

TEIAM, LLC
41-45 Stanhope Street
Boston, MA 02116
Heard: October 13, 2010

DECISION

Appeal of the decision of the Licensing Board of the City of Boston (the “Board”) to cancel the License of TEIAM, LLC, formerly exercised at 41-45 Stanhope Street, Boston, MA.

The following exhibits are in evidence:

1. Copy of Purchase Agreement by and between the Licensee and Bertucci’s;
 2. Copies of Signed letter of Interest from Todd English Enterprises, LLC dated June 17, 2008;
 3. Copy of Licensee’s Internal Spreadsheet;
 4. Copies of Numerous Letters of Intent Negotiated by the Licensee with Prospective Purchasers;
 5. Copy of Draft Letter of Intent negotiated by the Licensee and Michael Mastellone;
 6. Copy of Current Lease Agreement for the Premises dated September 29, 2010.
 7. Copy of Licensee’s September 29, 2010 Letter to the Local Board Requesting Reconsideration for Cancelling the License.
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- A. Local Board Hearing Notice dated October 1, 2009;
 - B. Local Board Hearing Notice dated October 15, 2009;
 - C. Board’s Letter dated November 2, 2009, regarding decision;
 - D. Local Board Hearing Notice dated November 12, 2009;
 - E. Board’s Letter dated January 28, 2010, regarding decision;
 - F. Board’s Letter dated April 30, 2010, regarding decision to cancel license; and
 - G. Local Board’s Statement of Reasons.

There is one (1) tape of this hearing.

FACTS

1. The licensee, TEIAM, LLC is the holder of a C.V. 7-Day All Alcoholic Beverages License at the above location.
2. The Board voted on August 27, 2008 to grant the transfer of the license from Bertucci's Restaurant Corp. to TEIAM, LLC. The ABCC approved said transfer on October 8, 2008.
3. Boston Police issued Licensed Premise Violation No. 20198 on August 8, 2009 for non use of the license. The Board held a violation hearing on November 10, 2009.
4. Maurya Twitchell, Manager of Record, appeared at the board's hearing and testified that the licensee is also the landlord. Ms. Twitchell testified that they are not in the restaurant business and do not want to be in the restaurant business. She stated that they had a potential tenant to whom they would have transferred the license but the tenant lost financing. She testified that having the license makes the space more attractive to potential tenants.
5. On November 12, 2009, the Board voted to hold a further hearing in January, 2010.
6. The Board held a hearing on January 26, 2010. Counsel for the licensee appeared and submitted a copy of a letter of intent regarding the transfer of the license and stated that she would submit the entire transfer application within sixty (60) days.
7. On January 28, 2010 the Board voted to allow sixty (60) additional days within which to file the transfer application.
8. In reviewing their record at the end of April, the Board became aware of the fact that over ninety (90) days had elapsed and a transfer application had not been filed. In fact, the Board did not receive any correspondence from the licensee after the January 28, 2010 hearing. The licensee has held this license for approximately one (1) and a half years and has never operated. The licensee had no intention of operating under this license. The Board determined that a reasonable amount of time was allowed within which to file the required transfer application.
9. On April 30, 2010, pursuant to M.G.L. c.138 §77, the Board voted to cancel the license for non-use.

DISCUSSION

Once a local board has determined that a license holder risks cancellation of its license under M.G.L. c. 138, §77 as a result of non-use of the license, this Commission evaluates the amount of time the board has given the licensee to cure the non-use to ensure its reasonableness. The Commission's practice of granting a reasonable time to transfer a license is in step with the Board of Selectmen of Saugus v. Alcoholic Beverages Control Commission, 32 Mass. App. Ct. 915 (1992). "Under the authority of M.G.L. c. 138, §77, this statute explicitly gives the Commission the authority to review the license cancellation by the Local Board." Id. In Saugus, this Commission gave this

Licensee six (6) months to transfer the license once he received notice of the risk of cancellation. Id.

It is this Commission's practice to allow the licensee six (6) months from the date of the notice of the risk cancellation to cure the non-use by either operating its premises or filing the appropriate application to transfer the license. Id. The Commission's sense of fairness is forward looking and the time within which the licensee must act does not begin to run until the licensee is first put on notice that there is a potential enforcement of Massachusetts General Laws chapter 138, §77. In re: Empresas Guanacas, Inc. dba Mango Grill Fine Latin Cuisine, (Watertown)(ABCC Decision dated March 13, 2009). "A Licensee cannot cease operations, sit silent and avoid contact with the Local Board without facing the real peril of the cancellation of its license." In re: Italian-American Restaurant, Inc. dba Italian American Restaurant, (Boston)(ABCC Decision dated July 2008).

In this case, the Local Board put the licensee on notice at the hearing on November 10, 2009 that it had to use the license or it would be terminated. Thereafter on April 30, 2010, the Board voted to cancel the license for non-use. The Board did not afford the licensee a six (6) month period of time to either use or transfer the license, after it was put on notice of the consequences of failing to either use or transfer the license, prior to cancelling the license.

CONCLUSION

The Alcoholic Beverages Control Commission DISAPPROVES the action of the Boston Local Board in cancelling the license for non-use and remands the matter to the Local Board with the recommendation that the Local Board give the licensee a reasonable period of time within which to comply by (a) operating the license, (b) filing an appropriate application to transfer the location of the license where the licensee will conduct the licensed business, or (c) filing an appropriate application to transfer the ownership of the license to a licensee that will conduct the licensed business.¹

¹ The Commission notes that given the time of the hearing and the time of this decision, this case presents an additional, undetermined issue. Because the hearing in this case was held on October 13, 2010, no evidence could be presented of any action taken by the Licensee to renew the license into calendar year 2011 (see M.G.L. c. 138, §16A). Without renewal of the license into calendar year 2011, the license expires by operation of law. M.G.L. c. 138, §23, ¶ 11 ("Every license and permit granted under the provisions of this chapter, unless otherwise provided in such provisions, shall expire on December thirty-first of the year of issue, subject, however, to revocation or cancellation within its term"). If it has not yet done so, the licensee must act forthwith to file an appropriate application to renew the license into calendar year 2011, subject to all statutory conditions that apply. Without a renewal of the license into calendar year 2011, the Commission is without authority to re-instate the license after the expiration of the license term. See Board of Selectmen of Sudbury v. Alcoholic Beverages Control Commission, 25 Mass.App.Ct. 470, 519 N.E.2d 1365 (1988). In re: Italian-American Restaurant, Inc. dba Italian American Restaurant, (Boston)(ABCC Decision dated July 2008).

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner _____

Kim S. Gainsboro, Chairman _____

Robert Cronin, Commissioner _____

Dated in Boston, Massachusetts this 22nd day of December 2010.

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 days of receipt of this decision.

cc: Local Licensing Board
Karen Simao, Esq. via Facsimile 617-946-4624
Jean Lorizio, Esq. via Facsimile 617-635-4742
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