

Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358

Jean M. Lorizio, Esq.
Chairman

DECISION AND ORDER

FULL REVOLUTION LLC
116-120 BRIGHTON AVENUE
BOSTON, MA 02134
LICENSE#: NEW
HEARD: 01/09/23

This is an appeal of the action of the Licensing Board for the City of Boston (the “Local Board” or “Boston”) in denying the M.G.L. c. 138, § 12 all alcoholic beverages license application of Full Revolution LLC (“Applicant”) located at 116-120 Brighton Avenue, Boston, Massachusetts. The Applicant timely appealed the Local Board’s decision to the Alcoholic Beverages Control Commission (the “Commission”), and a remote hearing was held via Microsoft Teams on January 6, 2023.

The following documents are in evidence as exhibits:

- A. Video recording of the 7/27/2022, hearing (beginning at 1:05:16)
- B. Video recording of the 8/25/2022, voting hearing (beginning at 26:09)
- C. Transfer application of Full Revolution LLC
- D. License and Docket Sheet of Metro Dining, Inc.
- E. In Re: DIC Boston Corp. d/b/a/ Score (ABCC Decision 3/14/2012)
- F. Transfer application of Brewed Intentions, LLC d/b/a The Fourth Wall
- G. Transfer application of Causeway Union LLC d/b/a Sons of Boston
- H. Correspondence from Applicant’s counsel to the Local Board, 8/26/2022
- I. Response from the Local Board, 9/2/2022.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

FINDINGS OF FACT

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

1. Full Revolution LLC is a limited liability corporation located in Boston, Massachusetts (“Applicant”). The LLC has two members: Derek Brady, with an 83% interest, and Raji Pine, with a 17% interest. Mr. Brady is the LLC manager and the proposed license manager. (Testimony, Exhibit C)

2. Mr. Brady holds an interest in seven all alcoholic beverages § 12 licenses, five of which are in Boston. (Testimony)
3. On or about May 23, 2022, the Applicant applied for the transfer of a § 12 all alcoholic beverages license to be exercised at 116-120 Brighton Avenue, Boston, Massachusetts. (Exhibit C)
4. On July 27, 2022, the Local Board held a public hearing on the Applicant's application. (Exhibit A)
5. At the public hearing, the Local Board spent extensive time discussing Mr. Brady's criminal offender record information report ("CORI") and the history of other licenses in which he holds an interest. In its discussions, the Local Board spent significant time on the fact that Mr. Brady answered "no" on the application when the application asked whether the Applicant had been convicted of a State, Federal or Military Crime, but had answered "yes" on prior unrelated license applications. (Testimony, Exhibits A & B)
6. The Local Board voted to deny the Applicant's application "with prejudice" on August 25, 2022. (Exhibit B)
7. The following day, August 26, 2022, counsel for the Applicant wrote a letter to the Local Board explaining that Mr. Brady's CORI was sealed pursuant to M.G.L. c. 276, § 100A, such that he was legally permitted to answer "no" to the application's question. (Exhibit H)
8. Daniel Green, Executive Secretary to the Local Board, responded by way of a letter stating that regardless of counsel's assertions, the Applicant was untruthful in answering "no" on the application. The letter went on to state that "the Board has serious concerns regarding a lengthy history of violation at other licensed premises that he manages and/or otherwise holds an interest," and that a "formal statement of reasons for the Board's vote will be forthcoming." (Exhibit I)
9. The Local Board never issued a written statement of reasons. (Testimony)
10. The Applicant timely filed a notice of appeal of the Local Board's denial "with prejudice" of its transfer application.

DISCUSSION

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). The procedure for the issuance of licenses to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both the local licensing authorities and the Commission. M.G.L. c. 138, §§ 12, 67; Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

The statutory language is clear that there is no right to a liquor license. As M.G.L. c. 138, § 23 provides,

[t]he provisions for the issue of licenses and permits [under c. 138] 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. c. 138, § 23.

A local licensing authority has discretion to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 378-379 (2006); Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 510-511 (2000). A local board exercises very broad judgment about public convenience and public good. Donovan, 65 Mass. App. Ct. at 379. However, while this discretion of the local licensing authority is broad, “it is not untrammelled.” Ballarin, 49 Mass. App. Ct. at 511.

