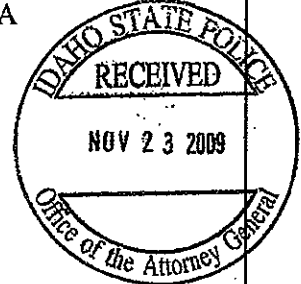


NOV 13 2009

By J. DAVID NAVARRO Clerk

COPY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA



CHEERLEADERS SPORTS BAR &
GRILL, INC., an Idaho corporation,

Plaintiff,

vs.

THE STATE OF IDAHO,
DEPARTMENT OF IDAHO STATE
POLICE, G. JERRY RUSSELL, in his
official capacity as Director of Idaho State
Police,

Defendant.

Case No. CV-OC0814425

MEMORANDUM DECISION
AND ORDER

This matter is before the Court on an appeal from the decision of the Director of the Idaho State Police adopting the hearing officer's recommended findings of fact, conclusions of law and recommended order. Based on the hearing officer's recommendation, the Director found and concluded that Cheerleaders Sports Bar & Grill's (Cheerleaders) liquor license expired on May 1, 2008; that no application for renewal was filed within the thirty-one (31) day grace period following May 1, 2008; and that the Director does not have the authority under Idaho Code §23-908(1) to renew or extend an expired license after the grace period. Cheerleaders asks this Court to find that the Director has discretion under Idaho Code §23-933 to decide whether to reinstate a license and impose a fine for not complying with a provision of chapter 9, title 23 of the Idaho Code, and it also

MS

1 asks the Court to vacate the Director's decision and recommend that the liquor license be re-
2 instated. For the reasons set forth below, the Court affirms the Director's ruling.

4 **FACTUAL & PROCEDURAL BACKGROUND**

5 In February 2005, Cheerleaders Sports Bar & Grill acquired a liquor license from Godzilla,
6 LLC, which transfer became effective on June 6, 2005. (Recommended Findings of Fact,
7 Conclusions of Law and Recommended Order ¶ 1.) On the 2005 application for the license, the
8 designated address for Cheerleaders was listed as "c/o Excell Business, 555 E. 42nd Street, Boise,
9 Idaho 83714," and the home address for the president of the licensee, Robert E. Godsill, Sr., was
10 listed as "24799 Lansing Lane, Middleton, Idaho 83644." (Recommended Findings ¶ 3.)

11
12 The Alcohol Beverage Control Agency (ABC) mailed preprinted renewals to Cheerleaders at
13 555 E. 42nd Street, Boise, Idaho 83714 in 2006, 2007, and 2008. (Recommended Findings ¶¶ 4-7.)
14 Mr. Godsill signed and returned the 2006 renewal and was issued a license with a listed expiration
15 date of April 30, 2007. (Recommended Findings ¶ 5.) He also signed and returned the 2007 renewal
16 and was issued a license with a listed expiration date of April 30, 2008. (Recommended Findings ¶
17 6; Agency Record, Adams Aff. Ex. 3.) The renewal mailed by ABC on February 1, 2008 was
18 returned to ABC as "Unable to Forward." (Recommended Findings ¶ 7.) After receiving the
19 returned mail, ABC mailed a preprinted renewal application to Mr. Godsill at his listed home
20 address, 24799 Lansing Lane, Middleton, Idaho 83644. (Recommended Findings ¶ 7.) The
21 preprinted renewal was not returned to ABC by the United States Post Office or by Mr. Godsill.
22 (Recommended Findings ¶¶ 7, 11.)

23
24 Pursuant to Idaho Code §23-908 and IDAPA 11.05.01.011.03, the last liquor license issued
25 to Cheerleaders expired May 1, 2008. (Recommended Findings ¶ 9.) During the thirty-one (31) days
26

1 following the license expiration, no license renewal was submitted on behalf of Cheerleaders.

2 (Recommended Findings ¶ 11.)

3 On July 9, 2008, Mr. Godsill called ABC and was informed that his license had expired by
4 operation of law and that ABC cancelled the license as required by law. (Recommended Findings ¶
5 12.) Mr. Godsill then presented to ABC a license renewal application for Cheerleaders along with a
6 check in the amount of \$800 on July 10, 2008. (Recommended Findings ¶ 13.) ABC date stamped
7 the application but then issued an "Applicant Return Record" noting that the application could not
8 be accepted because the license had already been cancelled. (Recommended Findings ¶ 13.) At the
9 time the application was filed and denied, Mr. Godsill had purportedly entered into agreements with
10 Table 28, Inc. to lease Cheerleaders' liquor license, among other things. (Petitioner's Brief 5.)

