UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 611

September Term, 2015

BRIAN GRACE, *et al.*

v.

BOARD OF LIQUOR LICENSE COMMISSIONERS FOR BALTIMORE CITY

Woodward,
Kehoe,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: April 24, 2017

On September 21, 2014, Baltimore City Police responded to an early morning incident at The Big Easy Cabaret (the "Big Easy"), an adult entertainment establishment in Baltimore, Maryland. As a result of that incident, the Board of Liquor License Commissioners for Baltimore City (the "Liquor Board") issued a notice alleging that the Big Easy violated Board Rule 3.02, titled "Cooperation," and Board Rule 3.12, titled "Public Welfare." The Liquor Board found that the Big Easy committed the alleged violations following a hearing on November 20, 2014, and then suspended the Big Easy's liquor license for two months and imposed a fine of $2,000.00. The Big Easy appealed the Liquor Board's decision to the Circuit Court for Baltimore City, which held a hearing on April 23, 2015. The court upheld the Liquor Board's finding that the Big Easy violated Rule 3.02 and its concomitant imposition of a $500.00 fine, but overturned the finding of a Rule 3.12 violation. The Big Easy timely appealed to this Court, presenting two questions for our review:

I. "Did the Liquor Board err in finding the licensee guilty of violating liquor board rule 3.02?"

II. "Did the liquor board deny the licensee a fair hearing?"

We hold that, because the Liquor Board properly interpreted Rule 3.02's definition of "Licensee," it did not err in finding that the Licensee violated Rule 3.02. Although we are troubled by some of the proceedings below, we further conclude that the Liquor Board did not violate the Big Easy's procedural due process. We affirm.

BACKGROUND

A. The Incident

The Big Easy was an adult entertainment establishment holding a class D liquor license located at 2000 Eastern Avenue, Baltimore, Maryland. Brian Grace, Paul Gunshol, and Fireball Entertainment, Inc. (collectively, the "Licensee") owned the Big Easy. According to the testimony offered before the Liquor Board by Baltimore City Police Officer Juan Minaya, at around 12:45 a.m. on September 21, 2014, he was stopped at a red light about a block away from the licensed premises when an unidentified man approached him and informed him of an incident with a baseball bat "in front of [t]he Big Easy." Officer Minaya then headed towards the Big Easy and observed a group of 10 to 15 persons scattering from the establishment, according to his testimony before the Liquor Board. Officer Minaya then spoke to a bouncer who told him "[t]hat a fight broke from inside and spilled outside onto the street." The bouncer also indicated that "people were inside at a private party . . . and once the people came outside[,] a guy with a baseball bat came assaulting the patrons that were inside." The manager on duty, Richard Marino, came out and informed the officer that there had not been a fight inside and that all of the events occurred outside.

Following the conversation with Mr. Marino, Officer Minaya briefly left the scene for two minutes, but was called back when other officers believed that they needed support

with Spanish translation. Officer Minaya and other officers then stopped a group of five or six persons—who appeared to have been involved in the fight—about half a block from the Big Easy and identified them to see whether any had any outstanding warrants. The individuals "refused to cooperate [or] to go to the Southeast District to be interviewed[.]" However, according to Officer Minaya, the group indicated that "they were inside the [Big Easy] for a private party, and that a fight broke out from inside and continued outside." While the officers waited on the information regarding the possible outstanding warrants, they requested that a fire department doctor assist the person most severely injured of the group, who "had a knot to his head." Officer Minaya later explained that, when one man who was being held was about to get into his car, another officer saw a handgun in the car and detained the man.

B. Proceedings Before the Baltimore City Liquor Board

On October 5, 2014, the Liquor Board issued a notice for Licensee to appear before it "to show cause why your Alcoholic Beverage License and other permits issued by this Board . . . should not be suspended or revoked[.]" The notice alleged violations of Liquor Board Rule 3.02, Cooperation, and Rule 3.12, Public Welfare.

Board Rule 3.02 provided:[1]

[1] Effective January 1, 2016, Rule 3.02 was revised. The current version now provides:

> "**Cooperation** Licensees shall cooperate with representatives of the Board, members of the Police Department, Health Department, Building Engineer's office, Grand Jury and representatives of other governmental agencies whenever any such persons are on official business."

Board Rule 3.12 provided:[2]

> "**Public Welfare** Licensees shall operate their establishment in such a manner as to avoid disturbing the peace, safety, health, quiet, and general welfare of the community."

The notice alleged that, in violation of Rule 3.12, on September 21, 2014 a "[f]ight occurred in the club moved outside and participants was [sic] found with weapons[.]" Regarding Rule 3.02, the notice alleged that on September 21, 2014 the "[m]anager contradicted statement from bouncer and tried to conceal the fight started in the establishment[.]"

> **Rule 3.02 - Cooperation**
> Licensees **and their agents and employees** shall cooperate with representatives of the Board, the Police Department, Health Department, Fire Department, Building Engineers office, and any grand jury, and representatives of other governmental agencies who are on official business.

(Emphasis added).

[2] Effective January 1, 2016, Rule 3.12 was revised. The current version now provides:

> **Rule 3.12 – General Welfare**
> Licensees shall operate their establishments in such a manner as to avoid disturbing the peace, safety, health, quiet, and to promote the general welfare of the community.

The hearing occurred on November 20, 2014 before Liquor Board Chairman Thomas Ward and Commissioners Dana Peterson Moore and Harvey E. Jones. Thomas Akras, attorney and Deputy Executive Secretary for the Liquor Board, presented testimony about the incident from Officer Minaya and several neighborhood residents.

As related above, Officer Minaya testified that he was at a traffic light on the 2000 block of Fleet Street, when a man on a bicycle approached him, informing him that "some people were being assaulted with a baseball bat in front of the Big Easy." He went to the location and saw 10 to 15 people gathered "[a]bout half a block up from the bar." He spoke to the bouncer, who informed him that a fight had broken out inside the bar and had spilled out into the street. He testified that the bouncer told him that people were inside at a private party, and, when the fight moved outside the bar, "a guy with a baseball bat came assaulting the patrons came assaulting the patrons were inside." He further testified that Richard Marino, the Big Easy's manager who was on duty that night, told him that the fight had occurred outside, not inside.

As recounted *supra*, Officer Minaya briefly left the scene, but he returned when an officer who could speak Spanish was required. Officer Minaya and the other police on the scene then ran warrant checks on a group of five or six people who were suspected of being "involved in a fight from the bar." Additionally, one of these men "was detained because he had a handgun in his vehicle." The people who were being held related to

Officer Minaya that they were inside the Big Easy at a private party, when a fight erupted and "continued outside."

