

The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

DECISION

TEA GARDEN IN ATHOL, INC.
631 MAIN STREET
ATHOL, MA 01331
LICENSE#: NEW
HEARD 6/12/2012

Tea Garden In Athol, Inc. (the "applicant") applied for an all alcoholic beverages license to be issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, June 12, 2012, to determine whether the application under M.G.L. Chapter 138 should be approved or disapproved.

The following documents are in evidence as exhibits:

The Commission took Administrative Notice of the following Commission files:

1. Files of Chef Wok, Inc.;
 - o October 2010 transfer application of Tea Garden in Athol, Inc.;
 - o June 2011 transfer application Tea Garden, of Athol, Inc.;
 - o February 2012 new license application of Tea Garden in Athol, Inc.; and
 - o April 27, 2012, new license application of Tea Garden in Athol, Inc.

There is one (1) audio recording of this hearing.

FACTS

The Commission makes the following findings, based on the evidence presented at the hearing:

1. In October 2010, Tea Garden in Athol, Inc. applied to the Commission for the transfer of an annual all-alcoholic beverages license issued pursuant to M.G.L. c. 138, §12, from Chef Wok, Inc., to be exercised at 631 Main Street, Athol, MA. (Ex.1, Testimony)
2. Mr. Yun Zeng Chi applied to be the sole shareholder and the sole director of the corporation. Mr. Yun Zeng Chi is not a United States citizen. (Ex.1, Testimony)
3. On October 19, 2010, Investigator Doyle returned this application for transfer of the license to the Local Board in Athol because the corporate structure did not conform to the statutory requirements of M.G.L. chapter 138, section 26 and Commission Regulations. (Ex.1, Testimony)
4. The all alcoholic beverages license Chef Wok, Inc. was renewed for the years 2008, 2009, 2010, and 2011. (Ex.1, Testimony)

5. In June 2011, Tea Garden, of Athol, Inc. again applied for a Transfer of the liquor license from Chef Wok, Inc. This application listed Mr. Yun Zeng Chi as President, Treasurer, Secretary, and Director holding one hundred and ninety-nine (199) shares, and Mr. Mark Litchfield was listed as License Manager and Director, holding one (1) share. (Ex.1, Testimony)
6. This June, 2011 application included an assignment of lease dated October 2008, and a purchase and sale agreement from Chef Wok, Inc. to Mr. Yun Zeng Chi, dated November 2008, which included a closing statement dated November 17, 2008. (Ex.1, Testimony)
7. Mr. Chi stated in the application that his intention was to purchase and to operate the business. (Ex.1, Testimony)
8. Bank statements of Yun Zeng Chi d/b/a Tea Garden of Athol, Inc., were submitted with the application for the period of March 2011 to April 2011. (Ex.1, Testimony)
9. The financial statements submitted showed that Tea Garden of Athol and Mr. Chi were already operating the business without the statutorily required approval from the Local Board and the Commission. (Ex.1, Testimony)
10. The Commission denied this June, 2011 application for failure to pay Massachusetts Department of Revenue taxes. (Ex.1, Testimony)
11. As of January 1, 2012, a liquor license does not exist at this location. Chef Wok, Inc. did not renew its license for 2012. (Ex.1, Testimony)
12. In February 2012, Tea Garden in Athol, Inc. applied for a new license to be exercised at 631 Main Street, Athol, MA. The license application was assigned to Investigator Temple. (Ex.1, Testimony)
13. The February 2012 application for a new license again listed Mr. Yun Zeng Chi as President, Treasurer, Secretary, and Director, holding one hundred and ninety-nine (199) shares, and Mr. John Richard Minahan as Vice President and Director, holding one (1) share. (Ex.1, Testimony)
14. The Articles of Organization, submitted with this application were filed on February 9, 2012, at 1:31 p. m., with the Commonwealth of Massachusetts Secretary of State Corporations Division. The articles reflected Mr. Chi as President, Secretary, Treasurer, and Director. The records listed Mr. Minahan as Vice President and Director. (Ex. 1, Testimony)
15. This corporate structure conformed with the application that was submitted to the Commission. (Ex.1, Testimony)
16. This February 2012 application included a purchase and sale agreement from Chef Wok, Inc. to Yun Zeng Chi dated August 25, 2011. This agreement is identical to the one dated November 2008. It was faxed to the Commission on August 20, 2011 from Mr. Minahan. (Ex.1, Testimony)
17. During Investigator Temple's review of the application, he noted that the Articles of Organization were updated on February 9, 2012 at 1:39 p. m., eight (8) minutes after the original Articles of Incorporation were filed and became effective. (Ex.1, Testimony)

