

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
Telephone: 617-727-3040
Facsimile: 617-727-1510*

Jean M. Lorizio, Esq.
Chairman

DECISION

**EKB CORPORATION, INC. D/B/A SULLY C'S BAR AND GRILL
168 BROADWAY
SAUGUS, MA 01906
LICENSE#: 1078-00006
HEARD: 6/14/2017 and 1/25/2018**

**SEBASTIANA'S BRICK OVEN PIZZA INC.
1539 BROADWAY
SAUGUS, MA 01906
LICENSE#: TRANSFER
HEARD: 1/25/2018**

This is an appeal of the action of the Town of Saugus Board of Selectmen for the following actions against the § 12 all alcoholic beverages license of EKB Corporation, Inc. d/b/a Sully C's Bar and Grill ("Licensee" or "EKB") and Sebastiana's Brick Oven Pizza Inc. ("Applicant" or "Sebastiana's"):

- (1) cancelling the § 12 all alcoholic beverages license of EKB Corporation, Inc. d/b/a Sully C's Bar and Grill located at 169 Broadway, Saugus, MA;
- (2) denying the 2018 renewal of the § 12 license of EKB Corp. Inc.; and
- (3) denying the § 12 license transfer application of EKB Corp. Inc. to Sebastiana's Brick Oven Pizza Inc. to be exercised at 1539 Broadway, Saugus, MA.

The appeal hearing on January 25, 2018 consolidates the previously scheduled separate hearings for EKB Corp. Inc. and Sebastiana's Brick Oven Pizza Inc.

The Licensee and Applicant timely appealed the Local Board's decisions to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Wednesday, June 14, 2017. At the June 14th hearing, the parties petitioned to have these matters consolidated. The Commission allowed this motion and a new hearing was held on Thursday, January 25, 2018.

At the close of the January 25, 2018 hearing, the Commission left the record open for the Licensee and the Applicant to submit rebuttal documents. The Licensee and the Applicant submitted documents in a timely manner. The record is now closed.

The following documents are in evidence as exhibits:

EKB Corporation, Inc. and Sebastiana's Brick Oven Pizza Inc. Exhibits

1. OccuHealth Inc.'s ("OHI") Letter re: Assessment of Basement Sewer Damage, (15 pages) 11/10/2015;
2. Town of Saugus Inspectional Services Correspondence (10/13/2015 to 6/22/2016 re: violations (9 pages);
3. Excerpts from Suleyman Celimli Deposition, vol. 3, (7 pages) 4/18/2017;
4. Photos of Fire Damaged Premises;
5. Town of Saugus Decision re: Cancellation of License for Non-use (10 pages) 1/25/2017;
6. Agreement 9/21/16 (4 pages) with Purchase & Sale Agreement 9/21/2016 between EKB Corp. and Sebastiana's Brick Oven Pizza, Inc. (5 pages);
7. Application of Sebastiana's Brick Oven Pizza, Inc., (61 pages) 10/5/2016;
8. Local Board's License File for High Country Investor, Inc. d/b/a Hilltop Steakhouse & Marketplace at 855 Broadway, for the period of October 2013 to 11/30/2016;
9. Local Board's License File for Triangle Entertainment, LLC, d/b/a Maddy's at 1639 Broadway, for the period of July 2014 to 7/13/2016;
10. ABCC Appeal Decision, 4/1/2013 for EKB's Appeal;
11. Copies of EKB's Check Payment 11/30/2016 for Its License Renewal and Town of Saugus's Refund Check, 12/22/2016; and
12. DVD of Town of Saugus Zoning Board Meeting, 3/25/2015.

Town of Saugus Exhibits:

- A. Local Board's Notice to Licensee re: Non-use of License, 7/8/2015;
- B. Local Board's Hearing Notice, 6/30/2016;
- C. Excerpt from Local Board's Meeting Minutes, 5/27/2015;
- D. Excerpt from Local Board's Meeting Minutes, 9/9/2015;
- E. Excerpt from Local Board's Meeting Minutes, 9/23/2015;
- F. Excerpt from Local Board's Meeting Minutes, 10/21/2015;
- G. Excerpt from Local Board's Meeting Minutes, 1/6/2016;
- H. Local Board's Meeting Minutes, 1/20/2016;
- I. Local Board's Meeting Minutes, 2/10/2016;
- J. Local Board's Meeting Minutes, 3/16/2016;
- K. Local Board's Meeting Minutes, 4/13/2016;
- L. Local Board's Meeting Minutes, 5/11/2016;
- M. Local Board's Meeting Minutes, 7/13/2016;
- N. Local Board's Meeting Minutes, 9/21/2016;
- O. Local Board's Meeting Minutes, 10/5/2016;
- P. Local Board's Meeting Minutes, 11/9/2016;
- Q. Local Board's Meeting Minutes, 11/30/2016;