11
12 Cheerleaders filed a Petition for Relief on November 12, 2008 asking the hearing officer to
13 reinstate the liquor license upon finding that ABC had a duty to provide notice to licensees, that
14 forfeiture is not mandated by law, and that forfeiture is an unconscionable penalty in this case. The
15 hearing officer concluded that Cheerleaders' license expired on May 1, 2008 and that the license
16 could not be renewed after the statutory thirty-one (31) day grace period. The Director of the Idaho
17 State Police (the Director) adopted the hearing officer's conclusions and recommended order on
18 March 24, 2009 and denied Cheerleaders' request to renew the license. Cheerleaders timely
19 appealed.
20

21
22 **ISSUES ON APPEAL**

- 23 1. Whether Idaho's statutory provisions and IDAPA's rules governing alcoholic beverages
24 prevent the Director of the Idaho State Police from renewing an expired liquor license where
25 the application for renewal was untimely made.
26

- 1 2. Whether the Director's refusal to re-instate Cheerleaders' liquor license was arbitrary,
capricious, and an abuse of discretion.
- 2 3. Whether the Director's refusal to re-instate and forfeit Cheerleaders' liquor license imposed
3 an unconscionable penalty upon Cheerleaders.

4
5 **STANDARD OF REVIEW**

6 In reviewing an agency's decision, an appellate court may not "substitute its judgment for
7 that of the agency as to the weight of the evidence on questions of fact." Idaho Code §67-5279(1).
8 Instead, the court must defer "to the agency's findings of fact unless they are clearly erroneous."
9 *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998);
10 *Bennett v. State*, 147 Idaho 141, 142, 206 P.3d 505, 506 (Ct. App. 2009).

11 Agency action must be affirmed on appeal unless the court determines that the agency's
12 findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory
13 provisions; (b) in excess of statutory authority of the agency; (c) made upon unlawful procedure; (d)
14 not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an
15 abuse of discretion. Idaho Code § 67-5279(3); *Bennett*, 147 Idaho at 142, 206 P.3d at 506. The party
16 attacking the agency's decision bears the burden of demonstrating that the agency erred in a manner
17 specified in section 67-6279(3) and that a substantial right has been prejudiced. *Price*, 131 Idaho at
18 429, 958 P.2d at 586; *Bennett*, 147 Idaho at 142, 206 P.3d at 506.
19
20

21
22 **ANALYSIS**

23 ***A. The Idaho Code does not give the Director the discretion to reinstate a license that expired
and was not renewed within the statutory grace period.***

24 The Idaho State Legislature has set forth unambiguous rules establishing when a liquor
25 license expires and when it can be renewed.
26

1 All licenses shall expire at 1:00 o'clock a.m. on the first day of the renewal month
2 which shall be determined by the director by administrative rule and shall be
3 subject to annual renewal upon proper application. The director will determine the
4 renewal month by county based on the number of current licenses within each
5 county, distributing renewals throughout the licensing year. . . . [R]enewals will
6 occur annually on their renewal month. Renewal applications for liquor by the
7 drink licenses accompanied by the required fee must be filed with the director on
8 or before the first day of the designated renewal month. Any licensee holding a
9 valid license who fails to file an application for renewal of his current license on
10 or before the first day of the designated renewal month shall have a grace period
11 of an additional thirty-one (31) day in which to file an application for renewal of
12 the license. The licensee shall not be permitted to sell and dispense liquor by the
13 drink at retail during the thirty-one (31) day extended time period unless and until
14 the license is renewed.

9 Idaho Code § 23-908(1). Based upon a plain reading of the statute, it is clear that a liquor license
10 must be renewed prior to the first day of the designated renewal month because it expires at 1:00
11 a.m. on the first day of the renewal month if not renewed. *Id.* If a license expires because a licensee
12 fails to timely file a renewal application (not because the license has been suspended or revoked), a
13 licensee has a thirty-one (31) day grace period from the time of expiration in which to file an
14 application. *Id.* However, because the license has already expired, the licensee is not allowed to sell
15 and dispense liquor by the drink at retail during that thirty-one (31) day period, "unless and until the
16 license is renewed." *Id.*

18 Nothing in the Idaho Code gives the Director of the Idaho State Police the option of
19 renewing an expired liquor license after the thirty-one (31) day grace period. The fact that the
20 Director may chose any month to be the renewal month does not mean that the Director may extend
21 the grace period for renewing a license once the renewal month is established. Also, the fact that the
22 director may have discretion in some instances does not mean that there are not strict deadlines that
23 he must honor and enforce.

1 The Director has discretionary authority to suspend, revoke, or deny renewal of a liquor
2 license upon a licensee's failure to comply with the provisions of title 23, chapter 9, but the Director
3 only has this discretionary authority with regard to liquor licenses that have not expired or that fall
4 within the thirty-one (31) day grace period after expiration. Idaho Code § 23-933. An expired
5 license cannot be suspended or revoked because it is no longer in effect, and a license can only be
6 denied renewal where there is a statutory basis for renewal to begin with. Where the statute does not
7 allow an expired license to be renewed after thirty-one (31) days, there is no room for discretionary
8 grant or denial of a renewal application after the deadline.

