

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

SHADY'S CORNER, LLC

Petitioner,

v.

CITY OF CHATTANOOGA BEER
AND WRECKER BOARD,

Respondent.

Docket No. 23-0579

Part 1

PETITION FOR WRIT OF CERTIORARI, SUPERSEDEAS, AND OTHER RELIEF

Petitioner, Shady's Corner, LLC, through its counsel, brings this Petition for Writ of Certiorari, Supersedeas, and Other Relief (the "Writ" or "Petition") against the City of Chattanooga Beer and Wrecker Board (the "Board"), and states the following in support:

INTRODUCTION

This is the second time Shady's Corner has been forced to file a Petition for Writ of Certiorari, Supersedeas, and Other Relief as a direct result of unlawful actions taken by the Board, actions which have been contrary to both facts and law.

On April 13, 2023, Shady's Corner filed a Petition in response to the Board's denial of Shady's Corner's properly submitted application to sell beer (the "April Petition"). The April Petition resulted in the Board reversing its decision, issuing the permit, and the dismissal of the April Petition with costs of the same taxed to the City of Chattanooga.

Now, and contrary to all record evidence, the Board has once again overstepped its authority and issued yet another unlawful order thus resulting in the filing of this Petition.

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The Petition is premised upon the Board again overreaching and severely punishing Shady's Corner, this time for a noise violation. The Board not only improperly reviewed the noise complaint before adjudication in City Court as required by the law, the Board also punished Shady's Corner by suspending its beer license for three (3) days (over Labor Day weekend)—the identical punishment meted out to another local bar during the same hearing; yet, in the other instance, the underlying disturbance including overserving a person who then proceeded to cause fights on the premises, including physically assaulting a responding police officer.

The Board's decision regarding Shady's Corner, and especially the punishment, was arbitrary, capricious, and devoid of any logical nexus to the alleged conduct, as evidenced by the conduct at the August 17, 2023 and the disregard for the rules governing Board hearings, the law, and all evidence (including the lack thereof) standing contrary to the Board's actions. And certain members of the Board and one advisor thereto are especially prejudiced toward Shady's Corner (as evidenced by their actions) and cannot be permitted to be involved in future proceedings. These persons are Attorney David Schmidt, an advisor to the Board and City of Chattanooga employee, Reginald Washington and Tiffany Bell, both Board members.

Shady's Corner therefore requests that this Court issue the Writ, stay the Board's Order, hold a de novo hearing on the merits, hold that the Beer Board's suspension was without merit and should be reversed, grant an injunction precluding Mr. Schmidt, Mr. Washington, and Ms. Bell from further hearing or being involved in cases relating to Shady's Corner, and enter an order precluding Mr. Schmidt from appearing as counsel of record on behalf of the City of Chattanooga or the Board, pursuant to Rules of Professional Conduct 3.7 ("RPC").

PARTIES

1. Petitioner Shady's Corner, LLC is a Tennessee limited liability company with its principal place of business located at 1402 Cemetery Ave, Chattanooga, Tennessee, 37408.

2. Respondent Chattanooga Beer and Wrecker Board (the "Board") is a nine-member board operating under the ordinances and regulations of the municipality of the City of Chattanooga, Tennessee, who may be served by delivering a copy of this summons and Petition to the City Attorney, Phillip A. Noblett, Suite 200, 2nd Floor City Hall Annex, 100 E. 11th Street, Chattanooga, Tennessee 37402.

3. Non-Party, David Werner Schmidt, is an attorney licensed in Tennessee and who sat with the Board during the August 17, 2023 hearing directing the hearing and witnesses contrary to his role as an advisor. Upon information and belief, Mr. Schmidt prepared the single anti-Shady's Corner witness prior to his testimony.

4. Non-Parties, Reginald Washington and Tiffany M. Bell, are Board members present at the August 17, 2023 hearing who both voted to sustain a violation levied against Shady's Corner, despite there being no evidence at all of wrongdoing, and who both also voted to penalize Shady's Corner for the sustained citation.

