Circuit Court for Baltimore City
Case No.: 24-C-18-003813

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3334

September Term, 2018

CHRISTOPHER ROBERSON, ET AL

v.

BOARD OF LIQUOR LICENSE COMMISSIONERS FOR BALTIMORE CITY

Fader, C.J.,
Beachley,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.
Dissenting in Part Opinion by Fader, C.J.

Filed: May 15, 2020

The appellants, Christopher Roberson, licensee, and Baltimore Little D's, LLC, trading as Little Darlings, a tavern and adult entertainment business formerly located at 403 East Baltimore Street in Baltimore, filed a petition for judicial review in the Circuit Court for Baltimore City, requesting that the decision of appellee, the Board of Liquor License Commissioners for Baltimore City, be vacated. The Board had determined that the appellants had violated Board Rule 4.01(a), which prohibits a licensee, or an employee or agent thereof, from selling or furnishing an alcoholic beverage to a minor, and Board Rule 3.05(a), which incorporates by reference the liquor license rules in the regulation of adult entertainment licenses; the Board imposed an administrative fee of $125.00, and suspended the liquor and adult entertainment licenses in issue until their transfer to another entity had been finalized. After a judicial review hearing, the Honorable John Nugent of the Circuit Court for Baltimore City affirmed the decision of the Board. Before us, the appellants posit the following question:

> Did the Liquor Board err in finding the licensee guilty of violating Liquor Board Rule 4.01(a) Sales to Minors and Adult Entertainment Rule 3.05(a) Incorporation of Liquor Board Rules by Reference?

For the reasons that follow, we shall affirm.

LEGAL FRAMEWORK

The General Assembly has enacted a comprehensive statutory scheme governing the sale and distribution of alcoholic beverages in Maryland, the purpose of which is "[t]o obtain respect and obedience to law and to foster and promote temperance[.]" Maryland

Code, (1957, 2016 Vol.), Section 1-201(a)(1)(i).[1] To that end, "the Comptroller, local licensing boards, liquor control boards, enforcement officers, and the judges of the courts of the State" are empowered to "carry out this policy in the public interest" by "administer[ing] and enforce[ing]" the laws enumerated in the Code. Section 1-201(a)(1)(ii). The Code also subjects a liquor license holder "to all penalties, conditions, and restrictions" provided by the statutory framework and requires that a licensee "assume all responsibilities as an individual[.]" Section 4-202(c). One such condition, of particular relevance to the instant matter, provides that, "[a] license holder or an employee of the license holder may not sell or provide alcoholic beverages to an individual under the age of 21 years old." Section 6-304.

Local licensing boards, such as that of Baltimore City, have adopted regulations and rules to carry out the provisions outlined in the Alcoholic Beverages Article. *See* Section 12-210(a) (stating that the Board of Liquor License Commissioners for Baltimore City "may adopt regulations to carry out this article."). Germane to the instant matter, the Board of Liquor License Commissioners for Baltimore City (Board), promulgated Rule 4.01(a), which states, that "[a] licensee or any employee or agent of the licensee may not sell or furnish any alcoholic beverages at any time to a person under 21 years of age for the underage person's own use or for the use of any other person." The Board also adopted Rule 3.05(a), which provides that, "[a]ll licensees that have been issued a liquor license

[1] All subsequent statutory references, unless otherwise indicated, shall be to the Alcoholic Beverages Article of the Maryland Code (1957, 2016 Repl. Vol.), which reflects the version of the relevant statutes in effect at the time of the incident.

and adult entertainment license shall abide by all rules and regulations listed in Chapter 3 and Chapter 4 of Liquor License Rules and Regulations in the operation of their adult entertainment license." The Board is empowered to "revoke or suspend a license" for "any reason to promote the peace or safety of the community in which the premises are located" or for "offenses as provided" by the Code. Section 4-604(a).

Section 4-905 mandates the scope of judicial review of the acts of a local licensing board, and, in pertinent part, provides:

> (a) *Presumption*. – 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.
> (b) *Burden of proof*. – A petitioner has the burden of proof to show that the decision of the local licensing board being reviewed was:
> (1) against the public interest; and
> (2)(i) not honestly and fairly arrived at;
> (ii) arbitrary;
> (iii) procured by fraud;
> (iv) unsupported by substantial evidence;
> (v) unreasonable;
> (vi) beyond the powers of the board; or
> (vii) illegal.

