-3-7 (4)).
3. The Hearing Judge conducted the hearing consistent with 905 IAC 1-36-7 and heard evidence consistent with 905 IAC 1-36-7(c).
4. The Hearing Judge may take judicial notice of the Commission's file relevant to a case, including the transcript and exhibits before the local board. 905 IAC 1-36-7(a).

5. The Hearing Judge conducted a *de novo* hearing of the matter, including a public hearing and a review of the available but incomplete record and documents in the Commission records. IC 7.1-3-19-11(a); 905 IAC 1-36-7(a). *see also* IC 4-21.5-3-27(d).
6. The findings are based exclusively upon substantial and reliable evidence in the record of the Local Board proceedings, on matters officially noticed in the proceeding, and on the verbal testimony provided at the hearing. 905 IAC 1-36-8 and IC 4-21.5-3-27(d).
7. The Commission may reverse a Local Board's action in denying an application for a permit review only if it finds that the Local Board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. IC 7.1-3-19-11, this would apply even in the event of incomplete record or recording of a hearing, such as the case here.
8. The decision of the Local Board was unsupported by substantial evidence and therefore was arbitrary and an abuse of discretion.
9. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Hamilton County Local Board resulting in a 3-0 vote to recommend denial of the application for renewal of permit number RR29-35146 is not supported by substantial evidence and was arbitrary and an abuse of discretion. The Alcohol and Tobacco Commission hereby reverses the previous denial of renewal of the permit for Adel Gyros LLC and orders that such license be renewed for one year effective the date of this order.

IT IS FURTHER STATED that the facts in this matter are unique, particularly since the recording of the Local Board hearing is incomplete and could not be reconstructed. Permittee is instructed specifically that it must follow all rules and regulations of the ATC, or the permit may not be renewed again.

All of which is ordered this 21st day of March 2023.




James W. Payne, Hearing Judge

Indiana Alcohol and Tobacco Commission

Commission Adoption:

Date: 4/4/23



Jessica Allen, Chair



Marjorie Maginn, Commissioner



James Payne, Vice Chair



Dale Grubb, Commissioner

Cc: ADEL GYROS, LLC
10450 N. COLLEGE AVE.
INDIANAPOLIS, INDIANA 46280

Hamilton County Local Alcohol Board