



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

CODMAN SQUARE LIQUORS, LLC D/B/A CROWN LIQUORS II
571 WASHINGTON STREET
BOSTON, MA 02124
LICENSE#: 88864-PK-0116
HEARD: 10/19/2016

This is an appeal from the action of the Licensing Board for the City of Boston (the "Local Board" or "Boston") for imposing a condition that Codman Square Liquors, LLC d/b/a Crown Liquors II (the "Licensee" or "Crown Liquors II") not sell "nips or singles" as part of the transfer of the M.G.L. c. 138, § 15 retail package store all alcoholic beverages license from MOD Liquors, Inc. ("MOD Liquors") to Crown Liquors II located at 571 Washington Street, Dorchester (Boston), Massachusetts. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission"), and a hearing was held on Wednesday, October 19, 2016.

The following documents have been entered in evidence as exhibits:

1. Boston Licensing Board List of Licensees with Condition Prohibiting Nips/Singles, 10/18/16; and
2. Letter from Boston Licensing Board to Attorney Aieta, 11/27/15.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

At the close of the hearing, the record closed for evidence, but the Licensee requested time to submit a written closing brief, which the Commission allowed. The record was left open until November 10, 2016 for written closing arguments. The Commission timely received the Licensee's post-hearing memorandum, and the record is now closed.

FINDINGS OF FACT

The Commission makes the following findings of fact and rulings of law based on the evidence presented at the hearing.

1. Crown Liquors II submitted an application to transfer to it the § 15 package store license of MOD Liquors, Inc. d/b/a MOD Liquors at 571 Washington Street, Dorchester (Boston), Massachusetts. (Testimony, Exhibit 2)

2. Crown Liquors II's application was to operate at the same location that MOD Liquors had operated for approximately thirty-five years. (Testimony, Exhibit 2)
3. MOD Liquors had no restriction on selling nips or singles and did sell nips and singles. (Testimony)
4. There is a demand for nips and singles in the neighborhood of 571 Washington Street, Boston. (Testimony)
5. For decades, MOD Liquors had no violations of state or local alcohol beverage laws. (Testimony)
6. The Licensee and MOD Liquors entered into a purchase and sale agreement in 2015.
7. The shareholders of Crown Liquors II are brothers George Stamatatos and Christ Stamatatos. Each has a fifty percent interest. (Testimony; Commission Files)
8. Crown Liquors II retained Damond Hughes, a former director of MOD Liquors, to continue his employment with Crown Liquors II for at least a year during the Licensee's transition. (Testimony)
9. The Local Board advises all license transfer applicants that they are required to meet with the respective local neighborhood association. (Testimony)
10. Crown Liquors II had Mr. Hughes reach out to the business and neighborhood/community associations as well as the abutters about the proposed transfer of the § 15 retail package store all alcoholic beverages license from MOD Liquors to Crown Liquors II. All of the feedback from the community about the transfer was positive. (Testimony)
11. The Stamatatos brothers expected to receive a license without conditions because the MOD Liquors license had no conditions and no one had raised with them concerns about the transfer or the possibility of a condition prohibiting the sale of nips/singles. (Testimony)
12. At the Local Board hearing in November 2015, the Licensee presented its case for the transfer of MOD Liquors' license. After the Licensee presented its case, the Local Board asked if there was any opposition, which there was not. Then the Local Board asked if anyone wished to speak in support of the application. Two people, a representative for Boston City Councilor Flaherty and the Mayor's Office of Neighborhood Services liaison supervisor, spoke in support of the transfer but suggested that there be a no nips/singles condition on the license. Neither of them presented any evidence to support their suggestion, and neither gave an explanation as to why the Local Board should impose such a condition. (Testimony)
13. By letter dated November 27, 2015, the Local Board notified the Licensee that it was approving the license transfer but with the condition of "[n]o sale of nips or singles." (Exhibit 2; Testimony)
14. In 2015, there were approximately nineteen licensees in Boston with the condition of no nips/singles. The Licensee was the only licensee in Dorchester with this condition. There is no evidence as to whether the other eighteen licensees agreed to such a

condition or what factors gave rise to the imposition of those other conditions. (Exhibit 1; Testimony)

