UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1044

September Term, 2014

WILLIAMS REALTY, LLC, et al.

v.

BOARD OF LIQUOR LICENSE COMMISSIONERS OF BALTIMORE CITY

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Meredith, J.

Filed: August 2, 2016

Robert D. Williams and Williams Realty, LLC (collectively "the Williamses"), appellants, appeal from a judgment of the Circuit Court for Baltimore City that affirmed a ruling of the Board of Liquor License Commissioners of Baltimore City ("the Board"), appellee. We shall likewise affirm.

BACKGROUND

The focus of this controversy is the status of a liquor license that had, at one time, been issued for the property known as 3100 Greenmount Avenue ("3100 Greenmount"), Baltimore City. This is the second time appellants have pursued claims against the Board in this Court. When the parties were here the first time, we upheld the Board's ruling that concluded that the license for 3100 Greenmount had expired by operation of law because no alcoholic beverages had been sold on the premises within 180 days prior to January 6, 2009, which was the date on which the appellants had requested a hardship exemption from the requirement that the bar remain in operation. *See Williams Realty, LLC v. Board of Liquor License Commissioners of Baltimore City*, No. 1748, September Term 2010 (filed April 12, 2012) (unreported) ("*Williams I*"); Maryland Code (1957, 2011 Repl. Vol.), Article 2B, § 10-504(d)(1) (providing for the automatic expiration of a license if the holder has failed to conduct active alcoholic beverages business at the licensed property for 180 days, and providing for a potential hardship extension of 180 days). The Court of Appeals denied the petition for a *writ of certiorari*. 427 Md. 611 (2012).

Despite our ruling in *Williams I*, the Williamses continued to press their claim for the Board to grant them a hardship extension of the license that had, at one point, permitted a bar to operate at 3100 Greenmount. On June 6, 2013 — *i.e.*, over a year after this Court filed

its opinion in *Williams I* affirming the Board's denial of the Williamses' request for a hardship extension — the Williamses' counsel delivered a letter to the Board summarizing communications that led Mr. Williams to conclude that "the Board's January 21, 2010, decision was strictly political." The letter referred to the Williamses' "February 2, 2010, request for reconsideration, upon which the Board never has acted formally," and suggested that that 2010 request for reconsideration — although filed over three years earlier — was still pending for action and "provides a vehicle for correcting the injustice that Mr. Williams and Williams Realty have suffered."[1]

By letter dated June 20, 2013, The Acting Executive Secretary of the Board advised counsel for the appellants:

[1]In the briefs the parties filed in *Williams I*, the parties made conflicting representations to this Court regarding the status of the Williamses' February 2010 request for reconsideration. The brief filed on behalf of the appellants stated: "On February 2, 2010, Williams Realty's counsel requested that the Board reconsider its decision in light of newly obtained, additional evidence that the licensed business had been in operation at least as late as July 15, 2008. The request for reconsideration was denied by the Board." (Extract reference omitted.) The brief filed on behalf of the Board, however, stated: "The Liquor Board never acted on the [February 2010] request for reconsideration." In our unreported opinion, we accepted the representation of counsel for appellants that the February 2010 request for reconsideration had been denied. We stated:

> Twelve days after Williams Realty was denied the hardship extension [by ruling dated January 21, 2010], counsel for Williams Realty asked the Board to reconsider its decision based on newly discovered evidence. Counsel also asked the Board to either reverse its decision or set the matter in for re-hearing so that it could consider additional testimony. These requests were denied, orally, by the Board.

Slip op. at 1.

> The Board has received your letter requesting a reconsideration of its January 21, 2010 decision that the license at 3100 Greenmount Avenue had expired by operation of law. The request for reconsideration is denied.

There were further communications between the Board's staff and counsel for the Williamses. Ultimately, by letter dated October 23, 2013, the Board, through its Acting Executive Secretary, notified counsel for the Williamses once again that the Board would provide no further reconsideration of the hardship extension request, explaining:

> On June 6, 2013 the Board received a letter from you requesting a reconsideration of its January 21, 2010 decision that the license located at 3100 Greenmount Avenue had expired by operation of law. On June 20, 2013, the Board denied your request and stood with that decision. On October 10, 2013 the Board received another letter from you requesting reconsideration. Since the Board had previously denied your request they find your most recent request moot. This Board cannot offer your client the relief he is seeking concerning this matter. If you need additional information concerning this matter, you may call me at 410-396-4377.