18. The statement of change reflected that Mr. Yun Zeng Chi was President, Treasurer, Secretary, and Sole Director. The Articles of Organization were amended by Mr. Yun Zeng Chi as President. (Ex.1, Testimony)
19. Investigator Temple noted that this amended statement of change was submitted to the Secretary of State's Office, yet was not included in the new license application submitted to the Commission. (Ex.1, Testimony)
20. In March of 2012, Investigator Temple recommended disapproval for this application because the most recent Articles of Organization submitted to the Secretary of State's Office would preclude the applicant from holding a liquor license under M.G.L. Ch. 138, section 26. This recommendation was due to what appeared to be a corporate structure designed to circumvent statutory requirements. (Ex.1, Testimony)
21. On April 27, 2012, the applicant applied for a new license and submitted an application. This application was assigned to Investigator Doyle. (Ex.1, Testimony)
22. The new license application listed Mr. John Richard Minahan as Manager, Vice President, and Director, holding one (1) share of stock. (Ex.1, Testimony)
23. This most recent application listed Mr. Yun Zeng Chi as President, Treasurer, Secretary, and Director holding one hundred and ninety-nine (199) shares. (Ex.1, Testimony)
24. This application listed Mr. John Richard Minahan as the proposed manager. Mr. Minahan stated on the manager and the personal information form that he was never charged or convicted of a crime. A Criminal Offender Record Information (CORI) check revealed three (3) criminal charges and one (1) open misdemeanor charge. (Ex.1, Testimony)
25. On June 4, 2012, Mr. Minahan subsequently submitted court records showing that his criminal case was closed, resulting in a criminal conviction. (Ex.1, Testimony)
26. Investigator Doyle requested an informational hearing before the Commission in order to hear from the officers and shareholder of this corporation pertaining to their respective interests in this license application. (Ex.1, Testimony)
27. During Investigator Doyle's review of the application, he noted that Chef Wok, Inc. filed with the Commonwealth of Massachusetts Secretary of State - Corporations Division, a statement for dissolution of the corporation on December 6, 2007. No further action has taken place regarding Chef Wok, Inc. (Ex.1, Testimony)
28. Mr. Chi has been operating these premises and selling alcoholic beverages under the license of Chef Wok, Inc. since 2008 until December 31, 2011. (Ex.1, Testimony)
29. Commission records show that Chef Wok, Inc. license was renewed for the years 2008, 2009, 2010, and 2011. The Renewal forms for each year were signed by Mr. Yun Zeng Chi, under the pains and penalties of perjury, as having a direct or indirect beneficial interest in Chef Wok, Inc.'s license. (Ex.1, Testimony)
30. Mr. Yun Zeng Chi testified under oath before the Commission that he signed and renewed the license of Chef Wok, Inc. for the years 2008, 2009, 2010, and 2011. (Testimony)

DISCUSSION

The law is well-settled that “[i]t was essential to the validity of [a section 12] license that it be approved by the Commission. General Laws (Ter. Ed.) c.138, section 12,” Coyne v. Alcoholic Beverages Control Commission, 312 Mass. 224, 227, 44 N.E.2d 692,694 (1942). Further, under the controlling law, “[t]hough the authority to issue a license is conferred by the governing statutes upon the local licensing authorities, they could rightly issue such a license only ‘subject to the prior approval of the commission.’ G.L. (Ter.Ed.) chapter 138, section 12, as amended. See, also, General Laws (Ter. Ed.) chapter 138, section 67, as appearing in St.1938, c.400; Town of Webster v. Alcoholic Beverages Control Commission, 295 Mass. 572, 574, 575, 4 N.E.2d 302. When such approval has been granted, the license is issued by the local licensing authorities. General Laws (Ter. Ed.) chapter 138, section 16B, as amended.” Coyne, 312, Mass. at 228; 44 N.E. 2d at 695.

The Supreme Judicial Court has acknowledged that “[t]he powers of the States in dealing with the regulation of the sale of intoxicating liquors are very broad. What they may wholly prohibit, they may permit only on terms and conditions prescribed by the Legislature. Supreme Malt Products Co., Inc., v. Alcoholic Beverages Control Commission, 334 Mass. ---, 133 N.E. 2d 775; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139, 60 S.Ct. 163, 84 L.Ed. 128; Carter v. Virginia, 321 U.S. 131, 137-143, 64 S.Ct. 464, 88 L.Ed. 605. In dealing with a trade, which, because of its great potential evils, can be wholly prohibited, a wide power is given to the Legislature with respect to the delegation of discretionary powers. Particularly in view of the extent to which the policy of chapter 138, and the basis for action under it, have been specified, as already indicated, there is no invalid delegation of authority to the Commission in leaving to it, as was done in [section 12], the power to approve or disapprove applicants for licenses. See Butler v. East Bridgewater, 330 Mass. 33, 36-37, 110 N.E. 2d 922.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass 613, 619, 138 N.E. 2d 131, 135-136 (1956).

