



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

DCI BOSTON CORP. DBA SCORE
65-71 CAUSEWAY STREET
BOSTON, MA 02114
LICENSE#: 011600172
HEARD: 1/10/2012

DCI Boston Corp. dba Score (the "Applicant" or "DCI") applied for the transfer of ownership of an All Alcohol License pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held an Informational Hearing on Tuesday, January 10, 2012 regarding whether the application for this license transfer should be approved. Based on the information presented at the hearing, the Commission finds the following facts and makes the following rulings.

The following documents are in evidence as Exhibits:

1. Application of DCI Boston Corp. dba Score filed with the Boston Licensing Board on October 31, 2011 (27 pages);
2. Local Board Notice, dated August 18, 2011, to Reschedule a Hearing for Metro Dining regarding an assault and battery on a patron at Metro Dining Inc. (1 page);
3. ABCC Decision and Notice of Suspension dated April 25, 2007, for Metro Dining, Inc. (6 pages);
4. Local Board Decision and Notice of Suspension dated December 1, 2010 (3 pages);
5. RMV Printout dated January 9, 2012 for Mr. Derek Brady (9 pages);
6. Alcohol License Application of Felt Enterprises, Inc. dba Felt dated (8 pages); and
7. Alcohol License Application of Metro Dining Inc. dba The Draft dated (5 pages).

The Commission took Administrative Notice of the contents of the file for the license application DCI Boston Corp. dba Score, 65-71 Causeway St., Boston, Massachusetts, 02114.

There is one (1) audio recording of this hearing. Two (2) witnesses testified during the course of the hearing.

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FACTS

1. DCI Boston Corp. dba Score seeks approval from the Commission to acquire the license located at 65-71 Causeway Street, Boston, Massachusetts. Ex. 1
2. On August 3, 2011, DCI completed an application to transfer the ownership of an alcoholic beverages license (the "Application") from Depot Café, Inc. of Boston, dba Penalty Box, license #011600172. Ex. 1
3. On September 28, 2011, Derek S. Brady, one of the corporate officers, and a shareholder signed the Application, as well as a personal information form, "under the pains and penalties of perjury." Ex. 1
4. On October 31, 2011, the Applicant submitted the application to the Boston Licensing Board. Ex. 1
5. On November 17, 2011, the Boston Licensing Board granted the Application and submitted the documents to the Commission for approval. Ex. 1
6. On December 13, 2011, the Commission received the application. Investigator John Carey was assigned to complete the investigation and inspection regarding this Application. Ex. 1
7. The officers, directors, and stockholders of DCI are listed in the Application form titled "Petition For Transfer of Ownership" as follows:
 - . Timothy J. McCasland, Jr. president and manager of record, and shareholder
 - . Derek S. Brady, clerk and shareholder
 - . Kevin Maguire, director and shareholder
 - . Aaron Chamberlain [sic]¹, Treasurer and shareholder
 - . Dave Ferrando, shareholder
 - . Melissa Azorian shareholder
 - . Jerome Brasseur, shareholder
 - . Anthony Killough, shareholder
 - . Jason Kuczynski, shareholder
 - . Ruben [sic]² Garza, shareholder Ex. 1

Thus, there are ten (10) shareholders/stockholders and only one (1) director according to the Application³

¹ The Personal Information Form signed on September 28, 2011 and filed for this individual shows his name to be "Aaron J. Chamberland."

² The Personal Information Form signed on September 28, 2011 and filed for this individual shows his name to be "Reuben R. Garza."

8. The individuals with a beneficial interest in the license are listed in Question 10 of the Application as follows:

Timothy J. McCasland, Jr. president and manager of record, and shareholder
Derek Brady, secretary and shareholder
Kevin Maguire, director and shareholder
Aaron Chamberland, treasurer and shareholder
Dave Ferrando, shareholder
Melissa Azorian shareholder
Jerome Brasseur, shareholder
Anthony Killough, shareholder
Jason Kuczynski, shareholder
Ruben Garza [sic]⁴, shareholder Ex. 1