The first community member to testify was Chrissy Anderson, President-Elect of the Fells Prospect Community Association. Ms. Anderson indicated that the Association had handled "many, many noise complaints," and complaints about the violation of the community's memorandum of understanding (the "MoU") with the Big Easy. When asked for specifics, she indicated that the complaints were "generally in regard to music, simply the bass being too loud. The blinking sign out front . . . kind of goes around and flashes constantly." Ms. Anderson then submitted an affidavit by Victor Corbin, who was then President of the Fells Prospect Community Association. When Ms. Anderson began reading a portion at the hearing, Chairman Ward and Commissioner Moore indicated that they had both previously read the affidavit. The affidavit averred, *inter alia*, that the Fells Prospect Community Association had reached an MoU with the Big Easy and that the Big Easy had violated the MoU through its use of: "sandwich signs, valet parking in an MTA bus stop and the addition of new blinking lighting and a[n] open 6 days a week sign[.]"[3] The affidavit also noted "numerous complaints that we have received about the noise level

[3] The Big Easy's prior owner entered into the MoU with Fells Prospect Community Association, a copy of which was attached to the Big Easy's liquor license. Later in the proceedings, Debbie Ritter, of the Southeast Community Relations Council testified that she personally gave Mr. Marino a copy of the MoU when he became the manager of the Big Easy.

(i.e., music) in the adjoining property." The Licensee's counsel objected to Ms. Anderson's testimony, as well as to the introduction of Mr. Corbin's affidavit stating: "I object to the Board having received information not specifically related to this incident prior to any finding of guilt." Chairman Ward admitted Ms. Anderson's testimony and the affidavit "[n]ot as to the guilt or innocence of the charge, but with respect to punishment in the event your client [is] found responsible." When the Licensee's counsel suggested that it would be more appropriate for the Board to first find the Licensee "guilty of something" before considering the testimony, Chairman Ward responded: "Well, [counsel], I got the job, not you."

Mr. Akras then called Mr. Robert Burch, who owned the property adjacent to the Big Easy at 2002 Eastern Avenue. The Licensee's counsel again objected to Mr. Burch's testimony noting that "[h]e's not testifying as a fact witness. He's testifying with regard to his other complaint with regard to this establishment." Nonetheless, the Liquor Board allowed Mr. Burch's testimony. Mr. Burch indicated that he rents the 2002 Eastern Avenue property and that he first learned of the September 21 incident from social media. Upon further investigation, Mr. Burch learned that "there was a big fight that had broken out in The Big Easy. It spilled out onto Eastern Avenue, and then there was an associated handgun violation[.]" Mr. Burch indicated that his tenants did not complain to him about the incident on September 21, but that he spoke about the incident with Mr. Corbin.

Chairman Ward then solicited "in the event we find responsibilities, what, if any experience have you had with respect to this establishment during the time of this ownership?" Mr. Burch indicated that he had had no problems before September but that, since Mr. Marino became the Big Easy's manager he "had regular -- a regular need to address complaints by my tenants." Mr. Burch specifically noted loud music more than 10 times and that one of his tenants even called 911 on November 12 to complain about excessive music.

Marianne Ferguson, who lived about a half a block from the Big Easy, testified next. Ms. Ferguson indicated that "[o]n the night of September 20th, 21st, [she] arrived home [at] approximately midnight" and, while walking there "observed several people standing outside [t]he Big Easy." She continued:

> When they are open on Friday and Saturday nights there are often groups of people congregating outside the building, and they're not always smoking. I can hear them from inside my house carrying on out there. As I crossed the street towards my house, I don't walk on that side. I walked on the other side, and as I crossed towards my house, I observed there men standing in a circle adjacent to the bar on the South Washington Street side. There's a doorway there with stairs that go up into the bar. They were standing right below those stairs smoking marijuana. I went into my house I was -- I had a very, very long day. But this isn't the first time that a fight has broken out inside the club and rolled out into the streets, and I've been affected. I've lived in this neighborhood for 20 years, and it has definitely disturbed my peace and quiet and jeopardized the safety of myself and my family.

At this point, the Licensee's counsel again objected to Ms. Ferguson's testimony, but was overruled. Ms. Ferguson continued her testimony, and the following exchange occurred:

> [MS. FERGUSON]: When I moved to the neighborhood this club was not

> open. It was a vacant building. And in 2003 the Liquor Board grandfathered the adult entertainment bar license . . . . And I've been subjected to nuisance after nuisance, and it is definitely a very serious safety concern.
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> * * *
>
> CHAIRMAN WARD: From the last four years since you've been living there how many times have you observed, you know, fights coming out of the bar and spilling into the street?
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> [THE LICENSEE'S COUNSEL]: Objection
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> [MS. FERGUSON]: With this ownership I have not really --
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> CHAIRMAN WARD: Overruled.
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> [MS. FERGUSON]: -- observed them because with the fights, but this recent one causes alarm because I, I know the history of this has happened, and it just escalates, and I feel that the bar owners do not manage their bar with respect to the community. It's a neighborhood of families, many young children. They -- we're trying to make a livable community, a safe community, and the bar has definitely disturbed the peace, quiet, safety and our general welfare. Doesn't belong here. It belongs in a block where the police can be right there to respond whenever there's a problem like this.

On cross-examination, Ms. Ferguson admitted that she did not observe the September 21 fight that triggered the charges against the Big Easy.

Following the community members' testimony, Mr. Akras introduced a letter from Reverend John Swope from Cristo Rey Jesuit High School "in regards to just general statements, general comments in regards to the Big Easy."[4] He indicated that the letter

[4] The letter was not included in the record.

was being offered "just for punishment purposes." The following colloquy then transpired:

> CHAIRMAN WARD: . . . You've seen the letter?
>
> [THE LICENSEE'S COUNSEL]: I've seen it. I object. If we are [sic] in a trial I guess I'd ask for a mistrial, but I'm -- my basis of my objection is --
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> CHAIRMAN WARD: We're not in the Circuit Court of Baltimore City.
>
> [THE LICENSEE'S COUNSEL]: We're not, but we're still entitled to a fair hearing. But my objection is stated.
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> CHAIRMAN WARD: Are you insinuating that you're not getting a fair hearing?
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> [THE LICENSEE'S COUNSEL]: No. I'm preserving the record that a licensee is entitled to a fair hearing on the evidence, a determination --
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> * * *
>
> [THE LICENSEE'S COUNSEL]: There's been no finding by the Board yet.
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> CHAIRMAN WARD: No, there hasn't. It was -- I, it's clearly admitted solely for the purpose, if I admit it, for punishment in the event that we find you responsible for the charges.

Following the exchange, Mr. Akras introduced an e-mail from Dina Demara, a resident of 2023 Eastern Avenue, describing what she observed of the September 21 incident and explaining that neighbors told her that the fight began on the Big Easy's second floor. The Licensee's counsel objected to introduction of Ms. Demara's email. Chairman Ward admitted the e-mail, but sustained the objection with respect to what the

neighbors told Ms. Demara.