15. The Licensee owns another liquor store approximately one and a half to two miles from Crown Liquors II – Crown Liquors at 389 Columbia Road in Dorchester (“Crown Liquors I”). (Testimony)
16. Crown Liquors I sells nips and singles and has a good reputation in the community with no prior violations of state or local liquor control laws. Crown Liquors I has not received any complaints about its selling of nips and singles. (Testimony)
17. George and Christ Stamatos are over twenty-one years old, and neither of them has had any criminal convictions. (Commission Files)

DISCUSSION

The statutory language is clear that there is no right to a liquor license of the type specified in M.G.L. c. 138, § 15. Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass. 613, 619 (1956); Opinion of the Justices, 368 Mass. 857, 861 (1975).

This appeal involves the Local Board’s imposition of the condition prohibiting the sale of nips and singles on a transfer application of a § 15 retail package store all alcoholic beverages license to be exercised at the same location. Crown Liquors II, the transferee, argues that: there was no mention of a possible condition being placed on the license until after the close of testimony at the Local Board hearing; there was no evidence or testimony submitted to the Local Board as to why a condition should be placed on the license; Exhibit 1, which lists the licensees in 2015 that had a no nips/singles condition placed on the license, does not advance the Local Board’s position; the Local Board’s imposition of the condition was unsupported by substantial evidence, arbitrary, capricious, an abuse of discretion, otherwise not supported by the law, and unsupported by specific findings of fact or by the evidence in the record; and Crown Liquors II was qualified to receive the license and the transfer was in the public interest. In response, the Local Board cites Fernandez Brothers Liquors, Inc. (ABCC Decision March 23, 2016) arguing that it was within its discretion to impose such a condition, especially where the neighborhood liaison suggested to the Local Board at the hearing that it impose the condition.

The Superior Court of Massachusetts affirmed the authority of the local boards and the Commission to impose “reasonable conditions” on a licensee pursuant to public/community input. Christopher Columbus Italian Mutual Aid and Benevolent Society, Inc., v. Alcoholic Beverages Control Comm’n and the Bd. of Selectmen of the Town of Winchester, No. CIV.A. 99-3214, 2000 WL 1509978, at *3 (Mass. Superior Ct. Sept. 28, 2000). The Commission has, in prior decisions, approved and enforced “reasonable conditions” imposed by the local boards. Reasonable conditions are conditions which relate to the operation and conduct of the licensed premises, so long as they do not conflict with the law or public policy. See Vijeta Corp. d/b/a Prospect Liquors, (ABCC Decision March 20, 2014) (Commission approved local board’s revocation of package store license for failure of licensee to comply with reasonable conditions imposed by the local board); GM Restaurant Enterprises, Inc. d/b/a Restaurante Bar La Terraza, (ABCC Decision February 8, 2012) (Commission approved local board’s decision finding licensee violated the “No

Bar” condition on its license); 5 North Square, Inc. (ABCC Decision July 7, 2010) (Commission approved local board requirement that all license applicants meet with neighborhood groups and civic associations in the area where premises is located. Commission approved local board’s decision imposing condition of “No Bar” on license, and found condition was validly transferred to the licensee); BAA Massachusetts Inc. (ABCC Decision December 17, 1997) (reasonable condition of being open a minimum of 35 hours per week); The Bandar Corp. (ABCC Decision May 4, 1993) (reasonable conditions that a maximum of 15 cars being parked in licensee’s parking lots, always having a valet available, and no car alarms to be used).

While local boards may impose reasonable conditions, the Commission finds that here the Local Board exceeded its authority by imposing the subject condition on no factual grounds, without explanation, without prior notice, and without giving Crown Liquors II an opportunity to oppose it.

The facts in this case are distinguishable from those in Fernandez Brothers Liquors, Inc. The cases are similar in that in Fernandez Brothers, the applicant for a § 15 license transfer appealed to this Commission the City of Boston local board’s imposition of a condition that it not sell nips or singles. However, in that case, the neighborhood group had raised concerns about the transfer with the applicant (including, loitering, public intoxication, sale of nips, and illegal activity) and suggested that the applicant agree to certain conditions, one of which was that it not sell nips or singles. The applicant entered into a memorandum of understanding with the neighborhood group agreeing to the condition, and as a result, the license transferor reduced the sales price for the applicant transferee. In granting the transfer application, the local board imposed the condition of no nips/singles to which the applicant had agreed. The Commission affirmed the Local Board’s imposition of the condition prohibiting the sale of nips and singles. Fernandez Brothers Liquors, Inc. (ABCC Decision March 23, 2016).

