



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

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**BENNTONE, INC.  
AND  
BROTHERS LIQUORS, INC. DBA BROTHERS WINE AND SPIRITS  
276-278 WARREN STREET  
BOSTON, MA 02119  
LICENSE #: 011601052  
HEARD: 06/14/2011**

This was an informational hearing before the Alcoholic Beverages Control Commission (the "Commission") to determine whether to approve or disapprove the application of Brothers Liquors, Inc. dba Brothers Wine and Spirits (the "Applicant" or "Brothers") for a transfer of an Annual All Alcoholic §15 Package Store License from Benntone, Inc. ("Benntone"). Based on the information presented at the hearing, the Commission finds the following facts and makes the following rulings of law.

**FACTS**

1. Brothers seeks the transfer of the license held by Benntone, Inc.
2. Victor Fernandez is the sole shareholder, corporate director and officer, and proposed license manager of Brothers. Brothers will pay one hundred eighty-seven thousand five hundred dollars (\$187,500.00) to Benntone.
3. Benntone is taking back a promissory note for eighty-seven thousand and five hundred dollars (\$87,500.00).
4. The remaining money, one hundred and thirty thousand dollars (\$130,000.00), is stated under oath to be a gift from German Fernandez, Victor Fernandez's brother.
5. German Fernandez is borrowing money from Grice Agency LLC, an entity that is referred to by the Commission's investigator as a "hard money lender." The investigator does not specify what constitutes a "hard money lender" compared to any other lender and does not explain the relevance of being a so-called "hard money lender."
6. German Fernandez currently holds an interest in two (2) §15 licenses in the city of Boston. One §15 is held by Brother Liquor Store, Inc. at 616 Shawmut Avenue. The second §15 license is held by Brother's Super Liquors, Inc. at 740 Blue Hill Avenue.
7. At the hearing, the Commission did not have any bank statements from Grice Agency, LLC to document that this lender has the funds to lend.

8. Subsequent to the hearing, with the permission of the Commission given during the hearing, the Commission reviewed documents received on August 1, 2011 in addition to unsigned affidavits.
9. On August 10, 2011, with the permission of the Commission given during the hearing, the Commission received two (2) unsigned affidavits dated June 15, 2011.
10. One unsigned affidavit from Elton Grice stated he is the principal of Grice Agency LLC and Grice Agency LLC is the lender to German Fernandez under a promissory note in the face amount of one hundred and seventy-five thousand dollars (\$175,000).
11. One hundred thousand dollars (\$100,000) of this sum has already been drawn down by German Fernandez.
12. According to Grice's unsigned affidavit, the loan is secured by German Fernandez' commercial property and Grice will have no interest in the liquor license if it is transferred to Brother's.
13. According to the unsigned Grice affidavit, neither he nor his business hold any interest in any liquor license in the Commonwealth and the source of the loan proceeds to German Fernandez are savings and earnings from his lending business.
14. On August 10, 2011, with the permission of the Commission given during the hearing, the Commission received two (2) signed affidavits.
15. One affidavit from Elton Grice signed and had a hand-written date of July 5, 2011; the second affidavit from German Fernandez was signed and had a hand-written date of January 26, 2011.
16. Brothers submitted brokerage account statements for Grice's individual account that showed a withdrawal of one hundred thousand dollars (\$100,000) on April 12, 2011 with a direct deposit to an account specified on the statement.
17. No document showed the account into which this one hundred thousand dollars (\$100,000) cash was deposited.
18. No gift letter from the brother German Fernandez was submitted to the Commission.
19. No other documents were provided to the Commission demonstrating a bona fide gift that complied with all laws, including the tax laws.
20. Within the application documents submitted by Brothers is a letter dated December 9, 2010, describes a lending relationship that includes Victor Fernandez individually.
21. The affidavit dated January 26, 2011 signed by German Fernandez states he will be gifting to his brother Victor one hundred and thirty thousand dollars (\$130,000) cash.
22. A Financial Disclosure Form dated January 26, 2011 signed by Victor Fernandez and filed with the Local Board before the Local Board granted the transfer application states

he will be receiving two (2) gifts from his brother German Fernandez, totaling one hundred thousand dollars (\$100,000).

23. One gift was sworn to be twenty-five thousand dollars (\$25,000) cash and the second gift was seventy-five thousand dollars (\$75,000) coming from a line of credit.

### DISCUSSION

General Laws chapter 138, §25 provides, in pertinent part, that "[i]t shall be unlawful for any licensee under this chapter to lend or borrow money, directly or indirectly, to or from any other licensee under this chapter." German Fernandez is prohibited by §25 from lending money directly or indirectly for the transfer of this license. In this application, it appears that since the source of funding might be a bona fide gift, further consistent documents need to be submitted to the local board and, if granted, then submitted to the Commission for its approval. With a properly and consistently documented bona fide gift, the statutory prohibition would not be implicated.

General Laws chapter 138, §15 separately prohibits any combination of persons from being granted more than two §15 licenses in a city or from holding a direct or indirect beneficial interest in more than two § 5 licenses in a city. If German Fernandez were to be found to have an interest in this application, it could not be approved as it would violate this statutory restriction.

The Commission by regulation requires that "[a]ll applications shall be made under the penalties of perjury." 204 CMR 2.01 (8). This regulation also provides, in pertinent part, that "any false statement contained in any application shall be a cause or ground for refusing to grant the license or permit or for suspending, cancelling or revoking a license or permit already granted."

The Commission does not have a true copy of the promissory note between the Grice Agency, LLC and German Fernandez individually; the Commission does not have any documentation showing the source of payments of this loan that has been in existence apparently since April 2011. The Commission does not have any documentation of where this one hundred thousand dollars (\$100,000) cash loan was deposited and how the applicant ended up with this cash in its accounts.

In this application, there are inconsistencies in the statements made in the application documents on the source of funding for this transfer. At a minimum, it is clear that the financing structure as described at the Commission hearing is not consistent with the financing structure represented to the local board.

### CONCLUSION

Therefore, the Commission DISAPPROVES the application of Brothers Liquors, Inc. dba Brothers Wine and Spirits (the "Applicant" or "Brother's") for a transfer of an Annual All Alcoholic §15 Package Store License from Benntone, Inc. This disapproval is without prejudice to a re-application with consistent, documented factual statements on the structure and financing of this transaction.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Susan Corcoran, Commissioner

*Susan Corcoran*

Robert H. Cronin, Commissioner

*Robert H Cronin*

Dated: August 24, 2011

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: File  
Local Licensing Board  
Frederick Mahoney, Chief Investigator  
Caroline Wilichoski, Investigator  
Counsel for Licensee via Facsimile  
Administration