The Alcoholic Beverages Control Commission was created under General Laws chapter 10, section 70. Its authority is broad and without express limitation. See Board of Selectmen of Barnstable v. Alcoholic Beverages Control Commission, 373 Mass. 708, 716 (1977); J & J Enterprises, Inc. v. Martignetti, 369 Mass. 535, 538, (1976). The ABCC’s powers “were not intended to be perfunctory or limited.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

General Laws chapter 138, section 23 states, in part that “The provisions for the issue of licenses and permits hereunder imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to serve the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made.” M.G.L. chapter 138, section 23.

The Massachusetts Appeals Court has held that the statute is not about the definition of need “in the literal sense of a requirement, rather, the test includes an assessment of public want, and the appropriateness of a liquor license at a particular location. In determining whether an application for an alcoholic beverages license should be granted, “a licensing authority may take into account a wide range of factors, including the sort of operation that carries the license, and the reputation of the applicant.” Ballarin, Inc. v. The Licensing Board for the City of Boston, 49 Mass. App. Ct. 506 (2000).

The Alcoholic Beverages Control Commission, defined as a “licensing authority” in M.G.L. chapter 138, section 1, can make a determination whether this license should be approved, and in doing so, consider the sort of operation that carries the license, and the reputation of the applicant. Based on the history of

the applicant's process of the four applications that the applicant has submitted, and the evidence presented at the hearing, the Commission is very concerned whether this applicant, Tea Garden of Athol, Inc., and its officers, Mr. Yun Zeng Chi, and Mr. Richard Minahan will conduct lawful operations if this license is approved.

The Commission heard evidence presented at the hearing that the first transfer application of Tea Garden in Athol, Inc. from Chef Wok Inc. in October of 2010, listed Mr. Yun Zeng Chi as the sole shareholder and the sole director of the corporation. Mr. Yun Zeng Chi is not a United States citizen. On October 19, 2010, Investigator Doyle returned this application for transfer of the license to the Local Board in Athol because the corporate structure did not conform to the statutory requirements of M.G.L. chapter 138, section 26 and Commission Regulations, Massachusetts General Laws, Chapter 138, section 26, which provides, in pertinent part, that "No license for the sale of alcoholic beverages shall be issued to any corporation a majority of whose directors are in fact aliens."

A second application was submitted in June of 2011, whereby Tea Garden in Athol, Inc. petitioned again for a transfer of the liquor license from Chef Wok, Inc. at the same location. This application listed Yun Zeng Chi as President, Treasurer, Secretary, and Director holding one hundred and ninety-nine (199) shares, and Mr. Mark Litchfield as the proposed License Manager and Director, holding one (1) share. The Commission denied this June, 2011 application for failure to pay Massachusetts Department of Revenue taxes. The financial statements submitted with this application showed that Tea Garden of Athol and Mr. Chi were already operating the business without the statutorily required approval from the Local Board and the Commission.

A third petition was submitted in February of 2012, when Tea Garden in Athol, Inc. applied for a new license. This application for a new license again listed Mr. Yun Zeng Chi as President, Treasurer, Secretary, and Director, holding one hundred and ninety-nine (199) shares, and Mr. John Richard Minahan as Vice President and Director, holding one (1) share. The Articles of Organization, submitted with this application were filed on February 9, 2012, at 1:31 p. m., with the Commonwealth of Massachusetts Secretary of State- Corporation Division. The Articles of Organization reflected Mr. Chi as President, Secretary, Treasurer, and Director. The records listed Mr. Richard Minahan as Vice President and Director. This corporate structure conformed with the application that was submitted to the Commission.

However, the Commission heard evidence that during Investigator Temple's review of this third application, the Articles of Organization were updated at the Secretary of State's Office – Corporation Division, on February 9, 2012 at 1:39 p. m., *eight (8) minutes after* the original Articles of Incorporation were filed and became effective. The statement of change reflected that Mr. Yun Zeng Chi was President, Treasurer, Secretary, and Sole Director. The Articles of Organization were amended by Yun Zeng Chi as President. This amended statement of change was submitted to the Secretary of State's Office, yet was not included in this third new license application submitted to the Commission.