The Licensee offered testimony from the manager, Mr. Marino. Mr. Marino testified that on the night of September 21 there was a birthday party on the second floor of the Big Easy and that the first floor was open to the general public. Mr. Marino then indicated that September 21 was "[k]ind of busy," but that there was no fight or altercation inside of the Big Easy that night. He further indicated that the only noise he heard coming from outside the Big Easy's main door that evening was knocking from Officer Minaya. Mr. Marino noted that Officer Minaya asked him whether everything was okay—to which Mr. Marino responded affirmatively—but that Officer Minaya did not ask about any fight inside the Big Easy. Mr. Marino added that he only learned of the September 21 incident when he saw the police outside while he walked some friends to their car. He added that his employees did not report an incident on that night and that Officer Minaya never informed him that the incident resulted in a possible charge of a "liquor violation." He further noted that he was not told to secure the recordings of Big Easy's security cameras. **E.252.** He also confirmed that he had received a copy of the Big Easy's MoU with the Fells Prospect Community Association. On cross-examination, Mr. Marino stated that because he spent some time upstairs, downstairs, and outside, it was "possible" that he may not have seen "something that went on upstairs." Mr. Marino later repeated that there was no incident inside the Big Easy on September 21 and that there were "no damages" because

"nothing occurred."

Following Mr. Marino's testimony, the Licensee called two bartenders. The first bartender, Christina Hamilton, testified that she works part-time at the Big Easy and was working there on the night of September 21. Ms. Hamilton indicated that she worked both the first and second floor that night and that she "never observed any kind of altercation of any kind. No, no scuffling, no raising of any voices other than to speak over the music. I didn't hear any kind of fight." When asked whether an alteration could have happened out of sight, she responded that "because the floor between the floor and the ceiling is very thin . . . if there was an altercation I would have heard it." The second bartender, Megan Fischer, similarly testified that she was working at the Big Easy on September 21 and that she did not observe any altercations. During cross-examination, Ms. Fischer clarified that she worked only on the first floor that night and that she was outside when the fight broke out.

The Licensee also sought to present testimony from Jose Ramos, the bouncer on duty on September 21. However, Mr. Ramos was unable to testify because he was not allowed inside the building where the hearing was held due to the fact that his photo identification had expired.

At the conclusion of the hearing, the Board announced its decision. Chairman Ward began with the observation that in this case, "how in the world the manager . . . or

owner doesn't know about this gun and would have found out. Because if this isn't a red light on the operation of anything it would seem to me that he would not only have heard about it, but he would have protected his cameras, which may have told a different story . . . ."

> there's a lot of conflicting evidence, but I find credible all the testimony of the police officers, particularly the first officer who testified, and the backup witnesses. And there's no doubt in my mind whatsoever there was not only an incident inside this bar, but big incident outside this bar, which extended down the street.
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> * * *
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> You know, a bar is responsible for the conduct of its customers both inside and out. Now this doesn't mean it's responsible for the conduct of customers who have moved away from the periphery of the bar and no longer are in the bar's observation or even control. But [in] this case it's clear that these witnesses were within that area, and it's particularly upsetting about the reports which show that a 50 caliber Smith and Wesson pistol was found in a car that was parked right there at the bar. And goodness knows where that -- led with to magazines of ammunition, 14 rounds, a gun case, a gun lock and grips all found in the car right there at this bar. How in the world the manager . . . or owner doesn't know about this gun and would have found out. . . . ."

The Chairman found that the charges were sustained and that "with respect to punishment this is a serious matter." Chairman Ward proposed both a two-month suspension of the Licensee's liquor license and a fine of $2,000.00. Both Commissioner Jones and Commissioner Moore concurred with Chairman Ward's findings. Commissioner Moore stated that

> I join in the penalty. And it is remarkable that something so significant, huge and impactful on the community, the neighbors, the Baltimore City Police Department is so well documents but is not experienced at all by the manager and the barmaids, the people that work there. The one person who would attest to what actually happened within the bar is not here. And that is—that speaks volumes.
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> * * *
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> I believe that we have absentee licensees. It's your desire to not be present. The other person who is on the license doesn't even live in Baltimore. He lives in Washington, D.C. That is a cocktail for disaster, and that's exactly what happened. It is - - that is an area that I certainly go in that area. I'm actively involved with Cristo Rey Jesuit High School. . . .

Ultimately, the Liquor Board imposed a $2,000.00 fine, a two-month closure, and administrative fees against the Licensee. Immediately following the Liquor Board's announcement of its decision, Licensee's counsel objected to the fact that the Liquor Board did not afford him the opportunity to present closing arguments. Following the objection, Chairman Ward responded: "Okay. I don't recall you asking or mak[ing] any mention of it. Maybe he'll sue you for negligence, your client. All right. Let's call the next case."

C. Proceedings Before the Circuit Court for Baltimore City

The Licensee filed a petition for judicial review in the Circuit Court for Baltimore City on December 19, 2014. In a February 18, 2015 memorandum in support of that petition, the Licensee presented four principal arguments: (1) that the Liquor Board erred in finding that the Licensee violated Rule 3.12 because it did not show that the "Licensee operated its establishment in such a manner as to fail to avoid disturbing the peace[;]" (2)

that the Liquor Board erred in finding the Licensee violated Rule 3.02 because "Richard Marino is not a Licensee" under the Rule's definition; and (3), that the Liquor Board denied the Licensee a fair hearing because: (a) it reviewed evidence before the hearing; (b) it allowed community members to offer evidence of "perceived violations for which Licensee [was not] provided a hearing or found guilty[;]" (c) Commissioner Moore "improperly admitted a letter from . . . Cristo Rey Jesuit High School[;]" and (d) it did not allow the Licensee to make a closing argument. Finally, the Licensee argued that the Liquor Board imposed an illegal fine because the $2,000.00 fine "exceeded the Liquor Board's statutory authority," which, the Licensee argued, prevented the imposition of a fine over $500.00.[5]

[5] For this argument, Licensee relied on the language of Maryland Code (1957, 2011 Repl. Vol., 2014 Supp.) Art. 2B, § 16-507(d), which read:

> (d) Baltimore City. – For any violation that is cause for suspension under the alcoholic beverages laws affecting Baltimore City, the Baltimore City Board of License Commissioners may:
>
> (1) For the first offense, impose a fine of not more than $500 or suspend the license or both; or
>
> (2) For any subsequent offense, impose a fine of not more than $3,000 or suspend the license or both.

This portion of the Maryland Code was recodified into the new Alcoholic Beverages article effective on July 1, 2016. *See* Maryland Code (2016), Alcoholic Beverages I, § 12-2802 ("For a violation that is cause for suspension of a license, the Board may: (1) except as provided in subsections (b) and (c) of this section, for a first offense, impose a fine not exceeding $500 or suspend the license or both; or (2) except as provided in subsection (c) of this section, for each subsequent offense, impose a fine not exceeding $3,000 or suspend the license or both.").