NATURE OF THE ACTION; VENUE AND JURISDICTION

5. Shady's Corner appeals from an action taken against it by the Board on or about August 17, 2023, at one of its regularly scheduled meetings. This appeal and Petition are made pursuant to the provisions of the Chattanooga City Code and provisions applicable to the Board under its adopted Policies and Procedures and provisions of Tenn. Code Ann. § 57-5-108 made applicable thereby, specifically Section 108(d) which states that any suspension of a beer permit "may be reviewed by statutory writ of certiorari, with a trial de novo as a substitute for an appeal,

the petition of certiorari to be addressed to the circuit or chancery court of the county in which any such order was issued.”

6. Venue and jurisdiction are therefore proper in this Court.

FACTUAL AND LEGAL ALLEGATIONS

7. Shady’s Corner is a restaurant and bar, that serves food, adult beverages (including beer, wine, and liquor), and provide games and entertainment, such as the ability to watch sporting events, play billiards and shuffleboard, and other fun activities similar to other establishments in Chattanooga.

8. Shady’s Corner has applied for, and been granted, a liquor license by the State of Tennessee.

9. Shady’s Corner applied for its beer permit from the City of Chattanooga, who held a hearing on April 6, 2023.

10. After the Board wrongfully denying Shady’s Corner its beer permit, Shady’s Corner appealed to this Court on April 13, 2023 in the April Petition. Shortly thereafter, on April 20, 2023, the Board granted Shady’s Corner its beer permit on and Shady’s Corner dismissed the April Petition.

11. On August 3, 2023, the Board entertained comments during its public session whereby Gary Rudolph, a City of Chattanooga employee (Assistant Director of Recreation) upon information and belief, levied multiple unverified and unsubstantiated complaints against Shady’s Corner.

12. In response, the Board asked Sgt. Wood, to investigate potential violations that Shady’s Corner might have incurred since it opened.

13. On August 4, 2023, Sgt. Wood delivered two citations to Shady's Corner. One, for allegedly failing to report a fight. The second, for ten (10) noise complaints that occurred since Shady's Corner opened through August 3.¹

14. Shady's Corner appeared before the Board on August 17, 2023, to address these citations. The hearing is visible at: <https://www.youtube.com/watch?v=rCWGJEjEQa4>.

15. The first citation, for failing to report a fight, was dismissed for lack of evidence.²

16. The second citation, for noise complaints, was heard over objections from Shady's Corner that the Board was not the proper legal venue for determination of whether noise violations occurred.

17. To be sure, Chattanooga City Code § 25-74 makes it clear that alleged noise violations are to first be heard by City Court before later being referred to any regulatory board "in addition to any fine or penalty assessed by city court." In other words, the Board incorrectly considered alleged noise violations before allowing a court to determine whether any ordinances were violated in the first place.

18. Despite this fact being raised multiple times at the August 17 hearing, the Board continued its consideration of the citation.

19. At no time was any evidence of decibel ranges submitted to the Board that would guide it in reaching a determination.

20. Despite this, the Board sustained the citation and sanctioned Shady's Corner by imposing a three (3) day suspension (to begin on August 31, 2023)³—exactly the same sanction

¹ The citation that relates to the subject of this Writ is attached as **Exhibit A**.

² Despite the lack of any evidence to indicate wrongdoing on the part of Shady's Corner, Ms. Bell and Mr. Washington nonetheless voted to sustain the citation.

³ See Board Order attached as **Exhibit B**.

that it had given out less than two hours earlier to a local bar found guilty of violations relating to serving alcohol to an incapacitated person, which also involved a bar fight where a police officer was assaulted and arrests were made.

21. During the August 17 hearing, City of Chattanooga attorney, David Schmidt (not a Board Member) and Board Members Reginald Washington and Tiffany Bell made statements or took actions showing extreme prejudice against Shady's Corner, even prompting pleas from Shady's Corner's member to ask for Mr. Schmidt to look at him while he was speaking and numerous public commentators who reflected upon the laughter, not paying attention, checking their phones and other behavior that simply does not comport with fundamental fairness.