9. There are a number of questions in every application that relate to criminal conduct and the history of disciplinary action at other licensed premises. Ex. 1
10. In the DCI Application, Mr. Brady, answered "No" to section 2 of the personal information form where it asks the question, "Have you ever been convicted of a state, federal, or military crime?" Ex. 1
11. Mr. Brady signed this form "under the pains and penalties of perjury." Ex. 1
12. As part of his investigation, Investigator Carey submitted Criminal Offender Record Information ("CORI") checks for each member of the applicant's shareholders and the license manager. Ex. 1
13. When Investigator Carey obtained the CORI reports he found that contrary to Mr. Brady's averments, that he had a number of criminal convictions. These convictions cover a three (3) year period and run the gamut from motor vehicle offenses to crimes of assault. The offenses span the Commonwealth from Wareham District Court, to Concord District Court, to Eastern Hampshire District, to Boston District Court. Ex. 1
14. The dispositions Mr. Brady received also vary from fines imposed to committed jail time. The commonality the offenses share is that they are all criminal convictions. Mr. Brady has been convicted of seven (7) separate criminal offenses. Ex. 1
15. Furthermore, in the DCI Application, Derek Brady disclosed that he has a direct beneficial interest in the alcoholic beverages license for Metro Dining, Inc. dba The Draft ("Metro") at 34 Harvard Avenue, Boston, MA.⁵ Ex. 1

³ M.G.L. c. 156D, § 8.03(a) requires not less than three (3) directors for DCI, unless the number of directors is "specified or fixed in accordance with the articles of organization or bylaws." The articles of organization do not fix the number of directors. No facts were presented about the bylaws of DCI.

⁴ See Footnote 2 above.

⁵ The Commission notes Mr. Brady failed to disclose his unlawful interest in the license last-approved to be held by Felt Enterprises, LLC in Boston. See In Re: Felt Enterprises, LLC, Boston (ABCC Decision dated February 23, 2012). 204 C.M.R.

16. Mr. Brady signed the Metro application "under the pains and penalties of perjury" on April 19, 2006. He is the president and sole shareholder and is the only person listed with a beneficial or financial interest. Ex. 7
17. In the Metro application, Mr. Brady also responded that "he had never been convicted of violating any state, federal, or military law." Ex. 7
18. Mr. Brady also applied to be the license manager for Metro. In that license manager application he also responded "No" to having a criminal conviction. Mr. Brady also signed the license manager application "under the pains and penalties of perjury" on April 19, 2006. Ex. 7
19. Mr. Brady also filed an application with the Boston Licensing Commission for Felt Enterprises, Inc. dba Felt. In that application, Mr. Brady is listed as the president and 55% shareholder. He again answered "No" on the application regarding whether he has been convicted of a crime. Ex. 6
20. Mr. Brady also signed the Felt application "under the pains and penalties of perjury" on May 5, 2011. Ex. 6
21. Mr. Brady's last criminal matter, for which he was convicted, received a suspended sentence, and was placed on probation, was closed in September of 1998. Ex. 1
22. In a separate question in the DCI Application requiring disclosure of past disciplinary actions taken against any licenses in which Mr. Brady held an interest [i.e. Metro], Mr. Brady answered "No" in response to the question, "Have any of the disclosed licenses [i.e. Metro] to sell alcoholic beverages listed in section 11 and or 12 ever been suspended, revoked, or cancelled?" Ex. 1
23. However, Commission records indicate that Metro has indeed received disciplinary action both from the Commission and the local licensing authority. Exs. 3, 4
24. On April 25, 2007, the Commission found Metro in violation of M.G.L. c. 138, §34C and suspended the licensee's license for ten (10) days. Ex. 3
25. In addition, by decision dated December 1, 2010, the Boston Licensing Board suspended Metro's license for one (1) day. Ex. 4
26. As a result of the discrepancies between the Application Derek Brady signed and submitted and his CORI and Commission records, Investigator Carey requested that the Commission hold an informational hearing to determine the Fitness and Character of the Applicant. Ex. 1
27. On January 10, 2012, this Commission held an informational hearing to determine whether the Application should be approved or disapproved.

§ 2.01(8) 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."

28. Mr. Brady testified during the course of the hearing that when he completed the Application, that he did not remember that his criminal record contained convictions. Mr. Brady further testified that when he completed the Application, he did not remember being arrested or arraigned. He also testified that he did not remember being committed to the House of Corrections. Testimony
29. Mr. Brady further testified that the offenses happened over fifteen (15) years ago, and that when he completed the Application, he did not remember them. Testimony
30. However, a review of the Metro application, which was completed in 2006, reveals that Mr. Brady also denied having a criminal history on that application. Testimony, Ex. 7
31. After Investigator Carey received Mr. Brady's criminal record, he notified Mr. Brady that the Application conflicted with his CORI and Commission records. Testimony
32. Thereafter, Mr. Brady attempted to correct the application by admitting that he has a criminal record. He also provided an affidavit explaining the convictions. This affidavit was signed "under the pains and penalties of perjury" on December 29, 2011. Ex. 1
33. In the affidavit, Mr. Brady "affirms that other than those convictions (disclosed in the affidavit), I have never been charged or convicted of a state, federal, or military crime." (Emphasis supplied).
34. However, Mr. Brady's driving record indicates that his registry of motor vehicles license was suspended on April 6, 2011, because a default warrant had been issued for his arrest out of the Boston Municipal Court. Ex. 5
35. Mr. Brady did not disclose in his affidavit or explain the offense that resulted in a warrant issuing out of the Boston Municipal Court in April 2011 for his arrest. Ex. 1

