

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

Steven Grossman
Treasurer and Revenue General

Kim J. Garnstero, Esq.
Chairman

DECISION

HOMESTEAD HARD CIDER, LLC d/b/a HOMESTEAD HARD CIDER
81 WEST STREET
ATTLEBORO, MA 02703
LICENSE#: NEW
HEARD 9/4/13 and 10/29/13

Homestead Hard Cider, LLC d/b/a Homestead Hard Cider (the "Applicant" or "Homestead") applied for a farmer-winery license to be issued pursuant to M.G.L. c. 138, §19B. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Wednesday, September 4, 2013, and Tuesday, October 29, 2013 to determine whether the application under M.G.L. Chapter 138 should be approved or disapproved.

The following documents are in evidence as exhibits from the Hearing held on September 4, 2013:

1. The Application file and contents of Homestead Hard Cider, LLC d/b/a Homestead Hard Cider, including documentation of Kickstarter, and a list of donors for this business. Kickstarter.org is an internet based "crowdfunding" website/business that allows applicants to apply and raise funds for projects and certain types of businesses;
2. Information describing Kickstarter.org and graph and chart of donors;
3. Description of Kickstarter.org downloaded from Internet.

There is one (1) audio recording and three (3) witnesses testified at the September 4, 2013 hearing.

The following documents are in evidence as exhibits from the Hearing held on October 29, 2013:

- 1A. Gift Affidavit and Webster Bank Statement (8 pages).

There is one (1) audio recording and three (3) witnesses testified at the October 29, 2013 hearing.

FACTS

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

1. Homestead Hard Cider, LLC d/b/a Homestead Hard Cider applied for a farmer-winery license to be issued pursuant to M.G.L. c. 138, §19B. (Exhibit 1, Testimony)
2. Mr. Kyle Schmitt and Mr. Jeremy Quaglia are the principles of the Applicant, each with a fifty (50%) percent ownership interest. (Exhibit 1, Testimony)
3. Mr. Schmitt applied to be the license manager of record. (Exhibit 1, Testimony)

4. The Applicant's farmer-winery application listed that the costs associated with the license were \$22,497.00. The supporting documentation that the owners of the Applicant provided demonstrates that they supplied \$12,446.54 of the finances. Mr. Schmitt and Mr. Quaglia each contributed six thousand dollars (\$6,223.27.00). (Exhibits 1, 1A, Testimony)
5. The remainder of the money was donated through a project the applicants created using Kickstarter.org ("Kickstarter"). The Applicant's owners set a goal to raise \$10,000.00 (ten thousand dollars) to finance their business. (Exhibit 1, 2, Testimony)
6. Kickstarter is a for-profit company based in New York City. The company provides a platform and resources for businesses and individuals to fund projects through online "crowdfunding". "Crowdfunding" is a new method of raising capital through donations, in varying amounts, from a large number of individuals. (Exhibits 1, 2, Testimony)
7. Kickstarter allows individuals to pledge to donate money to business projects registered through this website. (Exhibits 1, 2, Testimony)
8. Each project is independently created and the project's sponsors have complete control over and responsibility for their projects. (Exhibits 1, 2, Testimony)
9. Kickstarter is not involved in the development of the projects themselves. (Exhibits 1, 2, Testimony)
10. Project creators set a funding goal and deadline. Individuals interested in assisting a project to fruition can pledge money to it. However, projects must reach their funding goals to receive any money. (Exhibits 1, 2, Testimony)
11. Kickstarter does not allow alcohol or alcoholic beverages to be awarded or rewarded to individuals who donate money to help start businesses registered on Kickstarter.org. (Exhibits 1, 2, Testimony)
12. The individuals that donate money to Kickstarter projects receive no direct or indirect interest in the project. Moreover, Kickstarter receives no direct or indirect financial or beneficial interest in these projects. If a project is successfully funded, Kickstarter applies a 5% fee to the funds collected. (Exhibits 1, 2, Testimony)
13. Project donors pledge support to help projects become viable, not to profit financially. Project owners may use other incentives to entice funding. (Exhibits 1, 2, Testimony)
14. Homestead offered potential donors various items (based on the monetary amount of the donation) such as T-shirts, commemorative empty bottles containing their hard cider label, a pint glass with their business label affixed, a handwritten letter, stickers and buttons, an oak barrel with their business logo affixed, a virtual Cheers, the individual donor's name appearing on a donor plaque to be displayed at the premises, and donor artwork containing the applicant's business logo to be displayed at the license premises. (Exhibits 1, 2, Testimony)
15. At the conclusion of the solicitation process, the applicants exceeded their goal and received \$10,051.27 in financial donations to start their business. (Exhibit 1, Testimony)
16. One hundred and eight-six (186) donors/backers gave approximately \$10,051.27 to the Applicant's project through Kickstarter.org. (Exhibit 1, Testimony)