- R. Local Board's Decision re: non-use of license, 1/25/2017;
- S. Local Board's Decision re: renewal, 12/21/2016;
- T. DVD of Local Board's Meeting, 7/13/2016;
- U. DVD of Local Board's Meeting 11/9/2016;
- V. DVD of Local Board's Meeting 11/30/2016;
- W. Local Board's License File for 44 Broad Restaurant Group, Inc. d/b/a Oye's Restaurant & Bar, for the period of August 2015 to December 2016 with 2017 Approved Renewal;
- X. Local Board's License File for Benal, Inc. 114 Broadway, for the period of September 2014 to May 2017;
- Y. Local Board's License File for Joe Pace Saugus, LLC, 190 B Main Street, for the period of July 2012 to January 2013;
- Z. Local Board's License File for Pamela Avedisian, 60 Salem Turnpike, for the period of March 2009 to August 2011.

There is one (1) audio recording of this hearing and two (2) witnesses testified.

FINDINGS OF FACT

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

1. EKB Corporation, Inc. d/b/a Sully C's Bar and Grill ("Licensee" or "EKB") is the holder of a § 12 all alcoholic beverages license exercised at 169 Broadway, Saugus, Massachusetts. The licensee has held this license since May of 2013. (Testimony, Exhibit 10)
2. EKB leased the licensed premises from Mr. Suleyman Celimli. EKB invested more than one million dollars into opening and operating the licensed business. (Testimony, Exhibits 2, 3, D, J)
3. On May 2, 2015, a fire occurred at the premises of EKB. The licensed premises sustained severe structural, smoke, and water damage. There were also plumbing, electrical, mold, and termite issues, about which EKB notified the Local Board and the Town of Saugus. (Testimony, Exhibits 1, 2, 3, 4, 5, C, D, H, J)
4. As a result of the fire damages, the licensed premises could not operate and the business was closed. (Testimony, Exhibits 1, 2, 3, 4, 5, C, D, H)
5. The Building Department of Saugus would not issue a certificate of use and occupancy for the licensed premises after the fire. EKB was relying on the landlord to repair the premises after the fire. The landlord did not repair the premises so EKB was unable to operate her business. EKB never again operated its license at this location. (Testimony, Exhibits 1, 2, 3, 4, 5, D)
6. Very soon after the fire, EKB notified the Local Board that the premises was closed due to extensive fire damage. On July 8, 2015, the Local Board issued EKB a notice of potential license cancellation for non-use. The notice advised EKB that its license was subject to cancellation or non-renewal if it was not used, sold, or transferred to a new location within

six (6) months. (Testimony, Exhibits 5, A, C)

