



**Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

DECISION

**ARSLAN, INC. D/B/A VILLAGE DAIRY
167 MAIN ST
GRAFTON, MA 01560
LICENSE#: formerly 045600017
HEARD: 04/04/2017**

This is an appeal under M.G.L. c. 138, § 67, by Arslan, Inc. d/b/a Village Dairy ("Arslan") located at 167 Main Street, Grafton, Massachusetts. Arslan is appealing the action of the Town of Grafton Board of Selectmen (the "Local Board" or "Grafton") refusing to grant Arslan's application for a M.G.L. c. 138, § 15, wines and malt beverages license. Arslan timely appealed the Local Board's action to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Tuesday, April 4, 2017.

The following documents are in evidence:

1. Attorney David Rubin's Letter 1/29/2016 to the ABCC with Arslan's 2016 renewal application;
2. Local Board's Notice 10/24/2014 for 2015 Renewals;
3. Grafton Daily Voice Article, "Post Office Pub and Bridge Street Bistro Cited in Grafton Liquor Sting" dated 2/08/2012;
4. ABCC Decision 9/21/2016;
5. Local Board's Letter 12/27/2016 to Arslan re: application for new license;
6. Local Board's Letter 11/06/2015 to Arslan re: change of manager application;
7. ABCC Letter 2/27/2015 to Arslan's counsel with its 2015 License and 2/26/15 letter to Local Board;
8. Worcester County Superior Court #1485CV02171, Trial Clerk's Notice 10/22/2015 and Judgement on Pleadings, 11/16/2015;
9. Worcester County Superior Court #1485CV02171 Memorandum of Decision 11/06/2015; and
10. Minutes of Local Board's Meeting 12/20/2016.

There is one (1) audio recording of this hearing, and two (2) witnesses testified. The Commission took Administrative Notice of Arslan's Commission Records.

PROCEDURAL HISTORY

The Commission sets forth the following procedural history, most of which the Commission found as fact in its decision of Arslan, Inc. d/b/a Village Dairy, Grafton (ABCC Decision, 9/21/16) (Exhibit 4).

1. In 1999, Grafton issued Arslan, Inc. d/b/a Village Dairy ("Arslan") located at 167 Main Street, Grafton a wine and malt beverages license under M.G.L. c. 138, § 15. (Commission Records)
2. On August 20, 2013, the Local Board unanimously voted to revoke Arslan's alcoholic beverages license on the basis that Arslan sold an alcoholic beverage to an underage person during a compliance check. (Commission Records)
3. Arslan timely appealed that decision to the Commission. (Commission Records)
4. The license revocation was not stayed. (Commission Records)
5. By decision dated, April 23, 2014, the Commission disapproved the action of the Local Board and remanded the matter with the recommendation that the license be suspended for 20 days, *nunc pro tunc*. (Commission Records)
6. On July 1, 2014, at a hearing on remand, the Local Board again voted unanimously to revoke Arslan's liquor license, upholding its prior decision. (Commission Records)
7. Thereafter, Arslan timely filed with the Commission a Petition for re-appeal. (Commission Records)
8. On November 5, 2014, the Commission ordered the Local Board pursuant to M.G.L. c. 138, § 67 to reinstate Arslan's license for 2014 and issue a renewal notification for 2015 simultaneously. The Commission stated that if the Local Board failed to issue Arslan a license for 2014, the Commission would exercise its statutory authority pursuant to the provisions of M.G.L. c. 138, § 67, ¶ 6 and issue to Arslan a license for 2014. (Commission Records)
9. On or about February 13, 2015, the Commission received a letter from Arslan's attorney informing the Commission that the Local Board had not issued the license as ordered by the Commission. (Commission Records)
10. By letter dated February 26, 2015, the Commission informed the Local Board that it was exercising its statutory authority pursuant to the provisions of M.G.L. c. 138, § 67, and the Commission issued Arslan a § 15 license for 2015. (Commission Records; Exhibit 7)
11. On July 20, 2015, the Local Board filed an action in the Worcester County Superior Court for judicial review pursuant to M.G.L. c. 30A, § 14. (Commission Records)
12. On October 22, 2015, the Superior Court denied Grafton's motion for judgment on the pleadings and upheld the Commission's decision. (Commission Records; Exhibit 8)
13. In late October 2015, when the Local Board mailed renewal applications to licensees, it did not mail such a renewal application to Arslan. (Commission Records)
14. The Local Board sent Arslan a letter on November 6, 2015 returning a change of manager application Arslan had submitted on the basis that the Local Board was not the one that approved