The Liquor Board responded on March 30, 2015, arguing: (1) that substantial evidence supports the Liquor Board's finding that Licensee violated Liquor Board Rules 3.12 and 3.02; (2) that Licensee received a fair hearing; and (3) that the Liquor Board did not impose an illegal fine. With its response, the Liquor Board submitted an affidavit from Michelle Bailey-Hedgepeth, the Executive Secretary of the Liquor Board, affirming that her staff prepares a weekly "Board packet" that includes "staff reports, applications, completed form, letters, emails, police reports, photos, and other agency reports." These packets are prepared the Friday before a scheduled hearing and her office's practice "is to provide a copy of related police report and other document for violation cases to the licensee and/or attorneys."

The circuit court held a hearing on April 23, 2015. The circuit court heard arguments from both the Licensee's and the Liquor Board's counsel and at the conclusion of the hearing, announced its findings. The circuit court found "as a matter of law that there was an insufficient basis for finding a 3.12 violation." The circuit court noted that "[t]his transcript has a lot of extraneous evidence about noise violations and signs and other problems that are not charged as violations in this case" and that Chairman Ward "la[id] particular emphasis on the presence of a firearm, which it is undisputed, was found in a car after all of the events were over." It concluded:

> The emphasis on the gun as to which there was no evidence whatsoever, in any way, to the operation or anything that the operator or anything that the

> operator of the bar could have prevented, suggests that the [Liquor] Board was swayed either to regard this as a strict liability offense or to ignore the need for any evidence that would connect the activities to the operation of the bar.

Regarding the violation of Liquor Board Rule 3.02, the circuit court observed that the bouncer told the officer that there was a fight inside the Big Easy and found that "there [was] substantial evidence to support the conclusion of the [Liquor] Board that Mr. Marino did not cooperate with the officer investigating the issue by trying to deny that anything had occurred inside and shift responsibility." Regarding the Licensee's argument that Mr. Marino did not meet Rule 3.02's definition of "Licensee," the circuit court said "it [would] be absurd to interpret all those rules as being violated only if the conduct was purely that of the Licensee himself or herself." The court added: "I reject that argument as a matter of law and find that in the state of operation, the Licensee can be responsible for its manager[']s conduct[.]"

The circuit court also found that the Licensee received a fair hearing, calling Chairman Ward's comments at the closing of the hearing an "offhand comment," finding that Commissioner Moore's involvement with Cristo Rey Jesuit High School did not create "sufficient conflict" to require recusal, and concluding that "proceeding to decision without allowing closing argument by counsel" did not affect "the fairness of this hearing in any fundamental way." However, the circuit court was "disturbed by the practice . . . of the Board members of not only receiving a packet of information about what the charges are,

but receiving substantial amounts of evidence." The circuit court added that this was "a practice that the Board ought to examine to avoid the problem." Finally, although it was not necessary to address the Licensee's final argument because the circuit court had already reversed the Liquor Board's finding on Rule 3.12, the circuit court noted that, had that count not been reversed it "would find that the penalty on that count was illegal." For that conclusion, the circuit court noted that it construed the statute as meaning that "on the first set of offenses . . . the maximum penalty on each one of them is $500.00." Therefore, the court affirmed the penalty of only $500 plus the administrative fee levied by the Board, and noted that "[b]ecause the suspension has already been served, I can't revisit the appropriateness or inappropriateness of the amount of the suspension."

The circuit court entered its order in the case, affirming in part and reversing in part on May 9, 2015. Licensee timely appealed to this Court.

DISCUSSION

I.

Liquor Board Rule 3.02 Definition of "Licensee"

As an initial matter, the Licensee argues that the Liquor Board erred in finding that the Licensee violated Liquor Board Rule 3.02 because the manager, Mr. Marino, did not

meet the Rule's definition of Licensee. For this argument, the Licensee relies on the language of Liquor Board Rule 1.02(e), which defined "licensee" as:[6]

> any individual, firm or corporation whose name appears on a license issued by the Board, any officer or member of a firm or corporation to which a license is issued by the Board. With regard to any prohibited practice stated in these Rules or Regulations the term "Licensee" shall also include any agent, servant or employee of a licensee as herein defined.

Because Rule 3.02 of the Liquor Board Rules was contained in Chapter 3, entitled "Standards of Operations," Licensee argues that only the first sentence in Liquor Board Rule 1.02(e)'s definition of Licensee applied. The Licensee contends that the definition of Licensee was expanded to include "any agent, servant or employee" only in the second sentence of Rule 1.02(e) which refers to "prohibited practices," which, according to Licensee, is confined to Chapter 4 of the Liquor Board Rules entitled "Prohibited Practices." Under this interpretation, Mr. Marino was not a licensee because he was not "any officer or member of a firm or corporation" and his conduct is not attributed to the Licensee.

The Liquor Board disagrees and argues that the Licensee "strains to make an improper distinction between the definition of "Licensee" under Chapter 3 . . . and Chapter

[6] Effective January 1, 2016, the definitions section of the Liquor Board Rules was renumbered (now Rule 1.01) and substantially revised. The Rules now define what is a "Licensed Premises" under 1.01(n) and, under 1.01 (o), "'License Holder' or 'Licensee' means the holder of any license or permit issued under the provisions of Article 2B or any other law of the State of Maryland."

4 of the Board's Rules." The Liquor Board asserts that the Licensee's interpretation runs contrary to well-settled law in Maryland that a master is responsible for his servant's wrongful acts where that servant acts within the scope of his employment and in furtherance of his master's business. Furthermore, the Liquor Board asserts that such a limited definition of "licensee" would create absurd results under other Rules contained in Chapter 3.

In its most recent decision explaining the appropriate standard of review of a decision by the Liquor Board, the Court of Appeals began by observing that the General Assembly has authorized local liquor boards to promulgate their regulations:

> By statute, the General Assembly authorized local liquor boards to promulgate regulations advancing Maryland Code (1957, 2016 Repl. Vol.), § 1-201 of the Alcoholic Beverages Article ("AB"), which aims "[t]o obtain respect and obedience to law and to foster and promote temperance" in furtherance of "the protection, health, welfare, and safety of the people of the State." AB § 1-201(a)(1)(i)–(ii), (a)(3). The statute specifically authorizes the Liquor Board to "adopt regulations to carry out this article." [] AB § 12-210(a). In 1998, the Liquor Board promulgated revised Liquor Board Rules.