7. After the notice was issued, EKB provided reports to the Local Board on September 2015, October 2015, January 2016, February 2016, March 2016, and April 2016 regarding the status and progress of the work at the premises. (Testimony, Exhibits 5, C, D, E, F, G, H, I, J, K, L)
8. The Local Board renewed EKB's license for calendar year 2016. (Testimony, Exhibit 5)
9. On June 30, 2016 the Local Board issued EKB a notice to appear for a show cause hearing regarding cancellation of the license for non-use. (Testimony, Exhibit B)
10. At the hearing on July 13, 2016, EKB reported to the Local Board that repairs to the premises were still non-existent and that EKB was trying to sell or transfer the license to a new location. (Testimony, Exhibits 5, M, T)
11. The Local Board voted unanimously (5 – 0) to cancel the § 12 all alcoholic beverages license of EKB. The Local Board voted to hold the cancellation in abeyance until September 21, 2016 so that EKB could sell, utilize, or transfer the location of its license. (Testimony, Exhibits 5, M, T)
12. The Local Board voted that if EKB had a concrete resolution regarding its license, the Local Board would not cancel EKB's license. If there was no resolution by September 21, 2016, EKB's license would be cancelled on that date. (Testimony, Exhibits 5, M, T)
13. On September 21, 2016 the Local Board held a hearing on EKB's license. Mrs. Byrne, the licensee owner, gave the Local Board a copy of a purchase and sale agreement to transfer the ownership and location of EKB's license. The Local Board voted to hold the cancellation in abeyance until its next meeting on October 5, 2016. (Testimony, Exhibit 5, N)
14. On October 5, 2016, an application to transfer the ownership and location of EKB's license was filed. (Testimony, Exhibits 5, O)
15. At the hearing on October 5, 2016, the Local Board voted (3 – 2) to hold the cancellation in abeyance for a public hearing to be held on November 9, 2016 for the transfer of EKB's license to Sebastiana's Brick Oven Pizza, Inc. d/b/a Sebastiana's Pizza, ("Sebastiana's"), with Mr. Frank Perry as the proposed owner and manager, at the new location of 1539 Broadway Saugus, MA. (Testimony, Exhibit 5, O)
16. The Local Board held a hearing in November 9, 2016 regarding the transfer of the license and location to Sebastiana's Brick Oven Pizza, Inc. (Testimony, Exhibits 5, P, U)
17. At the November 9, 2016 hearing, Mr. Perry appeared as the proposed owner and license manager of Sebastiana's. The Local Board found that Mr. Perry was not familiar with the Alcohol Rules and Regulations of Saugus, and that he did not have any experience operating an establishment with an alcohol license. He testified that he had experience working at a sub shop and a pizza place. (Testimony, Exhibits 5, P, U)
18. Mr. Perry also told the Local Board that his menu and business plan were not finalized,

and that he was moving into the proposed new location. He stated that he would start construction after the current tenant/licensee located at this premises moved, which would be on or before December 31, 2016. (Testimony, Exhibits 5, P, U)

19. The Local Board voted to continue the hearing until its next meeting on November 30, 2016. The Local Board advised Mr. Perry to submit his resume at the next hearing and to learn the alcohol regulations of Saugus prior to the next hearing date. (Testimony, Exhibits 5, P, U)
20. Mr. Perry appeared at the November 30, 2016 hearing. He submitted his resume naming two restaurants where he had previously worked, one as a bartender, and one as an assistant manager. He was not completely familiar with the alcohol regulations of Saugus, and he was not trained or certified in the safe sale and service of alcohol. Mr. Perry stated his menu was not completed and there had been minimal construction at the proposed transfer location. No one spoke in favor or opposition to this application. (Testimony, Exhibits 5, Q, V)
21. Mr. Perry meets the statutory requirements to be the owner of a § 12 license in Massachusetts. (Testimony, Exhibits 5, 7, O)
22. The Local Board voted (4 – 1) not to approve the transfer of license and location application to Sebastiana’s because it determined that “....the applicant has no real experience, in managing an establishment with an all alcoholic beverages license; the applicant has no real experience in managing a restaurant;.... the proposed restaurant is a proposed pizza restaurant, without a full menu. There appears to be little need for a full liquor license at an establishment with such limited food service.” (Testimony, Exhibits 5, Q, V)
23. Mrs. Byrne did not receive specific notice that if the transfer to Sebastiana’s was denied at this hearing, that there would be a vote regarding the cancellation of her license. Mrs. Byrne was not present for the Sebastiana’s hearing or vote, and was not given the opportunity to be heard on the matter. (Testimony, Exhibits P, Q, U, V)
24. At the November 30, 2016 hearing, several matters after the Sebastiana’s hearing, Mrs. Byrne inquired why the Local Board had denied the transfer to Sebastiana’s. The Local Board told her to speak to her attorney because her license no longer existed, it had been cancelled.¹ (Testimony, Exhibits Q, V)
25. On November 20, 2016, EKB filed a renewal application with the Local Board for calendar year 2017. Mrs. Byrne was orally notified by Ms. Wendy Reed of the Local Board, that EKB’s license was not being renewed, and that it was now an issue on appeal before the Alcoholic Beverages Control Commission. The Local Board returned her check. (Testimony, Exhibit 11)

1. The Local Board stated that EKB’s license had been *revoked*. The Commission finds the Local Board did not revoke the license, rather the license was cancelled for non-use pursuant to M.G.L. c. 138, § 77. (Exhibits 5, Q, R, V)