17. The donations ranged in the amounts of \$5.00 (five dollars) to \$500.00 (five hundred dollars). (Exhibit 1, Testimony)
- a. Pledge of \$5.00 dollars or less donation - 12 donors;
 - b. Pledge of \$10.00 dollars donation - 10 donors;
 - c. Pledge of \$15.00 dollars donation - 27 donors;
 - d. Pledge of \$20.00 dollars donation - 8 donors;
 - e. Pledge of \$25.00 dollars donation - 25 donors;
 - f. Pledge of \$50.00 dollars or less donation - 53 donors;
 - g. Pledge of \$75.00 dollars donation - 11 donors;
 - h. Pledge of \$100.00 dollars donation - 28 donors;
 - i. Pledge of \$125.00 dollars donation - 1 donor;
 - j. Pledge of \$150.00 dollars donation - 3 donors;
 - k. Pledge of \$175.00 dollar donations - 1 donor;
 - l. Pledge of \$200.00 dollar donations - 2 donors;
 - m. Pledge of \$250.00 dollar donations - 2 donors; and
 - n. Pledge of \$500.00 dollar donations - 3 donors.
18. None of the donors received or obtained a direct or indirect beneficial or financial interest in the license or the license business. (Exhibits 1, 2, Testimony)

DISCUSSION

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.; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139; 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. See Butler v. East Bridgewater, 330 Mass. 33, 36-37 (1953).

The Alcoholic Beverages Control Commission was created under General Laws chapter 10, §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). Moreover, the ABCC’s powers “were not intended to be perfunctory or limited.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass 613, 619 (1956). 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, the power to approve or disapprove applicants for licenses.” See Butler v. East Bridgewater, *supra*, Connolly v. Alcoholic Beverages Control Commission, *supra*.

General Laws chapter 138, §19B states, in part, that “(a) ...the commission shall issue a farmer-winery license to any applicant ...unless (1) such person does not comply with reasonable application procedures required by the commission...” The Commission requires applicants for alcoholic beverages licenses to disclose in the license application all parties who hold a direct or indirect beneficial interest in the license, as well as documentation regarding the source of the funds of these parties used to purchase this direct or indirect beneficial interest. The Applicant disclosed that it obtained funding for its business through crowdfunding.

Crowdfunding is a new type of funding which the Commission is reviewing for the first time. In this instance, the costs associated with this license were \$22,497.00 of which \$10,051.27 was obtained

through donations via Kickstarter. There were 186 donors, of whom 183 gave \$250.00 or less. The 183 individual donors contributed amounts varying from \$5.00 to \$250.00.

Ordinarily the Commission requires documentation of the source of funds even if someone is gifting money to an applicant. However, for purposes of this application, the Commission finds these amounts (\$500.00 and lesser) to be "de minimis", meaning that the value is so small, the Commission finds that requiring an accounting for the source of these funds is unnecessary. Moreover, the Commission, after careful consideration and review of testimony and the application submitted, finds and is satisfied that none of these donors has a direct or indirect beneficial interest in this license.

CONCLUSION

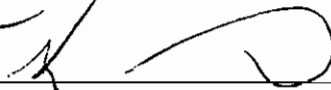
The Commission hereby **APPROVES** the application of Homestead Hard Cider, LLC d/b/a Homestead Hard Cider for a Farmer Winery Alcoholic Beverages License pursuant to M.G.L. c. 138, §19B.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Kim Gainsboro, Chairman



Susan Corcoran, Commissioner



Dated: November 20, 2013

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
Jack Carey, Investigator
Administration
√File