Arslan's liquor license. The Local Board suggested that Arslan send the change of manager application directly to the Commission. (Commission Records; Exhibit 6)

15. Arslan obtained a renewal package online, completed it, and submitted it to the Local Board on December 28, 2015. (Commission Records)
16. Arslan did not submit a renewal package to the ABCC. (Commission Records)
17. Without a renewed license for 2016, Arslan ceased selling alcoholic beverages at the end of December 2015. (Commission Records)
18. On January 29, 2016, Arslan, through its counsel, sent a letter to the Commission, and copied Grafton's Town Counsel and others, asking the Commission to reinstate and renew its license. Attached to the letter was a copy of the December 28, 2015 renewal application that Arslan had filed with Grafton. (Commission Records; Exhibit 1)
19. The Commission treated the January 29, 2016 letter as a notice of appeal, and the Commission held a hearing on June 1, 2016. (Commission Records; Exhibit 4)
20. In its September 21, 2016 decision, the Commission remanded the matter to the Local Board with the recommendation that the late renewal be treated as a new application pursuant to § 16A. (Commission Records; Exhibit 4)

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Arslan filed an application with the Local Board for a new § 15 license on or about November 20, 2016 (the "Application"). (Exhibit 5)
2. The Local Board held a hearing on the Application on December 20, 2016. (Exhibit 5; Testimony)
3. At the hearing, Arslan's owner, Amjad Chaudhry, appeared with his attorney but without the person proposed as the new manager of record. (Exhibits 5, 10; Testimony)
4. The Local Board noted at the hearing that the proposed manager of record was not present at the hearing and that the proposed manager of record had "no experience whatsoever with the sale of alcoholic beverages." (Exhibits 5, 10)
5. The Local Board suggested to Arslan's counsel that the application be withdrawn and then resubmitted with a different proposed manager of record who has liquor experience. (Exhibit 10)
6. Arslan, through its counsel, declined the Local Board's suggestion. (Exhibit 10)
7. In years prior, when Arslan was operating under a § 15 license, Arslan accrued five violations since 2005, which is the greatest number of violations by one licensee in Grafton's history. (Testimony; Exhibit 5)
8. The Local Board also noted that Chaudhry has another licensed premises in Gloucester, Massachusetts, which was the subject of a violation for sale to a minor in November of 2015. (Exhibits 5, 10)

9. At the hearing, the Local Board voted 3-2 to deny the Application. (Exhibits 5, 10)
10. In its December 27, 2016 decision, the Local Board summarized its reasons for the denial by stating that “there is significant concern about: (1) [Arslan’s] many prior violations, which the Police Chief stated at the hearing is the most in Grafton’s history; (2) given those violations, [Arslan’s] failure to submit a manager who has experience in alcohol sales; and (3) [Arslan’s] failure to have [the proposed] new manager present at the hearing to respond to the Board’s questions and concerns.” (Exhibit 5)

DISCUSSION

This appeal comes before the Commission on Grafton’s denial of Arslan’s application for a new § 15 license following Arslan’s late application for renewal. See M.G.L. c. 138, § 16A (providing that “if the [renewal] application does not meet the conditions hereunder, it shall be treated as an application for a new license and all the procedures set forth under section fifteen A shall be applicable thereto).

In reviewing a local licensing authority’s decision denying an application, 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, Inc. v. Boston Licensing Bd., 49 Mass. App. Ct. 506, 512 (2000) (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”). However, while this discretion of the local licensing authority is broad, “it is not untrammelled.” Ballarin, Inc., 49 Mass. App. Ct. at 511.

A local board may deny a license even if the facts show that a license lawfully could be granted. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). “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 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)).

A Board must state the reasons for its decision whether or not to issue the liquor license. M.G.L. c. 138, § 23. “Adjudicatory findings must be ‘adequate to enable [a court] 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.’” Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879, 880 (1981) (quoting Westborough v. Dep’t of Pub. Util., 358 Mass. 716, 717-718 (1971)).