26. On December 14, 2016, the Local Board voted to disapprove the renewal of EKB's § 12 annual license because it had been cancelled.² Notice dated December 21, 2016 was sent to EKB. (Testimony, Exhibit S)

27. On January 25, 2017 the Local Board sent notice to EKB that it had voted to cancel its section 12 all alcoholic beverages license for non-use. (Testimony, Exhibits 5, R)

DISCUSSION

I. Cancellation of License:

"The licensing authorities may, after hearing or reasonable opportunity therefore, cancel any license issued under [ch. 138] if the licensee ceases to conduct the licensed business." M.G.L. c. 138, § 77. When a local licensing authority cancels a "pocket license" for non-use, "the licensee may appeal to the [ABCC] as if such authorities had refused to grant the license upon an original application thereof" *Id.* Accordingly, § 77 "explicitly gives the [ABCC] the authority to review license cancellations by local boards." Bd. of Selectmen of Saugus v. ABCC, 32 Mass. App. Ct. 914, 916 (1992). The decision of the Commission "shall be final." M.G.L. c. 138, § 77.

In the case of In Re: Turnpike @ Winona, LLC, Peabody (ABCC decision dated May 14, 2010) the Commission previously decided the legal requirements for a Local Board when it seeks to exercise its authority to cancel a license under section 77. "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. In Re: Turnpike @ Winona, LLC, Peabody (ABCC decision dated May 14, 2010) (emphasis supplied.) *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). (emphasis supplied.) "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 the 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 at least six (6) months from the date of the notice of the risk of cancellation to cure the non-use by either operating its premises or filing the appropriate application to transfer the license. 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. d/b/a Mango Grill Fine Latin Cuisine, (ABCC Decision March 13, 2009).

The Local Board notified EKB that since its license was not being utilized, that it was in jeopardy of being cancelled. On July 13, 2016, the Local Board held a show cause hearing regarding the cancellation of the license. At this hearing, EKB told the Local Board that the landlord was not making repairs to the building necessary for a certificate of use and occupancy for EKB to

2. The Local Board's notice stated that EKB's license had been *revoked*. The Commission finds the Local Board did not revoke the license, rather the license was cancelled for non-use pursuant to M.G.L. c. 138, § 77. (Exhibits 5, Q, R, V)

operate its license. As a result, EKB notified the Local Board that it needed to find a new location or a buyer for its license.

The Local Board continued the matter. In the meantime, EKB complied with the Local Board's requirement that it find a buyer for the license by November 30, 2016. While the proposed buyer was statutorily qualified to hold a § 12 license and had properly completed all necessary paperwork, the Local Board nonetheless voted to deny the transfer application on November 30, 2016. As a result of its denial of the transfer application, the Local Board also immediately voted to cancel EKB's license.

The Commission disapproves of the Local Board's cancellation of EKB's license for two reasons.

First, at all steps EKB complied with the Local Board's instructions to find a buyer and made a good faith effort to do so. EKB found a buyer who sought to transfer the license to a new location. Mr. Perry, the proposed owner of the license, was statutorily qualified to hold a § 12 license and had a properly completed application submitted with the Local Board by the Local Board's deadline of November 30, 2016. The Local Board found that Mr. Perry did not have enough experience or knowledge of the liquor industry in Saugus, and it was within their discretion to deny the application.

Second, EKB was not given notice that if the transfer to Sebastiana's was denied, the cancellation of her license would be considered by the Local Board that same evening. As such, EKB was not present for the hearing and was not afforded an opportunity to be heard before the Local Board. EKB was entitled to notice of a cancellation hearing pursuant to M.G.L. c. 138, § 77 under the general premise that licensees are entitled to due process, which includes notice and an opportunity to be heard -- neither of which was afforded here. See Konstantopoulos v. Town of Whately, 384 Mass. 123, 131 (1981) (notice and opportunity to be heard required for revocation of a license)(and cases cited); Board of Selectmen of Saugus, 32 Mass. App. Ct. at 917 ("The commission was justifiably furthering a reasonable policy of having licensees receive adequate notice of a local board's intent to cancel a valid but currently inactive license . . ."). Where EKB was denied notice and an opportunity to be heard, the cancellation of its license was improper.