Investigator Temple recommended disapproval in March of 2012 for this application because the most recent Articles of Organization submitted to the Secretary of State's Office would preclude the applicant from holding a liquor license under M.G.L. Ch. 138, section 26. This recommendation was due to what appeared to be a corporate structure designed to circumvent statutory requirements.

A fourth application was submitted by Tea Garden in Athol on April 27, 2012, for a new license. This application was assigned to Investigator Doyle. The new license application listed John Richard Minahan as Manager, Vice President, and Director, holding one (1) share of stock. This most recent application listed Yun Zeng Chi as President, Treasurer, Secretary, and Director holding one hundred and ninety-nine (199) shares. This application listed Mr. John Richard Minahan as the proposed manager. Mr. Minahan

stated on the manager and the personal information form that he was never charged or convicted of a crime. A Criminal Offender Record Information (CORI) check revealed three (3) criminal charges and one (1) open misdemeanor charge. On June 4, 2012, Mr. Minahan subsequently submitted court records showing that his criminal case was closed, resulting in a conviction.

Mr. Richard Minahan applied to be the manager of record for this license. M.G.L. Ch. 138, section 26 states in part, "...nor unless such manager or representative is, with respect to his character, satisfactory to the licensing authorities." M.G.L. Ch. 138, section 26. The Commission is concerned about the character and fitness of Mr. Minahan becoming the proposed manager. Mr. Minahan stated on the manager and the personal information form that he was never charged or convicted of a crime. A Criminal Offender Record Information (CORI) check revealed three (3) criminal charges and one (1) open misdemeanor charge, which subsequently resulted in another criminal conviction.

The Commission has grave concerns about the fact that this applicant has submitted four applications for a liquor license, and has demonstrated on three of the applications a deliberate attempt to create a corporate structure designed to circumvent statutory requirements. The Commission heard evidence that during the process of the third petition, the Articles of Organization were updated on February 9, 2012 at 1:39 p. m., eight (8) minutes after the original Articles of Incorporation were filed and became effective. The statement of change reflected that Mr. Yun Zeng Chi was President, Treasurer, Secretary, and Sole Director. The Articles of Organization were amended by Mr. Yun Zeng Chi as President. This amended statement of change was submitted to the Secretary of State's Office, yet was not included in this third new license application submitted to the Commission. Based on the evidence, the Commission is gravely concerned with the applicant's deliberate and numerous attempts to circumvent the statutory requirements.

Chef Wok, Inc. filed with the Commonwealth of Massachusetts Secretary of State - Corporations Division, a statement for dissolution of the corporation on December 6, 2007. Since that date, no further action has taken place regarding Chef Wok, Inc. Yet, the Commission heard evidence, and Mr. Chi admitted that he has been operating Chef Wok, Inc. and selling alcoholic beverages under this license from the period of 2008, until December 31, 2011. The financial records submitted with the applications show that the applicant was operating the business of Chef Wok, Inc. without the statutorily required permission of the licensing authorities. Commission records show that the Chef Wok, Inc. license was renewed for the years 2008, 2009, 2010, and 2011. The Renewal forms for each year were signed by Mr. Yun Zeng Chi, "under the pains and penalties of perjury, as having a direct or indirect beneficial interest in Chef Wok, Inc.'s license," in violation of M.G.L. Ch.138, §64 and License issued under this chapter by the Local Licensing Authorities in violation of M.G.L. Ch. 138, §16A, for which the statutory remedy is revocation of the license.

The Tea Garden in Athol, Inc. and Mr. Chi, based on the evidence presented to the Commission, and by the applicant's own admissions, illegally renewed and operated the alcoholic beverages license of Chef Wok, Inc. in the years 2008, 2009, 2010, and 2011, resulting in the selling of alcoholic beverages in violation of the laws of the Commonwealth and the Commission.

The Commission finds that the applicant, Tea Garden in Athol, Inc. through its representative, Mr. Chi, has repeatedly taken deliberate steps to circumvent the law. Based on the totality of the facts and the evidence presented, the Commission finds that Tea Garden in Athol, Inc. is not the sort of operation which should be approved to hold an alcoholic beverages license. The Commission thereby **DISAPPROVES** this application of Tea Garden in Athol, Inc.

CONCLUSION

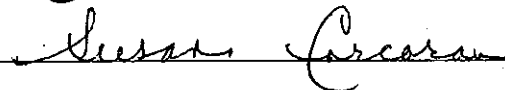
The Commission hereby **DISAPPROVES** of the application of Tea Garden in Athol, Inc. for an alcoholic beverages license.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: December 18, 2012

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Brad Doyle, Investigator
William A. Kelley, Esq.
Administration
File