Bd. of Liquor License Comm'rs for Baltimore City v. Kougl, ___ Md. ___, ___, No. 43, September Term 2016, slip op. at 4 (filed Feb. 17, 2017). Generally, the "'interpretation of an agency rule is governed by the same principles that govern the interpretation of a Statute.'" *Thanner Enters., LLC v. Baltimore Cnty.*, 414 Md. 265, 277 (2010) (quoting *Miller v. Comptroller*, 398 Md. 272, 282 (2007)). But an administrative agency is entitled to deference when interpreting and applying its own statute, *see, e.g., id.* at 275 (citation

omitted), and the "'agency's expertise is [even] more pertinent to the interpretation of an agency's rule than to the interpretation of its governing statute."' *Kougl*, slip op. at 5 (quoting *Maryland Comm'n on Human Relations v. Bethlehem Steel Corp.*, 295 Md. 586, 593 (1983)).

The scope of judicial review by the circuit court in this case is contained in Maryland Code (2016) Alcoholic Beverages Article ("AB") I, § 4-905(a), which provides that "[o]n the hearing of a petition under this subtitle, the court shall presume that the action of the local licensing board was proper and best served the public interest." In turn, "[o]ur review of the Board's decision is the same as that of the circuit court[.]" *Thana v. Bd. of License Comm'rs for Charles Cnty.*, 226 Md. App. 555, 569 (2016). This Court's review of the Liquor Board's decision "is similar to our review of decisions of other administrative agencies—in short, if the Board's decision was supported by substantial evidence, and if it committed no error of law, we must affirm." *Id.* at 569 (citing *Paek v. Prince George's Cnty. Bd. of License Comm'rs*, 381 Md. 583, 590 (2004)).

In this case, Rule 1.02(e)'s first sentence states that a "licensee" means any "individual, firm or corporation whose name appears on a license issued by the Board, any officer or member of a firm or corporation to which a license is issued by the Board." The Rule's second sentence states that "[w]ith regard **to any prohibited practice stated in these Rules or Regulations**, the term "licensee" shall also include any agent, servant or

employee of a licensee as herein defined." (Emphasis added). By its plain meaning, the second sentence refers to any prohibited practice addressed in the rules, and is not limited to Chapter 4 entitled "Prohibited Practices." Rule 3.02 prohibits licensees, and their employees, from failing to cooperate with the Police Department whenever they are on official business because the rule mandates that they "shall cooperate." Because Mr. Marino was an employee of the Licensee, his failure to cooperate with the police department as required by Rule 3.02 could be attributed to the Licensee.

Even assuming that Rule 3.02's definition of "licensee" is ambiguous, we would still hold that the Liquor Board did not err in finding that Mr. Marino's failure to cooperate can be attributed to the Licensee under Rule 3.02. When "a statute is ambiguous, or susceptible to more than one meaning, 'courts must consider not only the literal or usual meaning of the words but also the meaning of the words in light of the statute as a whole and within the context of the objectives and purposes of the enactment.'" *Bennett v. Zelinsky*, 163 Md. App. 292, 304-05 (2005) (quoting *Marriott Emps. Fed. Credit Union*, 346 Md. 437, 445 (1997)). "In every case, the statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense." *Lockshin v. Semsker*, 412 Md. 257, 276-77 (2010) (citations omitted); *see also Kougl*, *supra*, slip op. at 7-8, 13 (interpreting plain meaning Liquor Board Rules at issue and holding they imposed strict liability on licensees for prohibited conduct that occurred

on their premises). Therefore, applying these canons of statutory and regulatory interpretation for ambiguous language, we note that it would be absurd to allow a licensee to avoid violation of any Rule not contained in Chapter 4 simply by avoiding being directly involved in the action that constitutes a violation. For example, Rule 3.03 (d)(2)-(5), which like Rule 3.02 is codified in Chapter 3's "Standards of Operations," requires that "Licensees who sell containers of beer for off-premise consumption" identify the purchaser, complete a registration form and have the purchaser sign, affix the completed decal to the keg, and remove the decal from the keg upon its return. Similarly, Rule 3.09, also codified in Chapter 3's "Standards of Operations," requires that the Licensee "thoroughly wash all containers used for dispensing food or drink following each use." Because these tasks are most often performed by a licensee's employees, rather than a licensee directly, it is clear that the Board did not intend Chapter 3 to apply exclusively to "any officer or member of a firm or corporation[,]" as the Licensee suggests. Moreover, as in the instant case, absentee owners cannot be exempt from the rules and regulations of the Liquor Board because they leave their employees to run their operations.

Because this Court gives deference to an administrative agency interpretation of its rules, the Liquor Board's interpretation of Rule 3.02 is extremely persuasive in this case. *See Thanner Enters., LLC*, 414 Md. at 275; *Thana*, 226 Md. App. at 569. Furthermore, the fact that Maryland's long-standing jurisprudence holding a master responsible for his

servant's wrongful acts further persuades us that Rule 3.02 forbids a licensee's agent from failing to cooperate with a police officer. *See Carroll v. State*, 63 Md. 551, 556-57 (1885) (holding that a licensee was liable for his employee's action when the employee sold alcohol to a minor in violation of a criminal statute and explaining that a principal is *prima facie* liable for the acts of his agent done in the general course of business). Consequently, a commonsensical analysis of the goals and objectives of the regulations leads us to conclude that the Liquor Board was correct in finding that the Licensee was responsible for Mr. Marino's actions.

II.

Fair Hearing

The Licensee next argues that the Liquor Board denied it a fair hearing. In support of this contention, the Licensee points to five alleged procedural defects from the November 20, 2014 hearing: (1) Liquor Board members reviewed a packet of evidence before the hearing; (2) the Liquor Board allowed community members to present evidence unrelated to the September 21 incident; (3) Commissioner Moore did not recuse herself from the proceedings despite her involvement with Cristo Rey Jesuit High School; (4); the Liquor Board's failure to provide the Licensee with an opportunity to present closing arguments; and (5) Chairman Ward's demeaning statements towards the Licensee's counsel. The Licensee argues that separately or cumulatively, these defects establish that

the Liquor Board treated the Licensee in an unfair and biased manner. The Licensee asserts that an administrative agency is held to the basic requirements of due process, one of which is that the agency must be an unbiased decision maker. Furthermore, the Licensee urges that administrative agencies should follow the tenets of the Maryland Code of Judicial Conduct, which require judges to, *inter alia*, "act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary[,]" not be influenced by "family, social, political, financial or other interests or relationships" and to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials and others[.]"

The Liquor Board rejects these contentions, arguing that "[t]he record amply demonstrates that [t]he Big Easy was afforded a fair and proper hearing." The Liquor Board maintains that all that is required for due process in this case is notice and an opportunity for a hearing, with the opportunity for reasonable cross examination, which the Licensee was provided. The Liquor Board further points out that the routine evidentiary decisions "lie[] well within [its] discretion." With respect to Licensee's contention regarding the lack of opportunity for a closing argument, the Liquor Board observes that Licensee was provided the opportunity for closing argument and did not avail himself of it. The Liquor Board contends that members of the Liquor Board are "not bound by those canons [of Judicial Conduct]," but states that, to the extent that analogies

can be drawn to those rules, "a strong presumption exists that judges are impartial."