The Commission is guided by the seminal case on the matter arising out of Saugus. In Board of Selectmen of Saugus, the licensee received a show cause notice for cancellation. The licensee had made several attempts to sell its license, and before the hearing the licensee actually negotiated a purchase and sale agreement with a potential buyer, who submitted a transfer application the day before the hearing. The local board still voted to cancel the license. The Commission disapproved this action, holding that the licensee should have been afforded six additional months to transfer its license. The Appeals Court affirmed the Commission. See Board of Selectmen of Saugus 32 Mass. App. Ct. 914 (1992). To be certain, the Commission has routinely held that where a licensee is making good faith efforts to transfer its license, a reasonable period of time should be afforded the licensee. See 45 Province Restaurant, LLC (ABCC Decision Feb. 22, 2012); TEIAM, LLC (ABCC Decision Dec. 22, 2010); Empresas Guanacas, Inc. (ABCC Decision March 13, 2009); Ristorante Marino, Inc. (ABCC Decision June 29, 2005); CJS Market, Inc. (ABCC Decision Aug. 16, 2004). Because EKB has complied with the Local Board's instructions from the outset, EKB should be extended an additional reasonable amount of time to find a buyer for its license or to operate its license.

The Commission finds that the Local Board's decision to cancel EKB's license for non-use was not reasonable and therefore, is disapproved by the Commission. This decision is final. M.G.L. c. 138, § 77.

II. Non – Renewal of License:

General Laws c. 138, § 23, provides that “[e]very 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.” M.G.L. c. 138, § 23. General Laws c. 138, § 16A, confers upon § 12 licensees the prima facie right to renew the license every November, subject to certain conditions. The holder of an annual license under section twelve or fifteen who applies during the month of November in any licensing period for a license of the same class for the next succeeding licensing period . . . shall be prima facie entitled thereto “Any such application may, however, be rejected for cause, subject to appeal under section sixty-seven. A person whose application has so been rejected by the local licensing authorities shall for the purposes of section seventeen be deemed to have been granted such a license until the period for such an appeal has expired or until his appeal has been dismissed.” M.G.L. c. 138, § 16A. Under General Laws c. 138, § 67, a licensee who is aggrieved by the action of the local board in rejecting its renewal application may appeal to the Commission within five days of notice of such action. M.G.L. c. 138, §§ 67, 16A.

On November 20, 2016, EKB filed a renewal application with the Local Board along with a check for the annual license fee. On December 21, 2016, the Local Board voted to disapprove the renewal of EKB's license for calendar year 2017, because the license was cancelled on November 30, 2016. The Local Board returned a check to EKB in the same monetary amount as the check submitted to the Local Board accompanying EKB's renewal application. EKB timely appealed this denial of renewal to the Commission.

The Commission determines that the evidence demonstrates that EKB properly attempted to renew its license for calendar year 2017, during the statutorily required time frame in the month of November of the prior calendar year, along with submitting the statutorily required fee. The Commission finds that EKB timely appealed the denial of its 2017 license renewal.

Based on the aforementioned findings of the Commission disapproving the cancellation of EKB's license, the Commission disapproves the Local Board's action of not renewing EKB's 2017 annual § 12 all alcoholic beverages license.

III. Transfer of License and Location to Sebastiana's Brick Oven Pizza:

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. Licenses must be approved by both the local licensing authorities and the Commission. M.G.L. c. 138, §§ 12, 67; see Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

General Laws chapter 138, § 23, provides, in pertinent part, that “[a]ny 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 23 also provides, in pertinent part, that “[a]ny license issued under this chapter may, upon application pursuant to section fifteen A, be transferred from one location to another ... with the approval of the licensing authorities.” The term “licensing authorities” is defined, in cases like this one, to be both the Commission and the local licensing authorities.

The statutory language is clear that there is no right to a liquor license. M.G.L. c. 138, §§ 12, 23. “[T]he provisions for the issue of licenses and permits [under c. 138] 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.” Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 378-379 (2004).

A local licensing authority has discretion to determine public need with respect to whether to grant a license to sell alcoholic beverages. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 378-379 (2006); Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 510-511 (2000). A local board exercises very broad judgment in determining public convenience and public good and whether to issue a license to sell alcoholic beverages. Donovan, 65 Mass. App. Ct. at 379.