Here, there is no evidence that anyone from the local community, including abutters, businesses, or the local neighborhood group, raised any concerns at any time with Crown Liquors II about the transfer. (Testimony) The Stamatos brothers believed that they had the support of the local community. Id. In fact, no one opposed the transfer application at the time of the Local Board’s hearing. Id. The issue of a condition prohibiting the sale of nips and singles did not arise until after Crown Liquors II had presented its case for the license transfer. Id. The two people who suggested to the Local Board that such a condition be imposed gave no reasons as to why such a condition would be appropriate. Id. There was no evidence before the Local Board upon which to base its decision imposing the condition. Id.

Crown Liquors II had no opportunity to oppose the condition because the suggestion of a condition was not raised until after Crown Liquors II had presented its case for the transfer. (Testimony) At the time Crown Liquors II presented its case, the local community appeared to be in full support of the transfer application. Id. Had Crown Liquors II known sooner that a condition might be imposed, the purchase price of the license might have been reduced in connection with a decreased value of the license, as occurred in Fernandez Brothers.

Not only was there no testimony or evidence presented to the Local Board as to why such a condition was warranted, the Local Board never gave Crown Liquors II an explanation as to why it was imposing the condition. (Testimony; Exhibit 2) The Local Board’s letter to counsel for

Crown Liquors II simply states that it had approved the transfer application with the condition “no sale of nips or singles.” (Exhibit 2)

The Local Board’s imposition of the condition was arbitrary and unsupported by substantial evidence, by specific findings of fact, or by the evidence in the record. As set forth above, there was no evidence given at the hearing that would support the imposition of such a condition. (Testimony) Those who suggested such a condition gave no explanation as to why such a condition should be imposed. Id. There was no opposition to the license transfer or any discussion at the hearing as to why such a condition should be imposed. Id. The Local Board’s written decision imposing the condition gave no explanation for the imposition of a condition. (Exhibit 2)

The test for public need at this particular location had been met well before the time of the transfer application, and the focus of the transfer application simply should have been whether the transfer was in the public interest, i.e. whether the Stamatatos brothers were qualified to receive the license.¹ The fact that the prior licensee at this particular location sold nips and singles for decades without incident or complaint, should have evidenced for the Local Board that there was no need for a prohibition on the transferee selling nips or singles.


CONCLUSION

Based on the evidence presented at the hearing, the Commission **DISAPPROVES** the action of the Licensing Board for the City of Boston in imposing the condition of no nips/no singles to be sold at the premises on the transfer application of the § 15 all alcoholic beverages retail package store license of Codman Square Liquors, LLC d/b/a Crown Liquors II. The Commission therefore remands the matter to the Local Board with the recommendation that it remove the condition on the license of no sale of nips or singles, unless and until there is evidence before the Local Board upon which such a condition should be based and due process to the Licensee with notice and an opportunity to respond.

¹ As this Commission has articulated, “[w]here an application is filed to transfer [] ownership of a license without a change of location, the primary concern of the Commission is the fitness of the proposed new licensee.” Gaelic House, Inc. (ABCC Decision April 12, 1990). In order to determine if the transferee is qualified to receive a license, the local licensing authority shall cause an examination to be made that the applicant is not less than twenty-one years of age, has not been convicted of a violation of a federal or state narcotic drugs law, and is a person of good character in the city or town in which he seeks a license. See M.G.L. c. 138, § 12; CJ Restaurant Enterprises, LLC (ABCC Decision September 22, 2010). Here, the Licensee owners are over twenty-one years of age, and neither has had any criminal convictions. (Commission Files) Moreover, they both own and operate another package store in the same part of Boston and sell nips/singles at that location. (Testimony; Commission Files) That other location has never had a violation of the state or local liquor laws. Id. The Local Board appropriately granted the transfer application.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner 

Kathleen McNally, Commissioner 

Dated: December 14, 2016

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.

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cc: Jon D. Aieta, Esq., Esq., via facsimile 617-472-9028
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Local Licensing Board
Administration, File