The Williamses responded by filing two complaints in the Circuit Court for Baltimore City. The cases were eventually "consolidated for all purposes," but, initially, Case No. 24-C-13-006842 was the case in which the Williamses petitioned "pursuant to Maryland Rule 7-202 and Md. Code Art. 2B, § 16-101, for judicial review of the actions of [the Board] with respect to the requests for rehearing that [the Williamses had] filed with the Board, notice of the denial of which" was communicated via the letter dated October 23, 2013. In Case No. 24-C-13-006845, the Williamses filed a complaint requesting, "pursuant to Maryland Rule 7-401, et seq., that [the circuit court] issue a Writ of Mandamus directing [the Board] to hear and grant the requests for rehearing regarding the liquor license for 3100

Greenmount," for which the notice of denial was communicated via the letter dated October 23, 2013.

The Board filed a motion to dismiss in each of the circuit court actions. After the cases were consolidated, the circuit court held a hearing, and then granted both motions to dismiss. The judge explained that he was dismissing the request for administrative mandamus because the Maryland Rules that permit such actions "essentially, are a default appellate process when there's not an appellate process in the Maryland Code . . . or it's not covered by the Administrative Procedures Act." In cases such as this, the court ruled, "there is a specific appellate process. So I will be dismissing the Mandamus proceeding." With respect to the petition for judicial review of the denial of the Williamses' motion for reconsideration, the judge expressed doubt as to whether the ruling was "an appealable order." Assuming that the issue was before the court, the judge ruled: "[T]he suggestion that one staff person of the Liquor Board feels that it was a political decision is not, in my opinion, sufficient evidence of extrinsic fraud that would require an overturning of the original decision."

Within ten days after the orders of dismissal were docketed, the Williamses filed a motion to alter or amend the court's judgments. The court conducted another hearing. At that hearing, the judge reviewed the procedural history of the controversy with counsel for the Williamses, in the following colloquy:

> THE COURT: Now, you had the initial decision, and you filed a Motion for Reconsideration, which was denied in this initial decision; is that correct?
>
> [COUNSEL FOR APPELLANTS]: Correct.

THE COURT: Then, you took an appeal?

[COUNSEL FOR APPELLANTS]: Right.

THE COURT: It goes all the way up to the Special Appeals?

[COUNSEL FOR APPELLANTS]: Right.

THE COURT: And they affirmed the Board?

[COUNSEL FOR APPELLANTS]: Correct.

THE COURT: All right. Then you come back and then you file a second Motion for Reconsideration and that was filed in –

[COUNSEL FOR APPELLANTS]: In 2012.

THE COURT: In 2012. All right. Now, . . . your client received a letter saying that this reconsideration was denied.

[COUNSEL FOR APPELLANTS]: That letter was received . . . in 2013 . . . .

* * *

THE COURT: But just so I understand, what you're challenging right now, from what I gather, is the denial of the Motion for Reconsideration. Because the initial appeal has already been taken . . . and decided against it.

[COUNSEL FOR APPELLANTS]: Correct. And we do not challenge that.

THE COURT: Okay. Now, here's the question for you. The decision to grant a new hearing, or a reconsideration of a decision, is discretionary?

[COUNSEL FOR APPELLANTS]: Correct, Your Honor.

Counsel for appellants argued that there was an abuse of discretion in the Board's refusal to reconsider its ruling again in this case because he had raised an issue about improper political influence on the Board. Counsel proffered: "I don't have direct evidence" that a member of the City Council had had ex parte communications with the Board

Chairman and influenced the Board's decision, but "I have inferences." "And I think based on the allegations we've made in the complaint, I think that at least this is something that should be subject to discovery." In this regard, in the complaint for administrative mandamus, the Williamses alleged:

> 28. On August 1, 2012, Mr. Williams and counsel met with Mr. [Samuel T. Daniels, Jr., then Executive Secretary to the Board] and Jane M. Schroeder at the offices of the Board. At the meeting, Mr. Daniels made the following unsolicited statement, which was confirmed by Ms. Schroeder: "Mr. Williams, you lost the license based solely on politics" and therefore not on the facts.

In the course of explaining the reason that the court was not going to alter or amend its previous ruling dismissing all claims, the court commented:

> [A]gain, the difficulty in this — the matter being appealed from was a denial of a Motion for Reconsideration.
>
> Now, that's a discretionary act on the part of the Board. And to reverse a discretionary act requires, frankly, a fairly high level of proof that there was an abuse of discretion, that there is some fundamental level of arbitrariness in the decision that led this to be a[n] improper reconsideration.
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> Now, if, in fact, there had been actual testimony — evidence — of ex parte contacts that were not disclosed or some other after-found evidence of bribery or fraud and the like, then I think, perhaps, you could make a good argument that it was an abuse of discretion at that point not to have you know, reconsidered the proceeding. That's not been what is alleged.
>
> What is alleged is that, "The decision was political." And that could simply have reflected the fact that there are political leaders who spoke at the time of the hearing who were given extra credibility precisely because they're elected officials, which would be, perhaps, not the best way of doing things, but not necessarily in and of itself illegal. And, as I said, that particular process did go through a formal appeal process to the end of the proceeding.