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. As § 23 provides in pertinent part:

“[t]he provisions for the issue of licenses and permits [under c. 138] . . . 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. 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. Retail 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).

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. Donovan, 65 Mass. App. Ct. at 378-379; Ballarin, Inc., 49 Mass. App. Ct. at 510-511. A local board exercises very broad judgment about public convenience and public good with respect to whether to issue a license to sell alcoholic beverages. Donovan, 65 Mass. App. Ct. at 379.

A local board's determination to deny an application based on the lack of public need is not contrary to law where the local board considers the need for the particular business that the applicant sought to run, and the local board applies its analysis to the applicant's proposed business and to the location of the proposed business. Id. at 380. "Need in the literal sense of the requirement is not what the statute is about. Rather the test includes an assessment of public want and the appropriateness of a liquor license at a particular location." Ballarin, Inc., 49 Mass. App. Ct. at 511. "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.* Id. (Italics added).

Upon review of the record before the Local Board and the evidence before Commission, the Commission finds that the Local Board fulfilled its responsibility regarding the Application and that the Local Board's decision was not based on an error of law or reflective of arbitrary or capricious action. The Local Board considered Arslan's numerous past violations, which the chief of police stated were the most in Grafton's history. (Testimony; Exhibits 5, 10). Arslan's history of violations were a proper consideration for the Local Board, who "may take into account . . . the sort of operation that carries the license, and the reputation of the applicant." Ballarin, Inc., 49 Mass. App. Ct. at 511; see Las Brisas, Inc. d/b/a Las Brisas, Somerville (ABCC Decision, 11/15/11) (Commission determined applicant was not the sort of operation which should be approved where applicant failed to call the police after a disturbance on the premises resulting in serious bodily injury and was selling alcoholic beverages in violation of the law); Yu Hua Chen d/b/a Ming Seafood Restaurant, Quincy (ABCC Decision, 3/30/12) (in considering applicant's reputation and sort of operation, Commission disapproved application where applicant sold alcoholic beverages without a license, allowed customers to bring their own bottle of alcohol to the premises, and had safety violations according to the fire department); Tea Garden In Athol, Inc., Athol (ABCC Decision, 12/18/12) (Commission disapproved application where applicant repeatedly took deliberate steps to circumvent the law, including selling alcoholic beverages without a license). Compare Verc Enterprises, Inc., Randolph (ABCC Decision, 8/11/14) (considering applicant's exemplary history of operation in all five of its licensed package stores in two states). The Commission is persuaded that the Local Board's decision, which was specifically grounded upon two of the Ballarin factors, was a reasonable exercise of its lawful discretion.

Likewise, the Commission concludes that the Local Board's determination that the proposed manager of record was not qualified was supported by the record. The proposed manager of record had no experience in the sale of alcoholic beverages. (Exhibits 5, 10). The Local Board's concern with the proposed manager of record was highly appropriate, especially given Arslan's history of past violations.

See EKB Corp., Inc. d/b/a Sully C's Bar and Grill, Saugus (ABCC Decision, 2/5/13) (determining applicant not qualified to receive a license where proposed manager of record had not worked in the alcoholic beverages industry for almost forty years, but remanding case to the local board so applicant could propose a more experienced manager of record where the chairman of the local board had testified that the local board likely would have approved the application had applicant presented a more experienced proposed manager). While the Local Board was willing to give Arslan the opportunity to postpone the hearing so that the proposed manager of record could appear before the Local Board and answer any questions, Arslan declined the opportunity. (Exhibit 10). The Commission is not persuaded that the Local Board's decision to deny the license was based on an error of law or abuse of discretion.

CONCLUSION

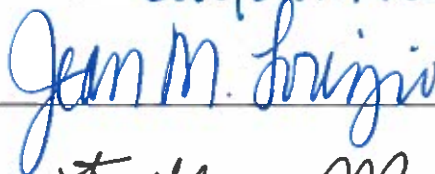
Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the Town of Grafton Board of Selectmen in denying the application of Arslan, Inc. d/b/a Village Dairy for a new M.G.L. c. 138, § 15 license.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Jean M. Lorizio, Chairman



Kathleen McNally, Commissioner



Dated: May 19, 2017

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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