



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**FULL REVOLUTION LLC
116-120 BRIGHTON AVENUE
BOSTON, MA 02134
LICENSE#: NEW
HEARD: 01/09/2023 and 9/18/2023**

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 remote hearings were held via Microsoft Teams on January 9, 2023, and September 18, 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;
- J. Local Board Statement of Reasons.

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 discussed 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, F, G)
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. (Exhibit H)
8. Daniel Green, Executive Secretary to the Local Board, responded by way of a letter stating that the Applicant was untruthful in answering "no" on the application and that a "formal statement of reasons for the Board's vote will be forthcoming." (Exhibit I)
9. The Applicant timely filed a notice of appeal of the Local Board's denial "with prejudice" of its transfer application.
10. The Commission held a hearing on January 9, 2023, after which it issued a Decision and Order requiring the Local Board issue the required statement of reasons.
11. On August 4, 2023, the Local Board issued its Statement of Reasons regarding Full Revolution LLC's application. (Exhibit J)
12. The Commission held a 2nd hearing on September 18, 2023.

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”).

“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 disapproved the application and issued a statement of reasons citing "...Mr. Brady's conduct in failing to disclose his criminal history and the full history of disciplinary actions concerning other licenses in which he holds an interest." (Exhibit J)

M.G.L. c. 138, § 12 states "[n]o license shall be issued to any applicant who has been convicted of a violation of a federal or state narcotic drugs law." Given the statutory prohibition, applicants for such licenses are asked if any individuals with a direct beneficial interest have ever been convicted of a State, Federal or Military Crime. Applicants are further directed that if the answer to the above question is yes, an affidavit shall be submitted providing information regarding the convictions.

While the Commission acknowledges M.G.L. c. 276, § 100A under which Mr. Brady's criminal record was sealed, the Local Board and the Commission nevertheless have a duty to comply with the Massachusetts Liquor Control Act, M.G.L. c. 138, and must ensure that § 12 licenses are not issued to any applicant who has been convicted of a violation of a narcotic drugs law. "...the sealed records statute does not operate to erase the fact of a prior conviction (compare G.L. c. 6, Sections 167, 171 providing for the "purging" or expungement of criminal offender information so that 'there is no trace of information removed and no indication that said information was removed.' G.L. c. 6, Section 167); it seeks simply to ensure confidentiality." Alexander J. Rzeznik vs. Chief of Police Southampton, 374 Mass. 475, 482 (1978).

Neither the Local Board, nor the Commission has the authority to approve an applicant for a § 12 license who has been convicted of a violation of a narcotic drugs law. A person with such a conviction is disqualified from holding a § 12 license. M.G.L. c. 138, § 12.

The Commission is not persuaded that a M.G.L. c. 138 alcoholic beverages license is an occupational and/or professional license. The Commission concurs with the Local Board and finds that Mr. Brady was obligated to answer in the affirmative the question on the application pertaining to prior convictions.

Because the Local Board's decision is supported by the evidence and applicable law, its disapproval of the transfer is not arbitrary and capricious.

With regard to the Local Board's consideration of the history of disciplinary actions at other licensed establishments in which Mr. Brady holds an interest, given the determination made above, the Commission need not reach this prong of reasoning.

CONCLUSION

Based on the evidence and testimony presented at the hearing, the Commission **APPROVES** the action of the Local Board in disapproving the M.G.L. c. 138, § 12 all alcoholic beverages application of Full Revolution LLC.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

Jean M. Lorizio

Crystal Matthews, Commissioner

Crystal Matthews

Deborah Baglio, Commissioner

Deborah A. Baglio

Dated: December 1, 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.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。
यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए
Dokiman sa a enpòtan epi li ta dwe tradwi touswit
'Đây là tài liệu quan trọng và cần được dịch ngay'
ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2022-000161-ad-enf

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