The Court of Appeals has recognized that, "it is always within our prerogative to determine whether an agency's conclusions of law are correct." *Bd. of Liquor License Comm'rs for Balt. City v. Kougl*, 451 Md. 507, 513–14 (2017) (quoting *Adventist Health Care, Inc. v. Md. Health Care Comm'n*, 392 Md. 103, 120–21 (2006)). In *Kougl*, the Court summarized the standard of review of a liquor board's legal conclusions, likening it to review of most other administrative agency decisions:

> But "[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency." *Finucan v. Md. Bd. of Physician Quality Assurance*, 380 Md. 577, 590, 846 A.2d 377 (2004)

> (citation omitted). Appellate courts should ordinarily give "considerable weight" to "an administrative agency's interpretation and application of the statute which the agency administers." *Md. Aviation Admin. v. Noland*, 386 Md. 556, 572, 873 A.2d 1145 (2005). In this regard, "the expertise of the agency in its own field of endeavor is entitled to judicial respect." *Finucan*, 380 Md. at 590, 846 A.2d 377 (citations omitted). An agency is granted further deference when it interprets a regulation it promulgated, rather than a statute enacted by the Legislature. *Md. Comm'n on Human Relations v. Bethlehem Steel Corp.*, 295 Md. 586, 593, 457 A.2d 1146 (1983). "Because an agency is best able to discern its intent in promulgating a regulation, the agency's expertise is more pertinent to the interpretation of an agency's rule than to the interpretation of its governing statute." *Id.*

Id. at 514.

BACKGROUND

On May 24, 2018, the Board held a hearing with respect to the violations during which it entertained argument, received evidence and heard testimony from detectives from the Baltimore City Police Department; Thomas Akras, Deputy Executive Secretary of the Liquor Board for Baltimore City; Stephan Fogleman, counsel for the license transfer applicant, Don West Management Services, LLC; and Mr. Roberson. The evidence adduced included the following:

- Officers with the Baltimore City Police Department testified that, on April 19, 2018, a "server" at "the location, 403 East Baltimore Street, known as Little Darlings," sold beer to an individual under 21-years old.

- The officers, along with a liquor board agent, then entered the establishment to further investigate and noted that, at that time, "the liquor license was present . . . and it stated that the Licensee was Mr. Christopher Roberson." When asked by counsel for Mr. Roberson whether the license "was actually in the premises on the wall," the detective responded that the police report would not have contained Mr. Roberson's information had the license "not been there."

- The officers "just assumed that [the server] was a night manager or another person running the club, and that Mr. Roberson was still the Licensee of the establishment."[2]

- Mr. Roberson explained that, in August of 2017, he decided to shutter the tavern and adult entertainment business he operated at 403 East Baltimore Street. As such, he terminated his commercial lease and relinquished the premises to his landlord, BFC Realty, LLC.

- In consideration for early termination of the lease, Mr. Roberson gave his liquor and adult entertainment licenses to BFC Realty, LLC and assigned his landlord the right to transfer the licenses. BFC Realty, LLC, then, filed a substitute application with the Board, which, if approved, would have resulted in the issuance of a substitute license to BFC as a "secured creditor or something analogous to a secured creditor," and, thus, would have prohibited the operation of the license until a subsequent transfer was "approved from the secured creditor to the transferred creditor."[3]

[2] Detectives testified that the business was forced to close following the April 19, 2018 event, but was later found operating without a liquor license, so that it had to be closed again on May 17, 2018.

[3] Board Rule 2.03 governs substitute applications, and provides, in pertinent part:

> (a) Reporting requirement: Any changes in the pertinent information contained in any application filed with the Board shall be reported to the Board in a timely manner. This includes, but is not limited to, a change of name, a change of telephone number, a change of address, a death of a licensee, dissolution of a corporation, an election or change of an officer or authorized person who is listed as an applicant or licensee.
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> ***
>
> (d) Substitution of a Secured Party: If a secured party applies to the Board to substitute its position in place of a licensee in default, the application shall include:
> (i) A copy of the security agreement, such as a copy of the signed contract or lease, between the licensee and the secured party; and
> (ii) A copy of the letter of default that was sent to the licensee indicating that the licensee was in default concerning the terms of the security agreement and stipulating that the secured party would take action to secure the secured party's interest created by the security agreement[.]
> (e) Substitution of a Contract Purchaser: If a person, corporation, or

(continued . . .)

