



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

AMENDED DECISION

RANSAN ROTISSERIE, INC. DBA BRAZA ROTISSERIE
566 PLEASANT ST.
NEW BEDFORD, MA 02740
LICENSE#: 077800194
HEARD: 12/04/2012

Ransan Rotisserie, Inc. dba Braza Rotisserie (the "Applicant" or "Ransan") applied for the transfer of ownership and change of location of an annual Wine and Malt Beverages Alcohol License pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held an Informational Hearing on Tuesday, December 4, 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:

- A. New Bedford Police Department Incident Report no. 10-2179-OF dated March 2, 2010;
- B. New Bedford District Court Docket Sheet no. 0633CR004534 dated July 17, 2006;
- C. New Bedford District Court Docket Sheet no. 1033CR001379, date complaint issued March 3, 2010; and
- D. Commonwealth of Massachusetts License to Carry Firearms, date of issue March 7, 2011 for Randy Cardoso.

The Commission took Administrative Notice of the contents of the file for the license application Ransan Rotisserie, Inc. dba Braza Rotisserie, 566 Pleasant St., New Bedford, Massachusetts, 02740.

There is one (1) audio recording of this hearing.

FACTS

1. Ransan Rotisserie, Inc. dba Braza Rotisserie seeks approval from the Commission to acquire the license located at 2840 Acushnet Avenue, New Bedford to be exercised at 566 Pleasant St., New Bedford, Massachusetts. (Commission Record)
2. On September 7, 2012, Ransan had signed a Petition For Transfer of Ownership of an alcoholic beverages license from Pella Corp. dba G&S Pizza, license #077800194, located at 2840 Acushnet Avenue, New Bedford, Massachusetts.

3. On September 8, 2012, Randy R. Cardoso, one of the corporate officers, and a shareholder signed an Application For Retail Alcoholic Beverage License (“the Application”), as well as a personal information form, “under the pains and penalties of perjury.”
4. On September 10, 2012, the Applicant submitted the application to the New Bedford Licensing Board.
5. On September 24, 2012, the New Bedford Licensing Board granted the Application and submitted the documents to the Commission for approval.
6. On October 1, 2012, the Commission received the application. Investigator Mark Kenny was assigned to complete the investigation and inspection regarding this Application.
7. The officers, directors, and stockholders of Ransan are listed in the Application form titled “Petition For Transfer of Ownership” as follows:
 - . Randy R. Cardoso, president, secretary, and co-director and shareholder
 - . Sandra N. Botelho, treasurer, co-director, and shareholder
8. The individuals with a beneficial interest in the license are listed in Question 10 of the Application as follows:
 - . Randy R. Cardoso, president, secretary, director and shareholder
 - . Sandra N. Botelho, treasurer, director, and shareholder
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.
10. In the Ransan Application, Mr. Cardoso 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?”
11. Mr. Cardoso signed this form “under the pains and penalties of perjury.”
12. As part of his investigation, Investigator Kenny submitted Criminal Offender Record Information (“CORI”) checks for each member of the applicant’s shareholders and the license manager.
13. Investigator Kenny obtained the CORI reports. In a document entitled “Recommendation of The Investigator”, Investigator Kenny indicated that he recommended approval of this application and further noted the receipt of information obtained from the CORI reports.
14. On December 4, 2012, this Commission held an informational hearing to determine whether the Application should be approved or disapproved.

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).

At the hearing, four (4) exhibits were submitted and three (3) witnesses testified including Mr. Randy Cardoso. During his testimony, Mr. Cardoso appeared forthright in his answers and his demeanor was direct and not evasive. The Commission finds his testimony credible.

CONCLUSION

Based on the evidence and testimony at the hearing, the Alcoholic Beverages Control Commission is satisfied that the applicant is fit to hold the license.

The Commission **APPROVES** the application of Ransan Rotisserie, Inc. dba Braza Rotisserie's to obtain a transfer of ownership of the license from Pella Corp. dba G&S Pizza, license #077800194, located at 2840 Acushnet Avenue, New Bedford, Massachusetts.