We certainly agree with the point that the Liquor Board is required to comply with procedural due process under Article 24 of the Maryland Declaration of Rights. *Maryland State Bd. of Pharmacy v. Spencer*, 150 Md. App. 138, 149 (2003) ("Procedural due process guaranteed to persons in this State by Article 24 requires 'that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties appearing before them.'" (quoting *Maryland State Police v. Zeigler*, 330 Md. 540, 559, (1993)), *rev'd on other grounds by Spencer v. Maryland State Bd. of Pharmacy*, 380 Md. 515 (2004). *See also Regan v. Chiropractic Exam'rs*, 355 Md. 397, 410 (1999) (assuming that the appearance of impropriety standard established in our cases involving judges applies to members of Maryland administrative agencies performing quasi-judicial or adjudicatory functions); *Bd. of License Comm'rs for Prince George's Cnty. v. Glob. Exp. Money Orders, Inc.*, 168 Md. App. 339, 350 (2006) ("In all proceedings, the board must conduct a fair hearing and comply with all other laws, including due process."). We presume, however, that the Liquor Board's actions were "proper and best served the public interest," AB § 4-905(a), and "review its decision to determine whether it was rendered in an illegal, arbitrary, capricious, oppressive, or fraudulent manner." *Global Exp. Money Orders*, 168 Md. App. at 345 (citations omitted). Thus, "[t]he burden

of proof is on the licensee to show that the board's decision was arbitrary, fraudulent, unsupported by substantial evidence, or illegal." *Id*. at 346 (citations omitted).

A.

Prior Review of Evidence

In contending that the Liquor Board deprived the Licensee of procedural due process, the Licensee first notes that the Liquor Board was provided a packet of evidence that it reviewed before the hearing. The Licensee argues that, in *Spencer*, 150 Md. App. at 138, this Court held that such a practice required the recusal of members of the Maryland State Board of Pharmacy who reviewed evidence before the hearing.

The Liquor Board admits that it is its practice to provide Liquor Board members with a packet of evidence, "containing copies of staff reports, applications, completed forms, letters, emails, police reports, photos and other agency related items" before a hearing. Nevertheless, the Liquor Board contends that it makes "similar information" available to the attorneys for the licensees and highlights that the Licensee had the opportunity to cross-examine witnesses and object to the admission of every piece of evidence the Liquor Board considered in its deliberations.

In *Spencer*, a pharmacist continued to practice for several weeks after her license had expired. *Spencer*, 150 Md. App. at 142. As a result, the Maryland State Board of Pharmacy charged the pharmacist with practicing pharmacy without a license and

scheduled a case resolution conference tasked with resolving the matter without a hearing. *Id*. Two board members represented the Board of Pharmacy at the conference, but the parties were unable to reach a settlement. *Id*. As a result, the case moved forward to a full hearing in which the same two board members participated in hearing the pharmacist's case. *Id*. When the pharmacist's counsel arrived at the hearing, "he noticed that at least one member of the Board was reviewing evidence before the start of the hearing." *Spencer*, 150 Md. App. at 143. The pharmacist's counsel requested that both the board members that represented the Board of Pharmacy at the conference and the board member that reviewed the evidence recuse themselves. *Id*. However, both board members declined to do so/denied his request. *Id*. During the contentious hearing, the pharmacist's counsel objected to the entry of a mail log, and stated that a fourth board member had already stated that the log would be used to assess the pharmacist's credibility. *Id*. at 145. The board member responded by saying "'I did not [say that], and you're a bold-faced liar.'" *Id*. The pharmacist's counsel's request that this fourth board member be removed from the case was also denied. *Id*. The Board of Pharmacy's final decision in the case demonstrated that the Board "considered [the] settlement negotiations and perhaps relied on [the board's representative's] knowledge of those negotiations in rendering the Final Decision." *Id*. at 150.

On appeal, this Court held that "the actions and statements of some of the members who presided over the hearings . . . lead this Court to conclude that [the pharmacist] was denied a fair and unbiased resolution of her dispute." *Id*. This Court's opinion noted its concern with "the fact that the tribunal was reviewing *documents provided by one party*, prior to their introduction as evidence during the hearing[.]" *Id.* at 153 (emphasis added). However, the review of documents was only one of several factors that influenced this Court's decision. *Id*. at 155. Notably, this Court identified the fact that the Board member called the attorney for the pharmacist a "bold-faced liar" as the issue of greatest concern because such action resulted in the proceedings no longer having the appearance of impartiality and fairness. *Id.* This Court's opinion in *Spencer* was later appealed to the Court of Appeals, which reversed other portions of the opinion, but upheld our conclusion that the exchange between the Board member and the attorney robbed the proceedings of the appearance of impartiality and fairness. *See Spencer*, 380 Md. at 525-26, 535.

In this case, Chairman Ward and Commissioner Moore admitted, on the record, that they read Mr. Corbin's affidavit before it was presented at the hearing. Ms. Bailey-Hedgepeth's affidavit indicates that the Liquor Board's practice is for its members to receive a packet of evidence on the Friday before a matter's hearing. Furthermore, the Liquor Board's brief admits that the Board receives and reviews a packet of evidentiary

material before a hearing. As a result, it is clear that the Liquor Board examined evidence before the hearing. However, Ms. Bailey-Hedgepeth's affidavit also establishes that Board staff makes copies of the scanned docket available to all parties. Therefore, the facts here are distinguishable from *Spencer*, where "the tribunal was reviewing documents *provided by one party*, prior to their introduction as evidence during the hearing[.]" 150 Md. App. at 153 (emphasis added). The Licensee does not argue that he did not have access to the documents before the hearing, that the Liquor Board did not allow him to introduce evidence into the packet, or that the Liquor Board's practice of receiving and reviewing the packets before the hearing results in an unfair or impartial process. As a result, comparing the facts in this case with this Court's holding in *Spencer*, we conclude that the Board's practice here did not deprive the Licensee of due process.

B.

Community Members' Testimony

In its second due process contention, the Licensee argues that the Liquor Board denied it a fair hearing by allowing community members to testify and offer documentary evidence about perceived violations that were irrelevant to the enforcement proceeding before the Liquor Board. The Licensee asserts that the Liquor Board allowed this evidence under the mistaken belief that it can properly admit irrelevant evidence if it does so as to the Licensee's sanction, but not guilt. The Licensee requests that the Liquor

Board be "admonished to stop this practice," which caused the hearing to go "off on a tangent regarding sandwich boards and noise complaints . . . ." The Liquor Board disagrees and asserts that the admission of such evidence and its relevance is within its discretion.