22. Gary Rudolph, upon information and belief, a current or former City of Chattanooga employee, testified at the August 17 hearing and directly responded to prompting by Mr. Schmidt, often being allowed to discuss unfounded accusations wholly unrelated to the allegations in the citation. And, upon information and belief, Mr. Schmidt met with and prepared Mr. Rudolph for his testimony at the August 17 hearing.

23. As an attorney in Tennessee, Mr. Schmidt is subject to RPC 3.7, which states: "(a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client."

24. No exception to RPC 3.7 applies. As such, Mr. Schmidt is a witness to the facts giving rise to this Petition and should be barred from participating in any defense of the Petition.

25. The Board's actions were arbitrary, unlawful, erroneous, without substantial and material evidence supporting it, contrary to the law, and simply wrong. If the Board's suspension

of Shady's Corner's beer permit stands, Shady's Corner and its employees will suffer substantial and irreparable harm.

26. This is Petitioner's first writ and request for relief relating to this matter, the Board's suspension of Shady's Corner's beer permit at the August 17, 2023 hearing.

WHEREFORE, Petitioner prays that:

1. Respondent be served with a summons and copy of this Petition and be required to respond as required by the Tennessee Rules of Civil Procedure;

2. The Court enter a Writ of Supersedeas, with bond, pursuant to Tenn. Code Ann. § 57-5-108(g), staying the enforcement of the Board's August 17, 2023 determination to suspend Shady's Corner's beer permit;

3. The Court determine that the Board's decision to sustain the citation and suspend the Shady's Corner's beer permit was capricious, arbitrary, unlawful, erroneous, and without substantial and material evidence supporting it and should be overturned or, alternatively, reduced;

4. The Court should conduct a de novo review of the Board's decision to suspend Shady's Corner's beer permit pursuant to Tenn. Code Ann. § 57-5-108(d);

5. The Court should reverse the Board's decision and not take any adverse action against Shady's Corner;

6. The Court enter an order enjoining and precluding David Schmidt, Reginald Washington, and Tiffany Bell from participating in any future Board hearings or actions involving Shady's Corner.

7. The Court enter an order mandating that the City of Chattanooga turn over all communications and phone logs by and between its employees, David Schmidt and Gary Rudolph from March 1, 2023 to the present.

8. For such further relief as Petitioner may appear entitled, including attorneys' fees, costs, and expenses incurred as a result of being forced to file this Writ.

Respectfully submitted,

WRIGHT, CORTESI & GILBREATH

BY: /s/ Charles W. Gilbreath II
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Facsimile: (423) 826-6929
swright@wcglegal.com
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Attorneys for Shady's Corner

VERIFICATION

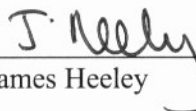
STATE OF TENNESSEE:

COUNTY OF HAMILTON:

James Heeley, being first duly sworn according to law, makes oath that he is the sole member of Shady's Corner, LLC, the Petitioner, and is familiar with the facts set forth and the statements made in the foregoing Petition for Writ of Certiorari, Supersedeas, and Other Relief (the "Writ" or "Petition"), and that the same are true to the best of his knowledge, information, and belief. He further states that the Petition is not made out of levity or by collusion with the Respondent but is made in truth and sincerity for the cause contained in said Petition.

PETITIONER:

SHADY'S CORNER, LLC

BY: 
James Heeley

Sworn to and subscribed before me this
25 day of August, 2023.


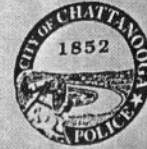

Notary Public
My Commission Expires: 2/11/2025



EXHIBIT A

Chattanooga Police Department
Regulatory Bureau

3410 Annicola Hwy, Chattanooga, Tennessee 37406
Phone: (423) 643-5156



Notification of Violation and Appearance Before the Beer Board

Complaint Number: 23-084377
Name of Business: Shady's Corner LLC
Business Address: 1402 Cemetery Ave
Business Owner's Name: James Heeley
Date/Time: 8/4/23 1025
Business Phone #: 423-635-3227
Permit Number: Beer-1139
Permit Expiration Date: 12-31-23