- As part of the substitute application, Mr. Roberson submitted to the Board an Affidavit of Compliance,[4] a Transfer Authorization, and Bill of Sale and Assignment Agreement.

- The Transfer Authorization, which had been signed by Mr. Roberson on August 21, 2017, stated that, he, as the holder "of a retail alcoholic beverages license No. LBD7 368 . . . do hereby request, consent to and authorize the Board of Liquor License Commissioners for Baltimore City to transfer said license and permits and all privileges thereunder to, BFC Realty, LLC[.]"

- The Bill of Sale and Assignment Agreement, signed in October of 2017, stated that, "[f]or the good and valuable consideration as set forth in the Contract . . . Seller does hereby grant, bargain, transfer, sell, assign, convey and deliver to Buyer[, BFC Realty, LLC,] . . . all of its rights, title and interest in and to the 7-day Class BD-7 Beer, Wine, and Liquor License issued for use at 403-05 Baltimore Street East[.]" It further provided that, "Seller for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Buyer, Seller will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required by Buyer in order to assign, transfer, set over, convey, assure and confirm unto and vest in Buyer,

(continued . . .)

> partnership submits a substitute application for the purposes of being named a contract purchaser the application shall include:
> (i) A copy of the bill of sale, which includes the identification of transferee, the contract purchaser, the specific license to be transferred, and a statement stipulating that the purpose of the transaction is for the contract purchaser to sell, and not operate, the license; and
> (ii) Signed and notarized transfer authorization and affidavit of compliance of the previous owner.

[4] The Affidavit of Compliance, a form filed with the Board as part of the substitute application, stated that "Liquor License No. LBD7 368, presently held in the name(s) of Christopher Roberson/Baltimore Little D's, LLC and doing as Little Darlings," as of August 21, 2017, had paid all taxes owed by the licensee to the State and City, and, further, that the current licensee had complied with "[a]ll provisions of Title 6 of the Commercial Law Article of the Annotated Code of Maryland[.]"

its successors and assigns, title to the assets sold, conveyed and transferred by this Bill of Sale."

- Mr. Roberson testified that it was his understanding, in light of the substitute application, that the licenses would be deposited at the Board and that the premises would not reopen until a subsequent transfer of the license had been completed.

- Sometime thereafter, BFC Realty, LLC leased the premises to Donald Savoy of Don West Management Services, LLC, who planned to operate a similar business in the space. BFC Realty, LLC then withdrew the substitute application and sold Mr. Savoy the licenses. Mr. Savoy then applied for a transfer of the licenses with the Board in December of 2017.

- In the interim, during the pendency of the transfer's approval, Mr. Savoy attempted to enter into a "management agreement" with Mr. Roberson, whereby, Mr. Roberson, as the licensee, would permit Don West Management Services, LLC, the prospective transferee, to operate the licenses and manage the business in contemplation of a transfer application; Mr. Roberson, as the license holder, would have remained responsible for compliance with all laws during the pendency of the transfer.[5] Mr. Roberson declined to enter into such a management agreement.

- Thomas Akras, the Deputy Executive Secretary of the Liquor Board for Baltimore City, testified that a hearing on the license transfer had taken place on February 8, 2018, but noted that the transfer had not been finalized because additional steps were still required, such as the submission of health permits, a use and occupancy permit, a fire code

[5] Although the Board of Liquor License Commissioners for Baltimore City does not have a rule specifically defining a "management agreement," Rule 2.18(J) of the Board of Liquor License Commissioners for Howard County is instructive, and provides, in part:

> When a license holder enters any agreement for a prospective purchaser to manage the business in contemplation of an application for a transfer of the alcoholic beverage license, the management agreement must be provided to the Administrator of the Board[] within ten (10) days. Any management agreement must acknowledge that the existing license holder(s) remain responsible for the compliance with all of the alcoholic beverage laws and these Rules until such time as the license is transferred.