This Court presumes that the members of the Liquor Board carry out their duties in an impartial manner. *See* AB § 4-905(a); *Global Exp. Money Orders, Inc.*, 168 Md. App at 346; *Bd. of License Comm'rs for Charles Cnty. v. Toye*, 354 Md. 116, 121 (1999). *See also State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 568 (2014) (quoting *Coddington v. Helbig*, 195 Md. 330, 337 (1950)) (noting that courts assume the competency of administrative officials unless their exercise of discretion is fraudulent or corrupt). In *Rosov v. Maryland State Board of Dental Examiners*, this Court explained that: "Administrative agencies, while not required to adhere to technical common law rules of evidence, must observe the basic rules of fairness." 163 Md. App. 98, 114 (2005) (citing *Dal Maso v. Bd. of Cnty. Comm'rs*, 238 Md. 333, 337 (1983)). While reviewing the Board of Dental Examiners' decision on whether to admit or deny certain evidence, this Court noted:

> Maryland Rule 5-401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evidence that is not relevant is inadmissible. Md. Rule 5-402 (2005). Admissible evidence is evidence "relevant to the issues in the case and tends to either establish or disprove them." *Parker v.*

> *State*, 156 Md. App. 252, 268, 846 A.2d 485 (2004) (citing *Dorsey v. State*, 276 Md. 638, 643, 350 A.2d 665 (1976)).

Id. at 119. Although our rules of evidence define relevant evidence, "it is well settled that the procedure followed in administrative agencies usually is not as formal and strict as that of the courts." *Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 408 (1997) (citing *Gorin v. B. of Cnty. Comm'rs for Anne Arundel Cnty*, 244 Md. 106, 110 (1966) and *Standard Oil Co. v. Mealey*, 147 Md. 249 (1925)). As a result, "rules of evidence are generally relaxed in administrative proceedings." *Id*. (citing *Gorin*, 244 Md. at 110; *Mealey*, 147 Md. at 249). However, the relaxation of procedures cannot be "applied in an arbitrary or oppressive manner that deprives a party of his or her right to a fair hearing." *Id*. at 412 (citing *Comm'n on Medical Discipline v. Stillman*, 291 Md. 390, 422 (1981)).

In this case, as discussed in detail *supra*, the Liquor Board admitted testimony and documentary evidence unrelated to the September 21, 2014 events from various community members. Counsel for the Licensee timely objected to each of the community members' testimony as being unrelated to the violations of Liquor Board Rules 3.12 and 3.02 that were at issue at the hearing. Chairman Ward overruled all of these objections, explaining that the Liquor Board received the testimony for the purposes of punishment, should the Licensee be found guilty of violating the Rules. As we noted *supra*, Maryland Rule 5-401 defines relevant evidence as "evidence having any tendency to make the existence of any fact *that is of consequence to the determination of the action* more

probable or less probable than it would be without the evidence." (Emphasis added). Here, because the community members' testimony did not have a tendency to make the facts needed to find that the Licensee violated Liquor Rules 3.12 and 3.02 more probable or less probable, their testimony was not relevant to the offenses. Therefore, we agree with the Licensee that the Liquor Board should probably not have considered community witnesses' testimony to conclude whether the Licensee violated Liquor Rules 3.12 and 3.02 unless that testimony was relevant to the particularly alleged violation at issue in the proceeding.

The Liquor Board's practice of allowing community members who do not possess direct knowledge of the alleged violations to testify about events unrelated to the alleged violation during the adjudicatory portion of the hearing troubles this Court because it is difficult to determine whether this evidence inappropriately influenced the Liquor Board's decision. *See Spencer*, 150 Md. App. at 149 (stating that "[p]rocedural due process guaranteed to persons in this State by Article 24 requires 'that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties appearing before them.'" (quoting *Zeigler*, 330 Md. at 559)). Even if the Liquor Board properly considers the community members' testimony solely to assess the appropriate punishment for parties found to have violated Liquor Board rules, the procedures may confuse citizens who may wonder why the Liquor Board did not respond

to their complaints. *See Boyd v. State*, 321 Md. 69, 85-86 (1990) ("It is, of course, important that the judicial process not only be fair, but that it appear to be fair"). We understand that the Liquor Board likely wants to hear from the citizens most affected by its decisions during the punishment portion of the hearing. The Liquor Board can more appropriately achieve this goal by first asking witnesses a few preliminary questions to determine their intention and knowledge, as well as the testimony's relevancy to the alleged violation. Citizens without direct knowledge of the alleged violation should be asked to testify after the adjudicatory portion of the hearing has closed.

We note that the Liquor Board issued a careful disclaimer that the community witnesses' testimony was only admitted as to sanctions and not the Licensee's guilt. Despite our concerns, therefore, we assume that the Liquor Board carried out its duties in an impartial manner. *See* AB § 4-905(a) ("On the hearing of a petition under this subtitle, the court shall presume that the action of the local licensing board was proper and best served the public interest."); *Toye*, 354 Md. at 121.

C.

Board Member Recusal

In its third due process contention, the Licensee asserts that Commissioner Moore should have recused herself from the hearing because she was actively involved with Cristo Rey Jesuit High School, which submitted a letter to the Liquor Board at the hearing

advocating against the Big Easy. The Liquor Board counters that the Licensee has offered no explanation as to how Commissioner Moore's statement "suggests any bias, ethical violation or even an appearance of impropriety."

In *Spencer*, *supra*, while analyzing the propriety of the participation of the two Board of Pharmacy members that had previously negotiated with the pharmacist in the pharmacist's hearing for the charges, this Court explained:

> Courts have recognized that there is a strong presumption that judges are impartial and will refrain from presiding over a matter when appropriate . . . This presumption can be overcome, however, if the aggrieved party proves the existence of actual bias . . . In other words, the party requesting recusal must show that the trial judge has a personal bias concerning the motioning party, or personal knowledge of disputed evidentiary facts concerning the proceeding. . . .
>
> In addition, the presumption of impartiality of judges can be overcome if the motioning party can show the existence of an appearance of impropriety . . . The Court of Appeals has recognized that it is essential that the judicial process not only operate fairly and but also appear to operate fairly . . . Consequently, courts have determined that recusal is mandated when a trial judge reasonably appears to hold a bias or prejudice against the moving party. . . .
>
> > [T]he test to be applied is an objective one which assumes that a reasonable person knows and understands all the relevant facts. . . . Like all legal issues, judges determine appearance of impropriety-not by what a straw poll of the only partly informed man-in-the-street would show-but by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge.