9
10 This absolute rule applies regardless of whether the Alcohol Beverage Control Agency sends
11 notice to a licensee regarding expiration and renewal. Although "[t]he right to renew is included
12 among the privileges appurtenant to a liquor license," *Uptick Corp. v. Ahlin*, 103 Idaho 364, 369,
13 647 P.2d 1236, 1241 (1982), Idaho Code §23-908 does not require the agency to send out a
14 reminder notifying the licensee of this right to renew and the upcoming expiration date. To the
15 extent that the agency has imposed a duty upon itself to send out an annual notice for renewal
16 pursuant to IDAPA 11.05.01.011.03,¹ the self-imposed rule does not require that the licensee obtain
17 the notice from the agency regarding the upcoming expiration date before a licensee loses the right
18 to renew and the license expires. Instead, Idaho Code §23-908 gives notice to the licensee that he is
19 required to annually renew the license, and the licensee bears the burden of ensuring that his license
20 does not expire.

21
22 In this case, the license expired on May 1, 2008, and Mr. Godsill did not file a renewal
23 application on behalf of Cheerleaders until July 10, 2008, more than thirty-one (31) days after the
24

25
26 ¹ IDAPA 11.05.01.011.03 contains a table setting forth the notification and renewal months established to renew licenses to sell alcohol. The renewal month for liquor licenses in Ada County is May 1.

1 expiration of the license. Mr. Godsill had notice that the liquor license would expire on May 1, 2008
2 based upon his previous renewal date of May 1, 2007, IDAPA 11.05.01.011.03, and Idaho Code
3 §23-908. In addition, the license itself informed Mr. Godsill that it would expire on April 30, 2008,
4 and the ABC Agency attempted to give notice to Mr. Godsill of the expiration by mailing a notice
5 first to Excell Business and then to Mr. Godsill's home address, the latter of which was not returned
6 to the agency. Despite this notice, Mr. Godsill did not timely file a renewal application. Because Mr.
7 Godsill did not timely file a renewal application and because the Director has no authority to grant
8 further extensions of time to file a renewal application, the Director had no authority to grant Mr.
9 Godsill's untimely renewal application.
10

11
12 ***B. The Director's decision was not arbitrary, capricious, or an abuse of discretion because the***
13 ***Director does not have the discretion whether to reinstate a license not timely renewed.***

14 A decision is only arbitrary if it is "done in disregard of the facts and circumstances
15 presented or without adequate determining principles." *American Lung Ass'n v. State, Dep't of*
16 *Agriculture*, 142 Idaho 544, 547, 130 P.3d 1082, 1085 (2006). It is capricious if it is "done without a
17 rational basis." *Id.* In this case, the Director did not act arbitrarily or capriciously because he
18 considered all the facts and then acted pursuant to the clear language of the statute in determining
19 that he had no authority to renew the license. The Director had a rational basis for not renewing the
20 license based upon the statutory language.

21 For an act to be an abuse of discretion, there must be discretionary authority that can be acted
22 upon. *American Lung Ass'n*, 142 Idaho at 46, 130 P.3d at 1084. Where a Director's factual decision
23 controls the result, there is no discretion to be abused. *Id.* As discussed above, the Director in this
24 case had no discretionary authority to renew an expired license beyond the grace-period. Instead, the
25

1 Director was required to let the facts control the result pursuant to the statutory rules, and the

2 Director did not abuse any discretion in so doing.

3 Because the Director did not have the authority or the discretion to renew an expired license
4 after the thirty-one (31) day grace period, the Director's decision to not renew Cheerleaders' expired
5 license for this very reason was not arbitrary, capricious, or an abuse of discretion.

6
7 *C. The loss of the liquor license is not an unconscionable penalty for failing to timely renew the*
8 *license.*


9 The consequence for not timely filing a renewal application pursuant to Idaho Code §23-
10 908(1) is the loss of a liquor license. Although this loss may have negative repercussions, the loss
11 resulting from an untimely application is not unconscionable. The applicable statute even provides a
12 grace period. The licensee's own failure to comply with the statutory requirements does not create
13 an unconscionable result.
14

15
16 **CONCLUSION**

17 For the reasons stated above, the Court affirms the Director's ruling.

18 **IT IS SO ORDERED.**

19 Dated this 12th day of November, 2009.

20
21 
22 Kathryn A. Sticklen
23 District Judge
24
25
26

CERTIFICATE OF MAILING

1
2 I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by
3 United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice
4 pursuant to Rule 77(d) I.R.C.P. to each of the attorneys of record in this cause in envelopes
5 addressed as follows:

6 ED GUERRICABEITIA
7 DAVISON COPPLE COPPLE & COPPLE
8 PO BOX 1583
9 BOISE, ID 83701

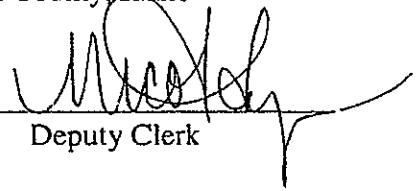
10 STEPHANIE A. ALTIG
11 IDAHO ATTORNEY GENERAL'S OFFICE
12 PO BOX 700
13 MERIDIAN, ID 83680-0700

14
15 J. DAVID NAVARRO
16 Clerk of the District Court
17 Ada County, Idaho

18 Date: _____

11/16/09

19 By _____

20
21
22
23
24
25
26

Deputy Clerk