> permit, and a criminal background check. "There are number of boxes to check before . . . the Board . . . actually issues the license. So approval by the Board is one major step, but not the penultimate step in issuing the license."[6]

- Mr. Akras also testified that the Board was unaware that Mr. Roberson had provided his licenses to another entity, in lieu of depositing them with the Board during the pendency of the transfer.

Counsel for Mr. Roberson posited that, although the event as alleged did occur, it was "not a matter of admitting or denial that a sale was made to a minor. It just wasn't done under my licensee's license." He contended that, pursuant to the terms of the lease termination, it was understood that the licenses were to be deposited to the Board by BFC Realty, LLC. He also averred that it was further understood that the premises were to remain closed, especially after Mr. Roberson had declined the offer to enter a management agreement with Don West Management Services, LLC, until the transfer had been finalized, which he thought had been completed following the Board hearing in February of 2018.

At the conclusion of the hearing, the Board found Mr. Roberson "technically responsible" for violating Rules 4.01(a) and 3.05(a), but chose not to impose a fine, as the

[6] Board Rule 2.02 governs the requirements for a new or transfer of license, and provides, in part:

> (a)(iv) The application is not complete unless: (A) The applicant has obtained zoning approval or verification of zoning from the City; and (B) All required documents outlined in the application have been submitted; and (C) All fines and fees that are due to the Board have been paid.

Section 4-107 of the Alcoholic Beverages Article outlines the requirements of a criminal history records check for each applicant for a license.

Board did not believe it was Mr. Roberson's "intention to have the place open and doing anything on that date." The Board also suspended the licenses until the transfer was "perfected," such that it was "satisfied that [the bar] should be open and operating again." The Board stated that it had no "other action that [could] be taken" in response to the violations, and assessed a $125.00 administrative fee to Mr. Roberson.[7]

Mr. Roberson then filed a petition for judicial review in the Circuit Court for Baltimore City, alleging that the Board erred in concluding that he violated Rules 4.01(a) and 3.05(a), because neither he, as the licensee, nor any employee or agent of his, sold or furnished an alcoholic beverage to a minor on April 19, 2018. He contended that Don West Management Services, LLC had been operating the premises without his knowledge and consent, and that it was an employee of Don West that had sold the beer to the minor. Mr. Roberson averred, as he does before us, that, because he gave his licenses to BFC Realty, LLC, he could not be held responsible for any violation, as he no longer possessed the licenses or occupied the premises.

A hearing was held, after which, Judge John Nugent of the Circuit Court for Baltimore City, in a written order, affirmed the decision of the Board, stating that, "the Board could have reasonably concluded based upon the establishment being open on April 19, 2018, the actual license being on site, and the transfer of the license not yet having been

[7] Board Rule 2.06(b)(xi) provides that, "Records of any violation of the alcoholic beverages laws or rules and regulations of the Board shall be retained for consideration in connection with a subsequent violation in a manner for which the Board sees fit."

completed, that Petitioners were responsible for the events of April 19, 2018." The appellants then requested further review by this Court.

DISCUSSION

The Court of Appeals, in *Kougl, supra*, 451 Md. 507, held that liquor license holders are strictly liable for liquor board rule violations occurring on premises on which their liquor licenses are displayed. In *Kougl*, the Court affirmed the decision of the Board which held Kougl, the owner of an adult entertainment establishment located in Baltimore, strictly liable for acts of prostitution committed by one of his employees, despite his lack of knowledge of the events, in violation of Board Rules 4.17(a), (b), and 4.18.[8] *Id.* at 521. The Court concluded that strict liability was appropriate as the "plain language meaning of the Rules" comported with the purpose of the statutory framework set forth in the Alcoholic Beverages Article, "which seek[s] to ensure respect and obedience for the law," in

[8] At the time of the incident, which occurred in 2013, Board Rule 4.17(a) and (b), which is now, in similar form, renumbered as Rule 4.15, provided:

> (a) No licensee shall permit or suffer his premises to be used for the purpose of any sexual activity, nor shall any licensee permit or suffer any employee, patron or frequenter to solicit any person for prostitution or other immoral purposes.
> (b) No licensee shall permit or suffer any person to appear in any act or other performance with breasts or the lower torso uncovered; nor shall any licensee knowingly permit or suffer his premises to be used for the conduct, exhibition or performance of an obscene act or other performance.

