



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

EKB CORPORATION, INC. DBA SULLY C'S BAR AND GRILL
168 BROADWAY
SAUGUS, MA 01906
LICENSE#: NEW
HEARD: 02/05/2013

This is an appeal of the action of the Town of Saugus Licensing Board (the "Local Board" or "Saugus") for denying the applications to transfer the M.G.L. c. 138, §12 all alcoholic beverages license of Evos Group, Inc. d/b/a Sully C's Bar And Grill ("Evos") to EKB Corporation, Inc. ("EKB") d/b/a Sully C's Bar and Grill located at 168 Broadway, Saugus, MA.; to change the manager; and to extend the closing hour. EKB timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Tuesday, February 5, 2013.

The following documents are in evidence as exhibits:

1. Minutes of the Local Board Meeting of September 4, 2012;
2. Minutes of the Local Board Meeting of September 18, 2012;
3. Decision of the Local Board dated September 21, 2012;
4. Purchase and Sale Agreement dated August 14, 2012, between Evos Group Inc. and EKB Corporation Inc.;
5. Letter from Elaine K. Byrne, dated August 10, 2012, to Local Board;
6. Joint Pre-Hearing Memorandum dated February 1, 2013; and
7. DVD of Local Board's Hearing of September 18, 2012.

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

FACTS

The Commission makes the following findings, based on the evidence presented at the hearing:

1. Evos Group, Inc. holds an all alcoholic beverages restaurant –type license, issued pursuant to M.G.L. ch. 138, section 12, which is exercised at 168 Broadway, Saugus, MA. (Commission Records)
2. EKB Corporation, Inc. applied to petition the Licensing Board for the Town of Saugus to transfer the license currently held by Evos to EKB, to be exercised at its current location of 168 Broadway, Saugus, MA. (Exhibits 1, 2,3, 4, 6,7)

3. Evos Group, Inc. has a contract to sell this restaurant license to EKB Corporation, Inc., a Massachusetts corporation in good standing. (Exhibits 4, 6, Testimony)
4. EKB applied, in conjunction with the transfer application, to change the manager from Mr. Suleyman Celimi to Ms. Elaine K. Byrne. (Exhibits 1, 2, 3)
5. EKB petitioned, in conjunction with the transfer application, to change the closing hour of the license premises from 11:00 p.m. to 1:00 a.m.¹ (Exhibits 1, 2, 3)
6. Two hearings on this matter were held before the Local Board on September 4, 2102, and on September 18, 2012. (Exhibits 1, 2, 7)
7. Ms. Byrne's lack of experience was discussed at both hearings. (Exhibits 1, 2, 7)
8. At the Local Board hearing, it was discussed that Ms. Byrne has no restaurant experience or liquor experience with an alcoholic beverages license. (Exhibits 1, 2, Testimony)
9. The Board recommended that she take the TIPS course and the ServSafe course. (Exhibits 1, 2 Testimony)
10. Ms. Byrne satisfactorily completed both the TIPS course and the SERVSAFE course. (Testimony)
11. At the Local Board hearing Mr. Charles Saldi was representing Ms. Byrne. Mr. Saldi is not an attorney, he is a registered public accountant and he forms corporations. He has been in business in Saugus for 36 years. (Exhibits 1, 2)
12. Mr. Saldi told the Local Board that Ms. Byrne did work at a family restaurant a long time ago, but not with liquor. (Exhibits 1, 2)
13. The Local Board expressed its concerns with Ms. Byrne's lack of experience with a restaurant and with an alcoholic beverages license. (Exhibits 1, 2)
14. Mr. Saldi reported to the Local Board that Ms. Byrne has gained experience over the last two months and is learning the day to day activities of running a restaurant. (Exhibits 1, 2)
15. The current owners will stay to provide guidance for Ms. Byrne for approximately six months. (Exhibits 1, 2)
16. The Board voted 3 to 2 to deny the application of EKB and Ms. Byrne². (Exhibits 3, 7)
17. EKB and Ms. Byrne timely appealed the Local Board's decision to the Commission by letter dated September 23, 2012. (Exhibit 6)
18. A hearing on this matter was held before the Commission on February 5, 2013. (Commission Records)
19. Mr. Suleyman Celimi testified before the Commission, and the Commission finds that he is the principal of Evos which currently holds this license. (Testimony, Commission Records)
20. He testified and the Commission finds that he has owned several liquor licenses over the past twenty (20) years. (Testimony)
21. He testified and the Commission finds that he is trying to sell this licensed business to Ms. Byrne. (Testimony)
22. He owns the building in which the licensed premises is located. He would be the landlord, and EKB and Ms. Byrne would be the tenant. (Testimony)
23. There was previously a nightclub at this location which caused many problems. The premise is currently set up as a restaurant with pool tables and televisions. (Testimony)
24. Mr. Celimi said that while he owns this property, this premises will never again be a nightclub. (Testimony)
25. Ms. Byrne's son currently works for Mr. Celimi at the premises, and he has been learning the business. (Testimony)
26. Ms. Byrne's son and Ms. Byrne would run the business together. (Testimony)