“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, 49 Mass. App. Ct. at 511, 512. It is well-settled that the test for public need includes an assessment of public want and the appropriateness of a liquor license at a particular location. Ballarin, 49 Mass. App. Ct. at 511.

In Ballarin, the Court identified several factors to be considered when determining public need:

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*.

Ballarin, 49 Mass. App. Ct. at 511. (Emphasis supplied.)

In reviewing the decision of a denial by a local licensing authority, 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); accord Ballarin, Inc. v. Licensing Bd. of Boston, 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, 49 Mass. App. Ct. at 511. “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.”

Donovan, 65 Mass. App. Ct. at 379. “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 to issue a 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)). General findings are insufficient, and if the licensing board does not make sufficient findings, “it remain[s] 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 880.

Upon review of the record of proceedings before the Local Board and the evidence presented to the Commission, the Commission is persuaded that the Local Board fulfilled its responsibility regarding Sebastiana’s transfer application. The Commission finds that the Local Board’s decision was not based on an error of law or reflective of arbitrary or capricious action. See Great Atlantic & Pacific Tea Co., Inc., 387 Mass. at 837.

The Local Board concluded that the applicant had no experience in managing a restaurant or an establishment with an alcoholic beverages license; the applicant showed no knowledge of the Rules and Regulations of Saugus regarding an alcohol license; and there was no need for an alcohol license at a location with such limited food service.

In issuing its decision, the Local Board made specific and particularized findings, which the Commission determines are supported by the record of these proceedings. As the Supreme Judicial Court has stated,

[t]here was evidence before the [Local Board] that the applicant did not have sufficient experience managing an alcoholic beverages license and that proposed location was a pizza restaurant without a full menu. The [Local Board] stated the reason for their decision. There is nothing in the record to indicate that the decision was whimsical or not based on logical analysis. On the record, we can only conclude that the decision was founded on reasoned judgment and was not arbitrary or capricious.

Great Atlantic & Pacific Tea Co., Inc., 387 Mass. at 839-840.

It is well-established that a local board may deny a license even if the facts show that a license could be lawfully granted. Donovan, 65 Mass. App. Ct. at 379. The Commission determines that the record supports the decision by the Local Board to deny this transfer application based on the Local Board’s consideration and application of appropriate and relevant Ballarin factors. Ballarin, 49 Mass. App. Ct. at 511. The Commission finds that the decision of the Local Board is supported by the record, was not based upon an error of law, and thus, was not arbitrary and capricious.

Based on the evidence and testimony presented at the hearing, the Commission approves the action of the Licensing Board for the Town of Saugus in denying the transfer of license and location of

the M.G.L. c. 138, § 12 all alcoholic beverages license application of Sebastiana's Brick Oven Pizza, Inc. d/b/a Sebastiana's.

CONCLUSION

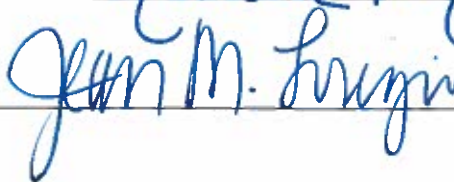
- I. Based on the evidence, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Town of Saugus Licensing Board in cancelling the § 12 all alcoholic beverages license of EKB Corporation, Inc. d/b/a Sully C's Bar and Grill for non-use pursuant to Massachusetts General Laws chapter 138, §77. *
- II. The Commission **DISAPPROVES** of the action of the Town of Saugus Licensing Board in denying the 2017 license renewal of EKB Corporation, Inc. d/b/a Sully C's Bar and Grill. The Commission remands this matter to the Local Board with the recommendation that the license be renewed for 2017 and 2018, effective January 1, 2018, *nunc pro tunc*
- III. The Commission **APPROVES** the action of the Town of Saugus Licensing Board in denying the transfer of license and location of the M.G.L. c. 138, § 12 all alcoholic beverages license application to Sebastiana's Brick Oven Pizza, Inc. d/b/a Sebastiana's.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Jean Lorizio, Chairman



Dated: August 16, 2018

*The decision of the Commission regarding the cancellation of this license is final and cannot be appealed. M.G.L. c. 138, § 77.

You have the right to appeal the decision disapproving of the non-renewal and the denial of transfer 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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cc: Michael P. Utke, Esq.
Ira Zaleznik, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File