

*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**

**LAS BRISAS, INC.**  
**D/B/A LAS BRISAS**  
**561 MCGRATH HIGHWAY**  
**SOMERVILLE, MASSACHUSETTS 02145**  
**HEARD: NOVEMBER 15, 2011**

Las Brisas, Inc. (the applicant) applied for a Wine and Malt Beverages License pursuant to M.G.L. c. 138, section 12. The Alcoholic Beverages Control Commission (the "Commission") held an Informational Hearing on Tuesday, November 15, 2011 regarding whether the application for this license 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:

Exhibit 1: Letter dated April 4, 2011 written by Somerville Police Captain Charles J. Femino.

The Commission took Administrative Notice of the contents of the file for the license application of Las Brisas, Inc. d/b/a Las Brisas, 561 McGrath Highway, Somerville, Massachusetts, 02145.

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

**FACTS**

1. On February 1, 2011 Mr. Roland Romero filed an application with the Somerville Licensing Board as the sole shareholder, director, and officer of Las Brisas, Inc. d/b/a Las Brisas, for a new Wine and Malt Beverages License.
2. Mr. Roland Romero also applied to be the licensed manager of Las Brisas, Inc.
3. The Somerville Licensing Board granted the application of Las Brisas, Inc. d/b/a Las Brisas, Mr. Rolando Romero, Manager, and submitted the application to the Alcoholic Beverages Control Commission (the "Commission") for approval.
4. Commission Investigator Paul Capurso was assigned to complete the investigation and inspection regarding this application.

5. On September 2, 2011, while the application was pending investigation at the Commission, Investigator Capurso requested that the Commission hold an informational hearing to determine whether the application of Las Brisas, Inc. for a Wine and Malt Beverages License should be approved.
6. At the hearing before the Commission, ABCC Investigator Paul Capurso testified that that he was assigned to conduct the investigation of the premises and the applicant.
7. During the hearing, Investigator Capurso requested that the Commission take Administrative Notice of the contents of the application and file for Las Brisas, Inc. d/b/a Las Brisas, Rolando Romero, manager, located at 561 McGrath Highway, Somerville, Massachusetts, 02145. Without objection, the Commission took administrative notice of the contents of the file of the applicant.
8. Attorney Jason Grossfield, Assistant City Solicitor for the City of Somerville, testified at the hearing that the City of Somerville has serious concerns regarding the fitness of the applicant, Las Brisas, Inc. and Mr. Romero, to hold an alcoholic beverages license.
9. Attorney Grossfield told the Commission that while the application was pending at the ABCC, and a liquor license had yet to be approved by the Commission, or issued by the Local Board, Mr. Romero was serving alcoholic beverages without a license.
10. Attorney Grossfield submitted a letter from Somerville Police Department Captain Charles Femino (See Exhibit 1).
11. The Commission heard testimony that on the evening of March 12, 2011, the Somerville Police were notified of a disturbance which occurred at the premises. The Police determined that one patron had attacked another patron with a machete. One of the patrons was transported to the hospital with very serious injuries.
12. The Commission heard testimony that the Somerville Police, during the course of their investigation of this incident, interviewed the victim of the attack. He told the Police that he and his friends were served alcoholic beverages at Las Brisas, and that other patrons were drinking alcoholic beverages on the premises.
13. Evidence was presented that although the victim had been attacked, cut, and seriously injured on the premises, Mr. Romero, the applicant, did not call for Emergency Assistance or call the Police to respond to the premises.
14. Mr. Romero testified at the hearing and admitted to serving alcoholic beverages before an alcoholic beverages license was issued, and while his application was pending at the ABCC.
15. Mr. Romero further testified that an attack with a machete occurred on his premises, and that he did not call for Emergency Assistance or call the Police. He testified that when the attack occurred, he left the premises.
16. Mr. Romero testified that he is currently operating a restaurant at this location, where only food is served.

17. Attorney Grossfield stated that Mr. Romero's failure to call the Police during the disturbance is a violation of the City of Somerville's Alcoholic Beverages Licensing Rules and Regulations.
18. Attorney Grossfield stated that, although the Somerville Licensing Board initially approved this application, the Somerville Licensing Board no longer believes that Las Brisas, Inc. and Mr. Romero have the satisfactory fitness and character to hold a liquor license.
19. Attorney Grossfield requested that the Commission disapprove this application.

### ISSUE

Whether the application filed by Las Brisas, Inc. for a wine and malt beverages license, located at 561 McGrath Highway, Somerville, Massachusetts should be approved by the Commission?

### 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]hough 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." M.G.L. chapter 138, section 23.

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. In this case the Commission is very concerned whether this applicant, Las Brisas, Inc. and Mr. Rolando Romero, will conduct lawful operations if this license is approved. Las Brisas, Inc. and Mr. Rolando Romero, based on the evidence presented to the Commission and by the applicant's own admissions, 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. M.G.L. chapter 138, section 2, paragraph 1; section 41. The applicant also was unlawfully storing alcoholic beverages. M.G.L. c. 138, section 2.

Based on the totality of the facts, evidence, and admissions made by the applicant, and taken in conjunction with the request from the Somerville Licensing Board, the Commission finds that Las Brisas, Inc. is not the sort of operation which should be approved to hold an alcoholic beverages license. The Commission thereby DISAPPROVES this application of Las Brisas, Inc.

The Commission gives great weight to the testimony provided by the representative of the Local Board. This testimony included the fact that the Local Board would not grant this application if faced with the question today.

## CONCLUSION

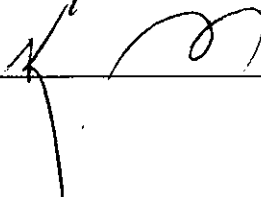
**The Commission hereby DISAPPROVES of the application of Las Brisas, Inc, for a Wine and Malt Beverages License.**

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Kim Gainsboro, Chairman



Dated: February 14, 2012

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: Attorney Anne Vigorito  
Attorney Jason Grossfield, Somerville Law Department  
Local Licensing Board  
Attorney William Kelly  
✓ Frederick G. Mahony, Chief Investigator  
Paul Capurso, Investigator  
Administration  
File