¹ The Commission has does not have jurisdiction over this issue, therefore it was not considered in this appeal.

² The Local Board minutes reflect that the vote was both 3-2, and 5-0 to deny the application. The DVD video audio recording of the Local Board hearing reflects that the vote was 3-2. (Exhibits 2, 7)

27. Mr. Celimi made a verbal commitment to Ms. Byrne that he would stay around to help and train her to run the place. No document was submitted in evidence that EKB secured the services of Mr. Celimi through a written agreement. (Testimony)
28. Ms. Byrne testified that she believes she is qualified to be the license manager because she has been going to the premises a few times a week and speaking to Mr. Celimi about the employees, alcohol, vendors, and the stock room. (Testimony)
29. Ms. Byrne told the Commission that she was a waitress and a barmaid for a family business, The Brown Jug, located in Chelsea during the 1970's, and she also took a course in mixology during this time. (Testimony)
30. However, she testified that she did not provide this information to the Local Board. (Testimony)
31. Ms. Byrne testified that she has become familiar with the business because her son currently works there. (Testimony)
32. While she testified before the Commission about her extensive employment and professional experience, she has no prior experience operating or managing a restaurant or licensed premises serving alcoholic beverages. (Testimony)
33. She became certified in TIPS and SAFSERV at the request of the Local Board, and she has no criminal record. (Testimony)
34. Her son is working at the premises now, and he would assist her in operating the premises. (Testimony)
35. Mr. Michael Serino testified. He is the Chairman of the Saugus Board of Selectmen, which is the licensing authority for Saugus. (Testimony)
36. Mr. Serino testified and the Commission finds that the Local Board was concerned about Ms. Byrne's lack of experience managing a licensed premise. (Testimony)
37. The Local Board asked her to complete TIPS and SAFSERV training. (Testimony)
38. Mr. Serino testified that he thought that the vote of the Board was 5 – 0 (unanimous) to deny this application. (Testimony)
39. A Commission review of the DVD (audio and video recording) indicates that the vote was 3 – 2 to deny the application. (Exhibit 7)
40. Upon Commission review of the recording of the hearing before the Local Board, the primary concern expressed by the Board was the lack of experience of Ms. Byrne as a license manager. It was expressed by the Board that Ms. Byrne should work as an assistant manager at a licensed premises for a period of time to obtain some experience, and then she should reapply to become the manager. (Exhibit 7)
41. Mr. Serino, when asked by the Commission, testified that the Local Board possibly would have approved the transfer application if there had been another person who possessed experience running a licensed premises who applied to become manager of this premises.

DISCUSSION

The law is well-settled that “[i]t was essential to the validity of [a section 12] license that it be approved by the Commission. General Laws (Ter. Ed.) c.138, section 12,” Coyne v. Alcoholic Beverages Control Commission, 312 Mass. 224, 227, 44 N.E.2d 692,694 (1942). Further, under the controlling law, “[t]hrough the authority to issue a license is conferred by the governing statutes upon the local licensing authorities, they could rightly issue such a license only ‘subject to the prior approval of the commission.’ G.L. (Ter.Ed.) chapter 138, section 12, as amended. See, also, General Laws (Ter. Ed.) chapter 138, section 67, as appearing in St.1938, c.400; Town of Webster v. Alcoholic Beverages Control Commission, 295 Mass. 572, 574, 575, 4 N.E.2d 302. When such approval has been granted, the license is issued by the local licensing authorities. General Laws (Ter. Ed.)chapter 138, section 16B, as amended.” Coyne, 312, Mass. at 228; 44 N.E. 2d at 695.