The application will be processed forthwith for approval in the usual administrative process.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner *Susan Corcoran*

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kathleen McNally, Commissioner *Kathleen McNally* 2/15/13
February 13, 2013

Dated: February 15, 2013

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: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Mark Kenny, Investigator
Edward J. Sylvia, Jr. Esq. via Facsimile 508-992-3175
Administration
File



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

RANSAN ROTISSERIE, INC. DBA BRAZA ROTISSERIE
566 PLEASANT ST.
NEW BEDFORD, MA 02740
LICENSE#: 077800194
HEARD: 12/04/2012

Ransan Rotisserie, Inc. dba Braza Rotisserie (the "Applicant" or "Ransan") applied for the transfer of ownership and change of location of an annual Wine and Malt Beverages Alcohol License pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held an Informational Hearing on Tuesday, December 4, 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:

- A. New Bedford Police Department Incident Report no. 10-2179-OF dated March 2, 2010;
- B. New Bedford District Court Docket Sheet no. 0633CR004534 dated July 18, 2006;
- C. New Bedford District Court Docket Sheet no. 1033CR001379 dated April 12, 2010; and
- D. Commonwealth of Massachusetts License to Carry Firearms dated March 7, 2011 for Randy Cardoso.

The Commission took Administrative Notice of the contents of the file for the license application Ransan Rotisserie, Inc. dba Braza Rotisserie, 566 Pleasant St., New Bedford, Massachusetts, 02740.

There is one (1) audio recording of this hearing.

FACTS

1. Ransan Rotisserie, Inc. dba Braza Rotisserie seeks approval from the Commission to acquire the license located at 2840 Acushnet Avenue, New Bedford to be exercised at 566 Pleasant St., New Bedford, Massachusetts. (Commission Record)
2. On September 7, 2012, Ransan completed an application to transfer the ownership of an alcoholic beverages license (the "Application") from Pella Corp. dba G&S Pizza, license #077800194, located at 2840 Acushnet Avenue, New Bedford, Massachusetts.

3. On September 9, 2012, Randy R. Cardoso, 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."
4. On September 10, 2012, the Applicant submitted the application to the New Bedford Licensing Board.
5. On September 11, 2012, the New Bedford Licensing Board granted the Application and submitted the documents to the Commission for approval.
6. On October 1, 2012, the Commission received the application. Investigator Mark Kenny was assigned to complete the investigation and inspection regarding this Application.
7. The officers, directors, and stockholders of Ransan are listed in the Application form titled "Petition For Transfer of Ownership" as follows:
 - . Randy R. Cardoso, president, secretary, and co-director and shareholder
 - . Sandra N. Botelho, treasurer, co-director, and shareholder
8. The individuals with a beneficial interest in the license are listed in Question 10 of the Application as follows:
 - . Randy R. Cardoso, president, secretary, director and shareholder
 - . Sandra N. Botelho, treasurer, director, and shareholder
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.
10. In the Ransan Application, Mr. Cardoso 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?"
11. Mr. Cardoso signed this form "under the pains and penalties of perjury."
12. As part of his investigation, Investigator Kenny submitted Criminal Offender Record Information ("CORI") checks for each member of the applicant's shareholders and the license manager.
13. When Investigator Kenny obtained the CORI reports he found that contrary to Mr. Cardoso'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.
14. The dispositions Mr. Cardoso received also vary from fines imposed to committed jail time. The commonality the offenses share is that they are all criminal convictions.
15. As a result of the discrepancies between the Application Randy R. Cardoso signed and submitted and his CORI and Commission records, Investigator Kenny requested

that the Commission hold an informational hearing to determine the Fitness and Character of the Applicant.

16. On December 4, 2012, this Commission held an informational hearing to determine whether the Application should be approved or disapproved.
17. After Investigator Kenny received Mr. Cardoso's criminal record, he notified Mr. Cardoso that the Application conflicted with his CORI and Commission records.
Testimony
18. Thereafter, Mr. Cardoso attempted to correct the application by admitting that he has a criminal record. He also provided an affidavit explaining the convictions.

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.”

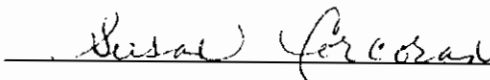
G.L. c. 138, § 23, as amended by St. 1965, c. 399.

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).

CONCLUSION

Based on the evidence and testimony at the hearing, the Commission **DISAPPROVES Ransan Rotisserie, Inc. dba Braza Rotisserie's Petition for Transfer of Ownership.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner 

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kathleen McNally, Commissioner 

Dated: February 12, 2013

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: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Mark Kenny, Investigator
Edward J. Sylvia, Jr. Esq. via Facsimile 508-992-3175
Administration
File