At the time of the incident, Board Rule 4.18, which is now, in similar form, renumbered as Rule 4.16, provided:

> No licensee shall commit or allow the commission on his premises of any act which shall be contrary to any federal, state or local statute, law or ordinance or against the public peace, safety, health, welfare, quiet or morals.

accordance with Section 1-201(a)(1)(i) of the Alcoholic Beverages Article. *Id.* Furthermore, the Court noted that, because a liquor license is a privilege, the Code empowers local licensing boards with "the power to circumscribe that privilege as 'deemed necessary to prevent [its] abuse.'" *Id.* (citations omitted); *see also* Section 4-604(a)(1) (permitting local licensing boards to revoke or suspend a license "for any reason to promote the peace or safety of the community").

The Court, citing with approval cases from the New Jersey and Wisconsin Supreme Courts, further noted that, "acceptance of the privileges and benefits of a liquor license in this State carries with it the burden that licensees are held to an exacting standard of conduct[,]" *id.* (quoting *Division of Alcoholic Beverage Control v. Maynards, Inc.*, 927 A.2d 525, 539 (N.J. 2007)), and, as such, "being subject to strict liability is 'a price that the [licensee] pays for the privilege of becoming licensed,'" *id.* (quoting *City of West Allis v. Megna*, 133 N.W.2d 252, 254 (Wis. 1965)). As such, the Board could hold the licensee strictly liable for rule violations which took place on the licensed premises.

In *Hoyle v. Board of Liquor License Commissioners for Baltimore City*, 115 Md. App. 124, 130 (1997), we already had interpreted an earlier version of Rule 4.01(a)[9] of the Board Rules. There, we affirmed the decision of the Board to discipline the owners of a

[9] Former Rule 4.01(a) of the Rules and Regulations of the Board of Liquor License Commissioners for Baltimore City, as interpreted in *Hoyle v. Board of Liquor License Commissioners for Baltimore City*, 115 Md. App. 124 (1997), provided:

> No licensee shall sell or furnish alcoholic beverages to any person under twenty-one (21) years of age or to any person with the knowledge that such person is purchasing or acquiring such beverages for consumption by any person under twenty-one (21) years of age.

bar where employees of the licensees had served a minor who, as a bartender testified, looked "exactly like" a patron who frequented the establishment and had previously provided identification which proved he was over 21-years old. *Id.* at 127.

We looked to the former version of Section 6-304 of the Alcoholic Beverages Article[10] and determined that no defense existed to any person charged with selling or furnishing alcohol to any minor under twenty-one years of age who resided in Maryland. *Id.* at 132. We further noted that the Board, by adopting the Rule, intended "to make those licensees who furnish alcoholic beverages to anyone under the age of twenty-one strictly liable for the offense[,]" as the "prohibition of sales to anyone under the age of twenty-one stands alone, unmodified by express terms. *Id.* at 130.

The question in the present case, then, is whether Mr. Roberson is strictly liable for violations of Rules 4.01(a) and 3.05(a) when a minor was served alcohol on premises in

[10] Section 12-108(a) of Article 2B, Maryland Code (1957, 1996 Repl. Vol), the predecessor of Section 6-304, provided in pertinent part:

> (a) *Generally.*—(1) A licensee licensed under this article, or any employee of the licensee, may not sell or furnish any alcoholic beverages at any time to a person under 21 years of age:
> (i) For the underage person's own use or for the use of any other person . . .
> (ii) A licensee or employee of the licensee who is charged with selling or furnishing any alcoholic beverages to a person under 21 years of age may not be found guilty of a violation of this subsection, if the person establishes to the satisfaction of the jury or the court sitting as a jury that the person used due caution to establish that the person under 21 years of age was not, in fact, a person under 21 years of age if a nonresident of the State.

The current version of the code does not distinguish between residents and nonresidents.

which his liquor license was visible, after he contracted to vacate the premises and deposited the licenses with his landlord, rather than surrender them with the Board or enter into a management agreement for the operation of the licenses.