The Supreme Judicial Court has acknowledged 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. ---, 133 N.E. 2d 775; Ziffrin, Inc. v. Reeves, 308 U.S. 132, 138-139, 60 S.Ct. 163, 84 L.Ed. 128; Carter v. Virginia, 321 U.S. 131, 137-143, 64 S.Ct. 464, 88 L.Ed. 605. 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 chapter 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 [section 12], the power to approve or disapprove applicants for licenses. See Butler v. East Bridgewater, 330 Mass. 33, 36-37, 110 N.E. 2d 922.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass 613, 619, 138 N.E. 2d 131, 135-136 (1956).

The Alcoholic Beverages Control Commission was created under General Laws chapter 10, section 70. Its authority is broad and without express limitation. See Board of Selectmen of Barnstable v. Alcoholic Beverages Control Commission, 373 Mass. 708, 716 (1977); J & J Enterprises, Inc. v. Martignetti, 369 Mass. 535, 538, (1976). The ABCC’s powers “were not intended to be perfunctory or limited.” Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 617 (1956).

General Laws chapter 138, section 23 states, in part that “The provisions for the issue of licenses and permits hereunder 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.” [a]ny license under this chapter held by an individual, partnership or corporation may be transferred to any.... 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.” M.G.L. chapter 138, section 23, paragraph 9. Thus, the licensing authorities face two questions for resolution when presented with an application to transfer ownership: i) is the transferee “qualified to receive such license in the first instance”; and ii) is the transfer “in the public interest.” In this case, there is a lack of experience of the proposed license manager. The licensing authorities must address and resolve both of these questions, viz., is this applicant qualified to receive the license in the first instance, and is this transfer in the public interest?

The Massachusetts Appeals Court has held that the statute is not about the definition of need “in the literal sense of a requirement, rather, the test includes an assessment of public want, and the appropriateness of a liquor license at a particular location. In determining whether an application for an alcoholic beverages license should be granted, “a licensing authority may take into account a wide range of factors, including the sort of operation that carries the license, and the reputation of the applicant.” Ballarin, Inc. v. The Licensing Board for the City of Boston, 49 Mass. App. Ct. 506 (2000).

The Alcoholic Beverages Control Commission, defined as a “licensing authority” in M.G.L. chapter 138, section 1, can make a determination whether this license should be approved, and in doing so, consider the sort of operation that carries the license, and the reputation of the applicant.

This matter came before the Commission on appeal. Ms. Elaine Byrne applied for Ms. Byrne to be approved as the license manager of record for this license pursuant to section 26 of chapter 138 of the General Laws. M.G.L. Ch. 138, section 26 states in pertinent part, that a license manager must be “....*nor unless such manager or representative is, with respect to his character, satisfactory to the licensing authorities.*” M.G.L. Ch. 138, section 26. During the two Local Board hearings and the Commission hearing, the issue of the lack of experience of Ms. Byrne was identified and discussed. The

issue regarding the character of Ms. Byrne was never identified or addressed. Ms. Byrne has no criminal record and no one spoke to her character or reputation. Ms. Byrne testified and admitted that she does not have experience operating or managing a business that holds an alcoholic beverages license. Ms. Byrne did testify before the Commission that she possesses some experience working as a waitress and a barmaid, in a family business which held a liquor license during the 1970's. However, she did not communicate this information to the Local Board.

The primary concern that the Local Board expressed regarding this application was not with the actual transfer of the license petition within the application. Rather, the primary concern expressed by the Local Board, and reflected in the decision to deny this application, was the lack of any experience possessed by Ms. Byrne in operating or managing a business holding a liquor license. To address the concerns about her lack of experience in the alcoholic beverages industry, Ms. Byrne did testify before the Commission in the attempt to persuade the Commission to overturn the Local Board's decision because Ms. Byrne possesses some experience working as a waitress and a barmaid, in a family business which held a liquor license during the 1970's. However, she did not communicate this information to the Local Board. Ms. Byrne also attempted to persuade the Commission to overturn the Local Board's decision by the fact that her son is working at the premises now and he would assist her in operating the premises. Ms. Byrne further urged that she is qualified to be the license manager because she has been going to the premises a few times a week and speaking to Mr. Celimi about the employees, alcohol, vendors, and the stock room. In addition, Ms. Byrne also attempted to persuade the Commission to overturn the Local Board's decision because Mr. Celimi made a verbal commitment that he would stay around to help and train her to run the place. The Commission is not persuaded.