So the question, as I said, remains, was there an abuse of discretion? And although there could be some scope for a genuine question as to what happened at that proceeding, I think that in a circumstance in which there was an open hearing with an opportunity to present evidence and to cross-examine evidence and the like, followed by an affirmance by the Circuit Court and then an affirmance by the Court of Special Appeals, followed by a denial of CERT by the Court of Appeals, I can't say it was an abuse of discretion by an administrative agency to say, "This is done and over with."

As I don't view this as an abuse of discretion — even with the affidavit, even with the suggestion that there might have been something improper — without more proof that there was, in fact, an actual impropriety, I don't think it was, in fact, an abuse of discretion for the Board to have denied the reconsideration.

QUESTIONS PRESENTED

Appellants submitted two questions for our review:

1. Did the Circuit Court err in granting motions to dismiss when [the Williamses] had alleged: (a) That the Board's January 21, 2010 quasi judicial ruling was based on politics rather than the facts in violation of due process; (b) That the Board had acted arbitrarily, capriciously and/or lawlessly with respect to Williams' 2012 request for reconsideration; and (c) That there were colorable instances of fraud with respect to documents that were found in the Board's file after the January 21 quasi judicial hearing in the matter?

2. Did the Circuit Court err when it denied Williams' request for discovery and an evidentiary hearing?

As noted above, we answer both questions in the negative.

DISCUSSION

1. Reconsideration Redux

Appellants acknowledge that motions for reconsideration are generally within the discretion of an administrative agency to review, and that the courts generally will not overturn the denial of a motion for reconsideration in the absence of an abuse of discretion.

Given the extensive history of this controversy, including the fact that this Court issued a previous appellate ruling affirming the Board's denial of the Williamses' extension request in *Williams I*, we agree with the circuit court's determination that appellants failed to demonstrate any basis for relief in either of the complaints filed in November 2013.

a. Judicial Review

A petition for judicial review invokes the court's review of the proceedings that have taken place at the agency. As we stated in *Department of Labor v. Boardley*, 164 Md. App. 404, 415 (2005):

> It is the function of the reviewing court to review only the materials that were in the record before the agency at the time it made its final decision. *Chertkof v. Dep't. of Nat. Resources*, 43 Md. App. 10, 17, 402 A.2d 1315 (1979). As Chief Judge Bell stated in *Dept. of Health v. Campbell*, 364 Md. 108, 123, 771 A.2d 1051 (2001):
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> > [I]t is the final decision of the final decision maker at the administrative level, not that of the reviewing court, that is subject to judicial review. Accordingly, the reviewing court, restricted to the record made before the administrative agency, *see Cicala v. Disability Review Bd. for Prince George's County*, 288 Md. 254, 260, 418 A.2d 205, 209 (1980), may not pass upon issues presented to it for the first time on judicial review and that are not encompassed in the final decision of the administrative agency. Stated differently, an appellate court will review an adjudicatory agency decision solely on the grounds relied upon by the agency.
>
> *Accord Schwartz v. Maryland Department of Natural Resources*, 385 Md. 534, 553–55, 870 A.2d 168 (2005) ("a reviewing court ordinarily ' "may not pass upon issues presented to it for the first time on judicial review...."""); *Brodie v. Motor Vehicle Administration*, 367 Md. 1, 3–4, 785 A.2d 747 (2001) ("Since Brodie's entire challenge to the administrative decision was based on an issue not raised before the agency, the circuit court should have affirmed the administrative decision without reaching the issue.").

See also Dakrish, LLC v. Raich, 209 Md. App. 119, 141 (2012) ("Judicial review of a decision by a liquor board 'is similar to review of decisions by most other administrative agencies.'" (quoting *Blackburn v. Bd. of Liquor License Comm'rs for Baltimore City*, 130 Md. App. 614, 623 (2000)).

As the circuit court pointed out in its ruling, the evidence in the record of the Board's proceedings relative to the renewed request for reconsideration provided no basis for the court to rule that it was an abuse of discretion for the Board to refuse to reconsider yet again the question that had been previously decided and affirmed and reaffirmed by the courts. The concerns that appellants brought to the attention of the Board about politics having colored the Board's previous ruling were insufficient to trigger another reconsideration of the Williamses' request for a hardship extension.