Appellants contend that they cannot be strictly liable for the rule violations because neither Mr. Roberson nor any employee or agent of his sold or furnished the minor alcohol. As such, they argue, the Board erred in finding them responsible because strict liability should only apply to the conduct of agents of the licensee and should not extend to the sale of liquor by another, regardless of whether the actual license was deposited with the Board.

The Board, conversely, posits that Mr. Roberson's licenses remained on the premises and that a private contractual agreement would not limit strict liability where a violation occurs when a violation occurs. The Board further contends that, pursuant to the statutory framework, Mr. Roberson failed to satisfy his burden in demonstrating that its decision was against the public interest, and the Code permits it to suspend any license "for any reason to promote the peace or safety of the community in which the premises is located."

Section 6-304 of the Alcoholic Beverages Article states that a licensee or the employee of a licensee may not "sell" or "provide" an alcoholic beverage to an individual under the age of twenty-one. The Rules developed pursuant to Section 6-304, Liquor Board Rules 4.01(a) and 3.05(a), which incorporates by reference the liquor license rules in the regulation of adult entertainment licenses, provides that a licensee may not "sell" or "furnish" an alcoholic beverage to an individual under twenty-one-years old. In interpreting what "provide," "furnish," and "sell" means, we analyze the plain language of

the statute and Rules. "Like a statute, a regulation's plain language is 'the best evidence of its own meaning.'" *Kougl*, 451 Md. at 515 (quoting *Total Audio-Visual Sys., Inc. v. Dep't of Labor, Licensing & Regulation*, 360 Md. 387, 395 (2000)). It is appropriate to consult a dictionary for "a term's ordinary and popular meaning." *Id.* at 516 (quoting *Chow v. State*, 393 Md. 431, 445 (2006)). Our inquiry ends if the language is clear and unambiguous. *Id.* (citation omitted).

"Provide," "furnish," and "sell" are construed according to their ordinary meaning. Black's Law Dictionary defines "sell" as "[t]o transfer (property) by sale." *Sell*, Black's Law Dictionary (10th ed. 2014). According to Merriam-Webster's Dictionary, the word "provide" means "to supply or make available (something wanted or needed)" or "to make something available to." *Provide*, https://www.merriam-webster.com/dictionary/provide [*archived at* https://perma.cc/Q7XD-CLB3]. And the word "furnish" means "to provide with what is needed" or to "supply, give." *Furnish*, https://www.merriam-webster.com/dictionary/furnish [*archived at* https://perma.cc/LRN9-9WZW].

To "provide" or "make available" encompasses more acts than mere selling. In the present case, Mr. Roberson, by providing his licenses to his landlord without surrender or deposit with the Board[11] or without contracting to manage the licenses, thereby attempted

[11] Although neither the statutory framework nor the Board's rules and regulations contain a provision governing the deposit or surrender of licenses, the Board posits that, Section 4-113(b) of the Alcoholic Beverages Article implicitly recognizes a licensee's ability to surrender its license and obtain a refund of the license fee under certain circumstances, which states:

> A refund shall be issued to a license holder on surrender of the license if:

(continued . . .)

to gain the benefit of "bartering" his licenses for an early termination of his lease, thereby facilitating the ability of the landlord in making the licenses available to Savoy. No matter what Mr. Roberson's contractual agreement provided, his actions which by the way solely benefitted him in the early termination of the lease, clearly paved the way for the violations in issue to occur. We, therefore, conclude that the Board did not err.[12]

(continued . . .)

> (1) receivership or bankruptcy of the business entity on whose behalf the license was issued occurs and a license transfer is not requested, with the refund issued for the benefit of the creditors of the license holder;
> (2) the license holder dies, with the refund issued for the benefit of the estate of the deceased license holder;
> (3) the license holder volunteers for or has been called into the armed forces of the United States or the organized State militia;
> (4) the license holder surrenders a license and obtains a new license of another class carrying a higher fee, with the refund deducted from the higher fee;
> (5) a license holder, against whom charges are pending when the license is renewed, is found guilty and the license is revoked, with the refund issued to the license holder in an amount based on the date that the revocation becomes final;
> (6) the issuance of a license by a local licensing board is reversed on judicial review and the operation of the establishment is prohibited, with the refund issued to the license holder in an amount based on the date that the refusal to grant the renewal becomes final; or
> (7) the licensed premises are taken by the federal government, the State, or a municipality for public use.

