

ARTHUR MASOERO, JR., MEMBER OF *
BALTIMORE'S ENTERTAINMENT *
GROUP, LLC *

vs.

IN THE
MARYLAND TAX COURT

COMPTROLLER OF THE TREASURY *

No. 13-SU-OO-0499

*

MEMORANDUM AND ORDER

This is an appeal from the decision the Respondent, who found that the Petitioner was personally liable for sales and use tax from the period of November 1, 2009 through March 31, 2010. Petitioner's personal liability was based upon the fact that he was a member of the Baltimore Entertainment Group, LLC (hereinafter BEG, LLC). Pursuant to Tax General Article §11-601 (d)(2)(ii), if a limited liability company has an operating agreement, those individuals who manage the business and affairs of the company are responsible for the sales and use tax. No operating agreement was provided to the Respondent.

At the hearing before this Court, Petitioner testified that he entered into a June 2008 management agreement, which he introduced as Petitioner's exhibit #1. According to Petitioner, this management agreement turned over the management of BEG, LLC to the DAD Group, LLC, which was managed by Mr. Dwayne Wells. He indicated that subsequent to that management agreement, an amended and restated operating agreement of BEG, LLC was entered between DAD Group, LLC and Southern Maryland Entertainment Group, LLC of which the Petitioner was the managing member.

Petitioner further testified that he was no longer involved in the management of BEG, LLC. His only involvement was to aid in the facilitation of the transfer of the liquor license since he was the named individual on the license. He indicated that as of late summer/early fall of 2009, the liquor license still would not be transferred.

Petitioner testified that he could not produce the operating agreement during the time frame of his original hearing before the Respondent because, due to a protective order he was placed out of his house and was denied access to any of the articles in his house where these records were kept. He claimed to have found an unsigned copy of the operating agreement. He ultimately admitted that the operating agreement was signed by Mr. Wells and Petitioner the day before this hearing.

During cross examination Petitioner admitted that Southern Maryland Entertainment, LLC was one of the members of BEG, LLC. Petitioner was the sole member of Southern Maryland Entertainment, LLC. After Mr. Wells' hearing at the lower level, Petitioner contacted the Respondent's office in an attempt to reduce the amount found to be due by Mr. Wells. He took this action in order to facilitate the transfer of the liquor license. On further cross examination, Petitioner indicated that he contacted the Respondent's office three times during the period in question.

The Petitioner's next witness was Mr. Wells. He testified that he was the manager of the DAD Group, LLC. He testified that the DAD Group, LLC purchased BEG, LLC and took over in 2008. He stated that Petitioner had no involvement in the day-to-day operations. He further acknowledged that there was a problem with the transfer of the liquor license and that that process took longer than it should have. This lengthened the period of which Petitioner was involved with BEG, LLC, due to the fact that Petitioner was

the holder of the liquor license in question.

Mr. Wells testified that he was a target of a criminal prosecution and that he had no records concerning BEG, LLC or DAD Group, LLC, as they were confiscated by the law enforcement authorities. He testified that at a prior hearing before the Respondent's, he advised the hearing officer that he was the managing member and not Mr. Masoero. In addition, he stated that Petitioner did not operate the business but Mr. Wells would call him from time to time if he had any questions.

The Respondent's witness, Ms. Kelly Wells, testified that Petitioner was the one who was listed on the liquor license. During the time period in question she had three contacts with the Petitioner concerning sales and use tax. She stated that Petitioner's name continued to appear on the combined registration on file with the Respondent.

Petitioner testified on rebuttal stating that he did contact the Respondent's office, as testified to by Ms. Wells, so that the tax liability could be paid down in order for the liquor license to be transferred. He paid the taxes with Mr. Wells's credit card.

Tax-General Article § 6-01(d)(2) indicates that all members of a limited liability company that does not have an operating agreement are personally liable for sales and use tax. That statute further states that if the limited liability company has an operating agreement, those individuals who manage the business and affairs of the limited liability company are liable for the stated tax.

The Respondent argues to the Court that there is no proof of an operating agreement in effect during the audit period. The Petitioner and his witness argue that there was an operating agreement in effect, that no one could find the original, and Petitioner was delayed in finding his unsigned copy until he was allowed access back into his marital

home. The Court notes the other exhibits entered by the Petitioner, such as the management agreement, the correspondence with the Board of Liquor License Commissioners for Baltimore City and the landlord's consent for a placement of guarantors. Those documents all indicate that the DAD Group, LLC and/or Dwayne Wells were taking over the responsibility for the operation of BEG, LLC. Mr. Wells testified that he would assume he was the managing member. He stated that Petitioner helped him run it... "he had more experience in the bar and he was more hands on than I was." The record in this case indicates that any involvement Mr. Masoero had during the tax period in question only involved answering questions about the operation of the bar and Petitioner's numerous and continuous attempts to get the liquor license out of his name. The Court finds that there was an operating agreement for BEG, LLC and that the testimony of Mr. Wells, as well as, the various other exhibits produced by the Petitioner corroborate that finding.

Therefore, it is this 6th day of August, 2015 that the

Court finds Petitioner not liable for the sales and use tax during the time period in question and the assessment by the Respondent shall be **REVERSED**.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.

cc: Gary R. Maslan, Esq.
Donald Krohn, Esq.