

Re: SNOFORD, LLC.
Premises: 174 Union Street
City/Town: North Adams, MA 02147
Heard: November 3, 2010

DECISION

This is an appeal of the action of the North Adams Licensing Board (“the Board”) for denying the All Alcohol General On Premises Beverage License application of SNOFORD, LLC (the “Applicant”). The Board voted to deny the application at a public hearing that convened on Monday, September 27, 2010.

SNOFORD, LLC appealed the Board’s decision to the Alcoholic Beverages Control Commission (the “Commission”) and a hearing was scheduled for November 3, 2010. Prior to the hearing, the Commission reviewed the documentation provided by the Board and discovered that there was no pretrial memo or findings issued by the Board stating the reasons for the denial.

Discussion

The statutory language is clear that there is no right to a liquor license of this type specified in M.G.L. c. 138, §12. 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 (2004); Ballarin Inc. v. Licensing Board of Boston, 49 Mass.App.Ct. 506 (2000). “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, at 311. “Consideration of the number of existing licenses in the area and the views of the inhabitants in the area can be taken into account when making a determination, as well as taking 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. “The opposition of the neighborhood, albeit an important factor for a licensing board to consider, does not convert the exercise of a licensing board’s adjudicatory function into a plebiscite.” Id.

Neither the 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. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). The local board “may exercise judgment about public convenience and public good that is very broad, but it is not untrammelled.” Ballarin, 49 Mass. App. Ct. at 511. Instead, “[w]here the factual premised 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.” Ruci v. Client’s Sec. Bd., 53 Mass.App.Ct. 737, 740 (2002).

Thus, a Board must state the reasons for its decision whether or not to issue the liquor license. M.G.L. c. 138, §23; Exotic Restaurants Concept, Inc. v. Boston Licensing Board, Suffolk Superior Court, C.A. No. 07-3287 (Borenstein, J.) 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, (1981) quoting Westborough. Dep’t of Pub. Util., 358 Mass. 716, 717-718 (1971). “General findings are insufficient, and if the licensing board does not make sufficient findings, it remains the Commission’s obligation to articulate the findings of fact, which were the basis of the conclusions it drew, and not merely adopt the findings of the board. Charlesbank Rest. Inc., 12 Mass. App.Ct. at 879. Recitals of testimony do not constitute findings. Johnson’s Case, 355 Mass. 782 (1968).” Exotic Restaurants Concept, Inc. v. Boston Licensing Board, Suffolk Superior Court, C.A. No. 07-3287 (Borenstein, J.)

Further, M.G.L. c. 138, §23 expressly provides, in pertinent part, “whenever the local licensing authorities deny an application for a new license, refuse to issue a license ... the licensing authorities **shall mail a notice of such action to the applicant or licensee, stating the reasons for such action and shall at the same time mail a copy of such notice to the Commission (emphasis supplied).** In this case, the Board did not issue any such findings or reasons for its action, and thus does not indicate how they evaluated the evidence presented before them and what they found credible or not credible. Therefore, the Board does not adequately state the facts and law upon which they based their decision.

Conclusion

The Commission remands this matter back to the Local Board to issue within ten (10) days from the receipt of this decision subsidiary findings and the statutorily required statement of reasons, upon which it made its decision denying the application for the All Alcohol General On Premises Beverage License. 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 these subsidiary findings.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman _____

Susan Corcoran, Commissioner _____

Dated in Boston, Massachusetts this 14th 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: North Adams Licensing Board
File