In reviewing the decision of a denial by a local licensing authority, the Commission gives “reasonable deference to the discretion of the local authorities” and determines whether “the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or capricious action.” Great Atlantic & Pacific Tea Co., Inc. v. Board of License Comm’rs of Springfield, 387 Mass. 833, 837, 838 (1983); see Ballarin, 49 Mass. App. Ct. at 512 (when reviewing the local licensing authority’s authority, court does not assess the evidence but rather “examine[s] the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making”).

A local board may deny a license even if the facts show that a license lawfully could be granted. Donovan, 65 Mass. App. Ct. at 379. “Neither the [local board’s] broad discretion nor the limitations on judicial review, however, mean that the [local board] can do whatever it pleases whenever it chooses to do so.” Id. “Instead, ‘[w]here the factual premises on which [the board] purports to exercise its discretion is not supported by the record, its action is arbitrary and capricious and based upon error of law, and cannot stand.’” Id., quoting Ruci v. Client’s Sec. Bd., 53 Mass. App. Ct. 737, 740 (2002).

“Whenever a Local Board denies an application for a new license, refuses to issue a license, modifies, suspends, revokes or cancels a license, denies an application for transfer of location or between persons, denies an application for change of a description of the licensed premises, or levies a fine, the Local Board *shall . . . stat[e] the reasons for such action.*” M.G.L. c. 138, § 23 (emphasis added). “A board must state the reasons for its decision” and its findings “must be ‘adequate to enable [the Commission] to determine (a) whether the order and conclusions were warranted by appropriate subsidiary findings, and (b) whether such subsidiary findings were supported by substantial evidence.’” Exotic Restaurant Concepts, Inc. v. Licensing Bd. for the City of Boston, Suffolk Superior Court, 0784 CV 03287 at 5-6 (Borenstein, J., Aug. 8, 2008),

quoting Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 879 (1981); accord Murfslix, Inc. d/b/a Murphy's Package Store (ABCC Decision March 21, 2013) (general findings are legally insufficient).

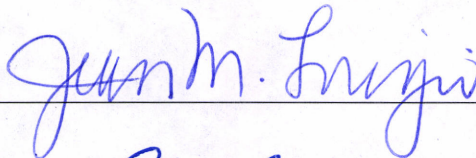
Here, the Local Board did not make *any* written findings.¹ Without a statement of reasons, the Commission cannot evaluate how the Local Board rendered its decision, or upon what evidence it made its decision. Therefore, the Commission cannot adequately review the Local Board's denial of the Applicant's application. As the Commission has stated before, "[t]he failure to issue [a] written statement of reasons, as required by law, is fatal to the Local Board on appeal." Gran Chimu Inc. (ABCC Decision, Dec. 16, 2015), and cases cited.

CONCLUSION

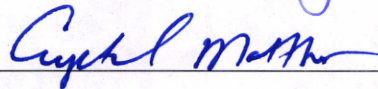
Based on the evidence and testimony presented at the hearing, the Commission REMANDS this matter to the Local Board to issue within ten (10) days from receipt of this decision and order subsidiary findings and the statutorily required statement of reasons, upon which it made its decision denying the M.G.L. c. 138, § 12 All-Alcoholic Beverages Retail license application of Full Revolution LLC. The applicant may request a further hearing before the Commission to present oral argument and legal authority on the denial by the Local Board based on their subsidiary findings.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

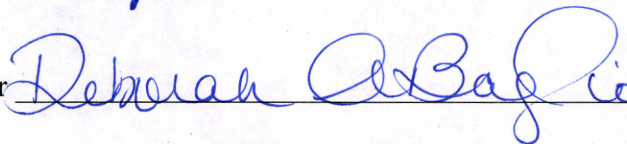
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: July 25, 2023

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.

¹ Executive Director Green's September 2, 2022, letter to the Applicant's counsel does not constitute a written statement of reasons since the statement of reasons must be issued by the Commissioners of the Local Board. Indeed, Executive Director Green recognizes this by concluding in his letter that a formal statement of reasons for the Board's vote would be forthcoming.

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2022-000161-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Carolyn Conway, Esq.
Daniel Green, Esq.
Administration, File