The affidavit of Samuel Daniels that was filed in the circuit court proceedings was not part of the agency's record under review. But, even if it had been, it did not provide facts sufficient to support appellants' claim that the Board abused its discretion in failing to reconsider yet again the Williamses' request for a hardship extension. In Daniels's affidavit, he explained that the "basis" for his statement that the Board's ruling in the Williamses' case had been "based on politics"

> was that the matters relating to 3100 Greenmount Avenue were contested by a few members of the local community, in general, and Councilwoman Mary Pat Clarke, in particular. Based on my first-hand observation of the routine practices of the Board during the time that Stephan Fogleman was Chairman of the Board, in cases in which there was community and/or political interest in the outcome of a matter, those interests always superseded the merits of the matter.

Although Mr. Daniels's description of the manner in which he perceived the Board to operate on a regular basis is distasteful, it does not provide any specific allegation of illegality or other facts that would mandate the reopening of the decision that the Board made to deny the Williamses' hardship extension based upon substantial evidence that we held to be sufficient in *Williams I*.

b. Administrative mandamus.

As the circuit court noted, claims for administrative mandamus pursuant to Maryland Rules 7-401 et seq. are essentially an alternative avenue for judicial review of agency rulings where a petition for judicial review is not authorized by other statutory provisions. Rule 7-401(a) states: "**Applicability**. The rules in this Chapter govern actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law." Because judicial review of the Board's rulings was authorized by Maryland Code (1957), Article 2B, § 16-101, appellants' dissatisfaction with the Board's ruling on their renewed request for a hardship extension of their liquor license was not an appropriate basis for a claim for administrative mandamus relief. The circuit court did not err in dismissing that claim.

2. Discovery.

In appellants' second issue on appeal, they argue that the circuit court abused its discretion in ruling on the Board's motions to dismiss before permitting appellants to conduct discovery. They cite Maryland Rule 7-402(c) and Article 2B, § 16-101(e)(1)(i) in support of their right to conduct discovery. Because the claim for administrative mandamus

was not supportable in this case, Rule 7-402(c) offers no support for appellants' claim for discovery. Article 2B, § 16-101(e)(1)(i) provided (at the time this case was pending in the circuit court):

> Upon the hearing of such appeal [to the circuit court], the action of the local licensing board shall be presumed by the court to be proper and to best serve the public interest. The burden of proof shall be upon the petitioner to show that the decision complained of was against the public interest and that the local licensing board's discretion in rendering its decision was not honestly and fairly exercised, or that such decision was arbitrary, or procured by fraud, or unsupported by any substantial evidence, or was unreasonable, or that such decision was beyond the powers of the local licensing board, and was illegal. The case shall be heard by the court without the intervention of a jury. If in the opinion of the court it is impracticable to determine the question presented to the court, in the case on appeal, without the hearing of additional evidence, or if in the opinion of the court any qualified litigant has been deprived of the opportunity to offer evidence, or in the interests of justice otherwise require that further evidence should be taken, the court may hear such additional testimony to such extent and in such manner as may be necessary.

Appellants recognize that § 16-101(e)(1)(i) contains no express grant of rights of discovery in the circuit court, and they acknowledge in their brief: "The Circuit Court's denial of Williams' motions for discovery is governed by an abuse of discretion standard." (Citing *Beyond Systems, Inc. v. Realtime Gaming Holding Company, LLC*, 388 Md. 1, 28 (2005). The totality of the argument in appellants' opening brief in support of its claim that the circuit court abused its discretion in denying their motions for discovery is contained in these three sentences:

> The Circuit Court's thirsting for evidence yet not allowing Williams to conduct discovery or hold an evidentiary hearing at which Williams could have subpoenaed [sic] clearly was without any guiding principles — none were stated in the Court's denial. Further, given the allegations that Williams made and Mr. Daniel's statement that ex parte emails were not included in the paper files of the Board and not available to persons inspecting the public

> records of the Board, it was clearly against logic and the effect of the facts and inferences before the Court for the Court not to allow Williams to obtain discovery. The Circuit Court abused its discretion.

In essence, the appellants' argument is that the circuit court abused its discretion in not permitting the appellants to conduct a fishing expedition to see if they could come up with evidence to support their claim on appeal that the Board had abused its discretion in refusing to reconsider a ruling it had made several years earlier. Under the circumstances of this case, the circuit court judge's denial of appellants' request for discovery was not an abuse of discovery.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.