The record of the Commission hearing does not contain any information or evidence of prior decisions or examples of the Local Board disapproving or approving a license manager with the same level or lack of experience as this applicant, Ms. Byrne.

At the Commission hearing, Mr. Serino, Chairman of the Saugus Licensing Authority, testified when asked by the Commission, that the Local Board possibly would have approved the transfer application of this license if there had been another proposed manager who possessed experience in operating a business holding a liquor license.

Upon review of the record of the Local Board proceeding in this matter, the Local Board expressed their view about concerns with Ms. Byrne's lack of experience in operating a business which engages in the sale and service of alcoholic beverages. The Local Board expressed, during their proceedings, that Ms. Byrne needs to work as an assistant manager for a period of time to gain the necessary experience, and then she should come back to the Local Licensing Authority and reapply to become the license manager.

The Commission recognizes the Local Board's concerns about the lack of experience of Ms. Byrne to become the license manager of this premises. Although Ms. Byrne did become certified in both TIPS training and SAFSERV, it was only after the Local Board identified these training programs to her. Although she may visit the premises several times a week to discuss business issues with Mr. Celimi, the Commission is persuaded that the decision of the Local Board was a reasonable exercise of its lawful discretion. The Commission is not persuaded that the Local Board committed an error of law or abused their lawful discretion in concluding that Ms. Byrne should gain experience working or training with an experienced manager of a licensed premises, and then reapply after she has gained the appropriate experience. The Commission is not persuaded that an individual is qualified to be the license manager where that individual has not worked in the alcoholic beverages industry for almost forty (40) years, where that individual's past experience was only working as a waitress and a barmaid in a family business which held a liquor license during the 1970's, the individual had no server training until the Local Board identified the training programs available, she has been going to the premises a few times a week and

only speaking about the employees, alcohol, vendors, and the stock room, her son is working at the premises now and would assist her in operating the premises, and the principal of the transferor made a verbal commitment that he would stay around to help and train her to run the place. Thus, the Commission concludes that, with this individual as the license manager, the transferee is not qualified to receive the license in the first instance and the transfer to this transferee is not in the public interest.

The Commission is persuaded by and agrees with the honest and credible assessment of Mr. Serino and his forthright opinion that if this application had been presented with a more experienced proposed license manager, the Local Board would likely have approved the transfer application.

CONCLUSION AND DISPOSITION

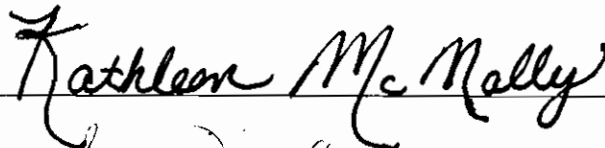
Based on the evidence, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Local Board of Saugus in denying the application to transfer the ownership of this license from EVOS Group, Inc. to EKB Corporation, Inc. The Commission **APPROVES** the action of the Local Board in denying the application of EKB to have Ms. Elaine K. Bryne approved to become the license manager of EKB Corporation, Inc. The Commission is prepared to approve the transfer application of EKB Corporation, Inc., but **NOT** Ms. Byrne as the License Manager.

The matter is remanded to the Local Board with the recommendation that the application to transfer the ownership of this license be granted once EKB files a second application, similar to this application, but with another individual possessing experience with a section 12 alcoholic beverages license, applying as the license manager. The Commission anticipates that such an application would be granted by the Local Board and then submitted to the Commission for its consideration of approval in the usual administrative process.

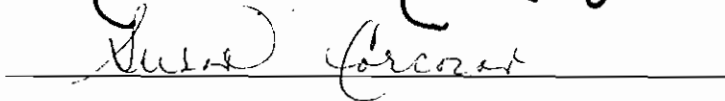
Therefore, the application is thus, **Disapproved Without Prejudice**, to a reapplication with another experienced individual applying as license manager.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

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Susan Corcoran, Commissioner

A handwritten signature in black ink that reads "Susan Corcoran". The signature is written in a cursive style and is positioned above a horizontal line.

Dated: April 1, 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: George O. Gregson, Esq. via Facsimile 781-233-9146
Ira H. Zaleznik, Esq. via Facsimile 617-439-3987
Local Licensing Board
Frederick G. Mahony, Chief Investigator
File