Thomas Akras, the Board's Executive Secretary, testified about the ability of a licensee to deposit a license with the Board.

[12] The dissent assumes that the term "provide" is narrower than the language employed in former Liquor Board Rules 4.17 and 4.18 ("permit," "suffer," and "allow"), but does so without citation to any legislative or regulatory history. Further, the dissent's assumption is undercut by the broad scope of the word "provide."

Furthermore, the appellants failed to overcome their burden of showing that the decision of the Board was "against the public interest," as required by Section 4-905(b)(1). At no point did the appellants articulate how the Board's decision contravened the public interest. The evidence supported only that Mr. Roberson was the intended beneficiary of the quid pro quo of the early termination of the lease for the licenses. The Board's decision, rather, furthered the public interest as it served to protect the health, welfare, and safety of the people of the State, *see* Section 1-201(a)(3), and is presumed to be "proper" and in the interest of the public, *see* Section 4-905(a).[13]

Accordingly, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[13] Unlike what the dissent avers, there has been no showing that anything Mr. Roberson has argued or proven reflects that the Board's decision was against the public interest. Rather, the only proof was that he acted in his own interest, not the public's.

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Dissenting in Part Opinion by Fader, C.J.

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Respectfully, I dissent in part. I agree with most of the analysis contained in the excellent opinion of the majority. I also agree that the Liquor Board did not err or abuse its discretion in (1) suspending Mr. Roberson's liquor license, pursuant to § 4-604(a)(1) of the Alcoholic Beverages Article (2016);[1] or (2) imposing the administrative fee, and so would affirm the circuit court's judgment to the extent it affirmed those aspects of the Liquor Board's ruling. I disagree, however, that Liquor Board Rule 4.01(a)—or, through it, Adult Entertainment Rule 3.05(a)—reaches the conduct at issue, because neither the licensee in this case nor any employee or agent of the licensee sold, furnished, or provided an alcoholic beverage to any underaged person. I would, therefore, reverse the Liquor Board's finding of a "technical violation" of those rules.

Liquor Board Rule 4.01(a) provides: "A licensee or any employee or agent of the licensee may not sell or furnish any alcoholic beverages at any time to a person under 21 years of age for the underage person's own use or for the use of any other person." Section 6-304 of the Alcoholic Beverages Article provides: "A license holder or an employee of the license holder may not sell or provide alcoholic beverages to an individual under the age of 21 years."[2] The persons whose actions are prohibited by these provisions are thus

[1] Section 4-604(a)(1) authorizes "a local licensing board" to "revoke or suspend a license . . . for any reason to promote the peace or safety of the community in which the premises are located," regardless of whether there has been a violation of a Liquor Board rule or of the Alcoholic Beverages Article. I agree with the majority that that standard was satisfied here.

[2] The Liquor Board found that Mr. Roberson violated Liquor Board Rules 4.01(a) and 3.05(a), not § 6-304 of the Alcoholic Beverages Article. It is not clear to me that § 6-304, to the extent it differs from Rule 4.01(a), controls our analysis. However, because

licensees and their employees and agents; and the actions that are forbidden to those persons are to "sell or furnish" (Rule 4.01(a)) and to "sell or provide" (§ 6-304) alcoholic beverages to a person under 21.

The key terms in these provisions are "sell," "furnish," and "provide." I take no issue with the dictionary definitions of these terms that the majority employs. Slip op. at 14. The majority does not assert that the terms "sell" or "furnish" apply to Mr. Roberson's conduct here. But the majority interprets "provide"—as defined to encompass "mak[ing] available"—to reach Mr. Roberson's conduct in surrendering his liquor license to his landlord, rather than to the Board, pending completion of a transfer application. Slip op. at 14. In doing so, the majority reasons, Mr. Roberson made possible the chain of events that resulted in the landlord prematurely providing the liquor license to its new tenant (the transfer applicant), the new tenant prematurely opening for business, and a bartender hired by the new tenant serving alcohol to an underaged person. I think that stretches the common understanding of the term "provide" too far.