Spencer, *supra*, 150 Md. App. at 151-52 (citations omitted). *See also Regan*, 355 Md. at 412-13 (determining that members of the Maryland Board of Chiropractic Examiners are not automatically assumed to be incapable of rendering an impartial decision where they have earlier knowledge of the case or expressed an opinion as to the case, but rather, that the test is whether a reasonable person, knowing all of the relevant facts would believe the subject of the case to be prejudiced). In *Spencer*, this Court determined that there was an "appearance of impropriety" sufficient to conclude that procedural due process was not provided because of the presence of three factors: (1) the two members of the Board of Pharmacy who were previously involved in negotiations with the pharmacist relied on information from the negotiations in reaching their decision; (2) members of the Board were provided with and reviewed documents not in evidence prior to the hearing; and (3) one of the Board members called the attorney for the pharmacist a "bold-faced liar" during the hearing. 150 Md. App. at 155.

In the instant case, the Licensee has failed to point to any evidence showing that Commissioner Moore was influenced by her involvement with Cristo Rey Jesuit High School in coming to her decision that the Licensee had violated Liquor Board Rules 3.02 and 3.12. Commissioner Moore suggested that her active involvement with the neighborhood school made her familiar with the neighborhood, but that does not demonstrate that she could not perform her duties as a member of the Liquor Board and

hear the Licensee's case without bias. We discern a meaningful distinction between this case and *Spencer*, which involved Board members who were previously involved in settlement discussions and relied on those discussions in their decision. *Spencer*, 150 Md. App. at 152-53. Therefore, we conclude that Commissioner Moore's participation in the Licensee's hearing did not deny the Licensee its due process rights.

D.

Lack of Closing Argument

In its fourth due process contention, the Licensee claims it was denied a fair hearing because it was not allowed to make a closing argument. Licensee asserts that "opportunity to be heard is an absolute necessity" to satisfy due process. The Liquor Board responds that the Licensee never requested an opportunity to make a closing argument until after the decision was rendered. The Liquor Board points out that the Licensee had the opportunity to make such a request both when the Chairman asked, "Anything else from anybody?" and when the Chairman declared the Liquor Board "ready for a decision." Therefore, the Liquor Board argues that the objection was waived and that the conduct of the hearing did not violate any due process rights.

We fist analyze the Liquor Board's argument that Licensee waived this argument below. "Ordinarily, [an] appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Maryland Rule

8-131(a); *see also Cremins v. Cnty. Comm'rs of Wash. Cnty.*, 164 Md. App. 426, 443 (2005) ("'A party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceedings,' may not thereafter complain about the error at a judicial proceeding." (quoting *Cicala v. Disability Review Bd. for Prince George's Cnty.*, 288 Md. 254, 261-62 (1980))). However, as noted *supra*, "it is well settled that the procedure followed in administrative agencies usually is not as formal and strict as that of the courts." *Travers*, 115 Md. App. at 408 (citations omitted).

In this case, the Liquor Board correctly points out that the Licensee did not raise the issue of making a closing argument until *after* the Liquor Board had rendered its decision. Because procedures before administrative agencies such as the Liquor Board are usually less formal than the procedures used in court, we conclude that, through its objection, the Licensee properly preserved the issue for judicial review. We conclude, however, that the Liquor Board properly gave the Licensee an opportunity to present closing arguments when it specifically asked, "Anything else from anybody?" and stated that it was "ready for a decision." Despite this opportunity, the Licensee chose not to pursue closing arguments at the appropriate time. As a result, we hold that the Liquor Board did not deny the Licensee's due process rights because the Licensee did not avail itself of the opportunity to present a closing argument at the appropriate time.

E.

Demeaning Statement

In its final procedural due process contention, the Licensee argues that Chairman Ward's treatment of Licensee's counsel during the hearing "rises to the level of an appearance of impropriety and at best displays an actual bias." Licensee focuses on two incidents during the hearing for this allegation. The first occurred when counsel for the Licensee objected to the admission of the letter from Cristo Rey Jesuit High School, at which point Chairman Ward allegedly "accused counsel of making a personal attack and berated counsel for Licensee, claiming he insulted the Board." The second occurred when counsel noted his objection that he was not afforded an opportunity to present closing arguments, at which point Chairman Ward responded: "Maybe he'll sue you for negligence, your client." Noting this Court's decision in *Spencer*, the Licensee argues that the Liquor Board should follow the tenets of the Maryland Code of Judicial Conduct. *See Spencer*, 150 Md. App. at 151-52.

The Liquor Board disagrees, asserting that the Licensee has provided "no connection to any biased, unethical or improper conduct." The Liquor Board further argues that Maryland Code of Judicial Conduct does not apply to members of the Liquor Board and the Chairman's comments to counsel did not rise to that level of those in *Spencer* and amounted to harmless error.

As explained *supra*, in *Spencer* this Court found an "appearance of impropriety" sufficient to conclude that procedural due process was not provided where members of the Board of Pharmacy relied on information from prior settlement discussions with the pharmacist, reviewed documents not in evidence prior to the hearing, and where one of the Board members called the attorney for the pharmacist a "bold-faced liar" during the hearing. *Id*. at 155. We reasoned that "a reasonable member of the public knowing all the relevant facts would conclude that appellant's impartiality was questionable." *Id*. In *Spencer*, we noted that, while the Board was not comprised of judges, it was acting in a quasi-judicial function and was "held to basic standards of fairness." *Id.* at 154 n.12 (citing *Regan*, 355 Md. at 410). This Court cited to the Maryland State Bar Association Code of Civility, adopted by the Bar Association of Baltimore City, May 14, 1996, which states in relevant part:

> A judge should not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses . . . A judge should treat lawyers and litigants with impartiality and courtesy while maintaining control of proceedings . . .

Id. Although the Maryland Code of Judicial Conduct does not apply to Liquor Board members, we also cited its relevant principles:

> A judge should behave with propriety and should avoid even the appearance of impropriety. A judge should . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Id. (citing Md. Rule 16-813, Canon 2(A)). *See also Regan*, 355 Md. at 409-10 (assuming

that the appearance of impropriety standard established in our cases involving judges applies to members of Maryland administrative agencies performing quasi-judicial or adjudicatory functions). We also explained, *supra*, that we presume that Board members carry out their duties in an impartial manner. *See supra* sections II.B & II.C.

The Liquor Board's proceedings in this case again concern this Court and we do not condone the Chairman's statement made at the end of the proceedings. Nonetheless, because we find no other extenuating circumstances in the case, and we act under the presumption that Board members carry out their duties in an impartial manner, the relevant facts here do not lead us to conclude that the Chairman acted with prejudice. *See State Ctr., LLC*, *supra*, 438 Md. at 568 (quoting *Coddington*, 195 Md. at 337) (noting that courts assume the competency of administrative officials unless their exercise of discretion is fraudulent or corrupt). As the circuit court found in this case, we also deem the Chairman's comment as off-handed, made after the final decision was rendered, and conclude that the Liquor Board did not violate the Licensee's procedural due process.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED;

COSTS ASSESSED TO APPELLANT.