On the 4 day of Aug, 2023, at 1025 hrs, the Chattanooga Police Regulatory Bureau checked your business and found violations of City Code Chapter 5, Article III, Section and are hereby ordered to appear before the Beer/Wrecker Board on 17 Aug 2023, City Council's Building, 1000 Lindsay Street, Room 101, 9:00 a.m. to show cause why your Beer License should not be suspended or revoked for the following violation(s):

- | | |
|---|---|
| <input type="checkbox"/> Hours Regulated Sec. 5-47 | <input type="checkbox"/> Prohibited acts on premises Sec. 5-54 |
| <input type="checkbox"/> Offenses involving minors; loitering; gambling Sec. 5-48 | <input type="checkbox"/> Telephone and reports of disorders Sec. 5-55 |
| <input type="checkbox"/> Unauthorized use or consumption of beverages on premises Sec. 5-49 | <input checked="" type="checkbox"/> Operating a Disorderly Place 5-82.a(1) |
| <input type="checkbox"/> Sales to incapacitated or incompetent person(s) prohibited Sec. 5-50 | <input type="checkbox"/> Denied access to law enforcement or inspectors 5-82.a(9) |
| <input type="checkbox"/> Use of premises not authorized by permit Sec. 5-51 | <input type="checkbox"/> Consumed or allow employee(s) to consume alcohol or be intoxicated on premises 5-82.a(14) |
| <input type="checkbox"/> Employment of former violators Sec. 5-52 | <input type="checkbox"/> Allowed patrons to leave the premises with an open container of beer or alcohol 5-82.a(16) |
| <input type="checkbox"/> Employment of minors Sec. 5-53 | <input type="checkbox"/> Other Violation (See below): |

Narrative: From April 7 to Jul 31 there has been 10 calls for complaints of loud music. The business is not in the Amplified Music District

A deferral of the hearing date may be granted for good cause shown by contacting the Office of the City Attorney (423) 643-8250 by no later than the Tuesday immediately preceding the hearing date shown above otherwise the hearing will proceed as scheduled. A copy of this form will be placed in your file for future reference. Failure to appear could result in the suspension or revocation of your beer license.

J. Almy
Signature of Authorized Agent of Permittee or Permittee

SGT J Wood 1033
Officer's Name and Badge Number

JAMES HEeley - OWNER
Recipient's Name and Title (PRINT)

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EXHIBIT B



**CITY OF CHATTANOOGA
BEER AND WRECKER BOARD**

3410 Amnicola Highway
Chattanooga, Tennessee 37406
(423) 643-5156

ORDER

Re: James Heeley, Shady's Corner, LLC, 1402 Cemetery Avenue (Consumer)
Offense: Violation of the following provision of the Chattanooga City Code:
§ 5-82 (a)(1) - Operating a Disorderly Place
Offense Date: August 4, 2023

On August 17, 2023, a hearing on the above-referenced violations was held by the City of Chattanooga Beer and Wrecker Board ("Board"). The Board rendered the following decision:



Sustained

Sanction (mark the appropriate sanction):

☐ Letter of reprimand placed in file.

☒ Suspension of beer permit for 3 days beginning at 8:00 a.m. on August 31, 2023, and ending at 3:00 a.m. on September 3, 2023

☐ Revocation of beer permit

☐ In lieu of the above sanction, Permittee may pay a civil penalty of \$ _____ within seven (7) days of this decision.¹

Not Sustained

☐ Additional training pursuant to City Code § 5-89(d) to be completed by _____, 2023.

Date: August 17, 2023

Chairman, Chattanooga Beer and Wrecker Board

¹ Payment must be made by check made payable to "City of Chattanooga".

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Part 1

COST BOND

The undersigned acknowledges and hereby binds the undersigned for the payment of all costs in this Court which may at any time be adjudged against Petitioner, the principal herein, in the event said principal shall not pay the same if so ordered by this Court.

Witness my hand this ____ day of August 2023.

Respectfully submitted,

WRIGHT, CORTESI & GILBREATH

BY: /s/ Charles W. Gilbreath II

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