Notably, the terms "sell," "furnish," and "provide" stand in contrast to "permit," "suffer," and "allow," the terms that were used in former Liquor Board Rules 4.17 and 4.18,[3] which the Court of Appeals recently interpreted in *Board of Liquor License Commissioners v. Kougl*, 451 Md. 507 (2017). Rule 4.17(a) and (b) then provided:

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the majority relies on § 6-304 and I do not think it changes the result, I also include that provision in my analysis.

[3] Effective January 1, 2016, Liquor Board Rules 4.17 and 4.18 were revised and renumbered as Liquor Board Rules 4.15 and 4.16, respectively. *See Bd. of Liquor License Comm'rs v. Kougl*, 451 Md. 507, 517 n.8, 518 n.11 (2017).

> (a) No licensee shall permit or suffer his premises to be used for the purpose of any sexual activity, nor shall any licensee **permit** or **suffer** any employee, patron or frequenter to solicit any person for prostitution or other immoral purposes.
>
> (b) No licensee shall **permit** or **suffer** any person to appear in any act or other performance with breasts or the lower torso uncovered; nor shall any licensee knowingly permit or suffer his premises to be used for the conduct, exhibition or performance of an obscene act or other performance.

Quoted in Kougl, 451 Md. at 516 (emphasis added in *Kougl*). Rule 4.18 then provided:

> No licensee shall commit or **allow** the commission on his premises of any act which shall be contrary to any federal, state or local statute, law or ordinance or against the public peace, safety, health, welfare, quiet or morals.

Quoted in Kougl, 451 Md. at 518-19 (emphasis added in *Kougl*). In deferring to the Liquor Board's reasonable interpretation that these prohibitions imposed strict liability on licensees, the Court examined the definitions of "permit," "suffer," and "allow," and determined that they encompass conduct that provides the opportunity for the underlying actions to occur, even if the licensee does not participate in or even know about the underlying activity. *Id.* at 517-19.

Here, by contrast, Rule 4.01(a) and § 6-304 use the narrower, active terms "sell," "furnish," and "provide." We construe regulations "by applying our well-settled principles of statutory interpretation." *Kougl*, 451 Md. at 515. "It is a common rule of statutory construction that when a legislature uses different words, especially in the same section or in a part of the statute that deals with the same subject, it usually intends different things." *Toler v. Motor Vehicle Admin.*, 373 Md. 214, 223 (2003). Likewise, "[w]hen the legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded." *Toler*, 373 Md. at 224 (quoting 2A Norman J. Singer, *Sutherland*

Statutes and Statutory Construction § 46.06 (6th ed. 2000)); *see also McClanahan v. Wash. County Dep't of Soc. Servs.*, 218 Md. App. 258, 280 (2014) ("The presence and absence of language [in two provisions of a regulation] . . . is significant in the construction of the regulation."), *rev'd on other grounds*, 445 Md. 691 (2015).

Based on the undisputed facts, I do not think the record contains substantial evidence to sustain the finding of a technical violation of Rule 4.01(a). The Liquor Board contends that this interpretation of Rule 4.01(a) would create a loophole that potentially would allow licensees to escape responsibility to the Board. Because the Board maintains the authority to revoke or suspend a license in these circumstances, I do not necessarily agree. To the extent there is a loophole, however, it is created by the plain language of the Rule.[4]

Finally, the Liquor Board points out that § 4-905(b)(1) of the Alcoholic Beverages Article (2016) places on Mr. Roberson the "burden of proof to show that the decision of the local licensing board being reviewed was . . . against the public interest." In showing that Liquor Board Rule 4.01(a) does not cover the conduct of which he is accused, I believe he has met that burden.

[4] I recognize, of course, that the Board's interpretation of its own regulations is entitled to substantial deference. *See Kougl*, 451 Md. at 515 ("[W]e accord an agency considerable deference in interpreting its own regulations."). However, that deference does not apply when a regulation is unambiguous. *Id.* ("Although we accord an agency considerable deference in interpreting its own regulations, we review its conclusions of law for error by applying our well-settled principles of statutory interpretation. Therefore, we begin by analyzing whether the plain language of the Rules supports imposing strict liability.") (internal citation omitted); *see also Kisor v. Wilkie*, 139 S. Ct. 2400, 2414 (2019) ("[T]he possibility of deference can arise only if a regulation is genuinely ambiguous . . . even after a court has resorted to all the standard tools of interpretation.")