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Commn., 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses to sell alcoholic beverages is set out in G.L. c. 138. Licenses must be approved by both local licensing authorities and the ABCC. G.L. c. 138, §§12, 67. See Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996). Section 23 of c. 138 provides, in pertinent part: "Any license under this chapter held by an individual, partnership, or corporation may be transferred to any individual, partnership or corporation qualified to receive such a license in the first instance, if, in the opinion of the licensing authorities, such transfer is in the public interest." Section 2 of c. 138 provides, in pertinent part: "No person shall ... sell ... alcoholic beverages or alcohol, except as authorized by this chapter [...] ... Violation of any provision of this section shall be punished except as provided in section twenty-two [for unlawful transportation of alcoholic beverages] by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not more than one year, or both."

In reviewing the authority of the Commission, the Supreme Judicial Court has held 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. 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 c. 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 § [12], the power to approve or disapprove applicants for licenses. See Butler v. East Bridgewater, 330 Mass. 33, 36-37. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 619, (1956).

The SJC further held that “[t]he legislative history of [the Commission’s enabling act], and of G.L. (Ter.Ed.) Ch. 138, as amended, clearly shows that the powers of the commission were not intended to be perfunctory or limited. In the very respect here in issue, the approval or disapproval of the action of local licensing authorities, that history [footnote omitted] indicates that the commission was charged with important responsibilities and that it was not to be narrowly restricted in performing them.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

The Appeals Court has discussed the statutory standard to grant a license and the factors that a licensing authority may properly consider in its decision whether to grant or deny a license application. In Ballarin Inc., v. Licensing Board of Boston, 49 Mass. App. Ct. 506 (2000), the Appeals Court held that:

The statute authorizing the issuance of liquor licenses speaks in terms of serving “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.”

G.L. c. 138, § 23, as amended by St. 1965, c. 399.

In making its discretionary determination, a licensing authority may take into account a wide range of factors -- such as traffic, noise, size, the sort of operation that carries the license, and the reputation of the applicant. [Emphasis added]. See Connolly v. Alcoholic Bevs. Control Commn., 334 Mass. at 617-618; Great Atlantic & Pac. Tea Co. v. Board of License Commrs. of Springfield, 387 Mass. 833, 837 (1983); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. at 322 n. 4; Hub Nautical Supply Co. v. Alcoholic Bevs. Control Commn., 11 Mass. App. Ct. 770, 772-774 (1981). Ballarin Inc., v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 510-512 (2000).

The Commission is incredulous that an individual who has seven entries on his criminal record, which all resulted in convictions, claims to have forgotten about these criminal activities. Mr. Brady was arrested on numerous occasions, placed on probation several times, received a suspended jail sentence, and was actually committed to the house of correction for one (1) of the offenses. The Commission does not find Mr. Brady’s testimony credible, and believes he intentionally attempted to deceive this Commission on three (3) separate applications since 2006. This is particularly true in light of the fact that as recently as April 6, 2011, a warrant issued out of Boston Municipal Court for Mr. Brady’s arrest.

Instead of disclosing that criminal offense for which he was undeniably charged, Mr. Brady submitted an affidavit signed “under the pains and penalties of perjury,” and purposefully did not disclose the crime or offense that lead to that warrant. In fact, he pointedly, and affirmatively declared that, “other

than those convictions (disclosed in the affidavit), I have never been charged or convicted of a state, federal, or military crime.”

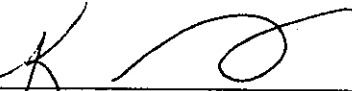
The Commission refers this matter to the Investigative and Enforcement Division for all needful and appropriate investigations regarding the Metro Dining, Inc. and Felt Enterprises, LLC filed by Mr. Brady. Moreover, the Commission warns Mr. Brady that any future applications will be reviewed pointedly given his conduct in this application.

CONCLUSION

Based on the evidence and testimony at the hearing, the Commission **DISAPPROVES DCI Boston Corp. dba Score’s Petition for Transfer of Ownership.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Susan Corcoran, Commissioner



Kathleen McNally, Commissioner



Dated: March 14, 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: Dennis Quilty, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Jack Carey, Investigator