



*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**

**LIBERTY BEER & WINE, LLC DBA BEER & WINE DEPOT**  
**668 LIBERTY ST.**  
**SPRINGFIELD, MA 01104**  
**LICENSE#: NEW**  
**HEARD: 07/10/2013**

This is an appeal of the action of the City of Springfield Licensing Board (the "Local Board" or "Springfield") in denying the M.G.L. c. 138, §15 application for an annual wine & malt beverages license of Liberty Beer & Wine, LLC dba Beer & Wine Depot (the "Applicant" or "Liberty") located at 668 Liberty St., Springfield, MA. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, July 10, 2013.

The following documents are in evidence:

1. Affidavit of Thomas Rooke;
  2. Photographs;
  3. Section 15 Licenses in Liberty Heights (1980s/1990s);
  4. Section 15 Licenses in Liberty Heights (currently);
  5. Office of Planning & Economic Development Analysis for Liquor License;
  6. Springfield and its Neighborhoods (bird's eye view); and
  7. Springfield Planning Board (bird's eye view).
- A. Audio CD of Springfield Licensing Board's Hearing held December 27, 2012;
  - B. Local Board's Decision dated January 10, 2013;
    - a. License Application;
    - b. Supplements to License Application;
    - c. Board minutes of December 27, 2012;
    - d. Signature Petition presented by Applicant;
    - e. Commission Notice of Indefinite Suspension dated August 24, 2012, issued to the previous licensee (668 Liberty Liquors & Spirits LLC dba Stephen's Liquors) at the Proposed Location; and
    - f. Letter in Opposition to the Application from the Upper Hill Residents Council a/k/a Hungry Hill Neighborhood Council.
  - C. Letter dated March 6, 2013, affirming denial;
  - D. Letter dated March 28, 2013, Local Board Minutes.

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

The Commission took Administrative Notice of the Commission records for Liberty Beer & Wine, LLC dba Beer & Wine Depot.

### FACTS

1. On December 27, 2012, the Springfield Board of License Commissioners (the “ Local Board”) held a hearing on Liberty Beer & Wine, LLC dba Beer & Wine Depot’s (the “Applicant”) application for a new annual wine and malt beverage license pursuant to M.G.L. c. 138, §15 .
2. Mr. Raju R. Patel (“Mr. Raju”) is the sole shareholder and officer of the Applicant as well as the proposed license manager. The address is 668 Liberty St., Springfield, MA (the “Proposed Location”).
3. The Applicant currently operates as a gas station, convenience store with a Keno parlor, and Dunkin Donuts drive-through.
4. The Proposed Location is on Liberty St. in the Hungry Hill section of Springfield and is zoned Business A. The Proposed Location is abutted by and in close proximity to commercial properties zoned Business A and Business B, and residential properties zoned Residence B.
5. There are nine (9) M.G.L. c. 138, §15 licensed establishments within an approximately three (3) mile radius of the Proposed Location, including one which is on the same street 0.2 miles from the Proposed Location. (Records of the Springfield Commission)
6. Springfield’s Planning Board approved the applicant’s plan to use the location as a licensed premises.
7. The Proposed Location was previously the site of an annual wine and malt beverage license under M.G.L. c. 138, §15. The previous licensee was 668 Liberty Liquors & Spirits LLC dba Stephen’s Liquors (“Previous Licensee” or Stephen’s Liquors”), and was approved by the Commission on October 20, 2004.
8. The previous licensee was owned by Mr. Hasmukh Patel (“Mr. Hasmukh”) as sole managing member of the LLC, and Mr. Hasmukh was the approved manager of record.
9. From 2010-2011 Commission investigators examined the business operations of Stephen’s Liquors. As part of this review, they interviewed Mr. Raju. Mr. Raju is the brother-in-law of Mr. Hasmukh. Mr. Raju stated that:
  - He has been the manager of the licensed premises for six (6) years;
  - He is a member of the LLC;
  - He hires and fires all the employees;
  - He orders and pays for the alcoholic beverages;
  - He pays the employees through a payroll company;
  - He writes and signs all checks for the business;
  - He is not a United States Citizen;
  - He is the brother-in-law of Mr. Hasmukh ;
  - Mr. Hasmukh comes by the licensed premises once a week for about two (2) hours;

- Mr. Hasmukh lives in New York, not in Massachusetts.
10. As a result of the information gleaned, at some point in December 2011, Commission investigators took out charges against Stephen's Liquors.
  11. In January of 2012, Mr. Raju appeared before the Local Board at which time he was approved to be the license manager of Stephen's Liquors, in place of Mr. Hasmukh.
  12. Mr. Raju served as the license manager from January 2012 through August 24, 2012.
  13. On August 7, 2012, the Commission held a hearing on the above referenced alleged violations of M.G.L. c. 138.
  14. On August 24, 2012, the Commission indefinitely suspended Stephen's Liquors alcoholic beverages license, based upon a finding that the license was transferred without first obtaining permission from both the Local Board and the Commission as required by M.G.L. c. 138, §23, and upon a further finding of violations under M.G.L. c. 138, §15A .
  15. In the case before the Commission, after Mr. Raju completed his presentation of the Application, the Local Board, discussed the history of the Proposed Location as it related to the Commission's August 24, 2012 decision, the Previous Licensee, and Mr. Raju.
  16. Chairman Sygnator summarized the Commission decision, specifically the relationship between the previous owner/manager of record: Mr. Hasmukh and Mr. Raju.
  17. Chairman Sygnator stated that pursuant to the Commission decision it appeared that Mr. Hasmukh and Mr. Raju were engaged in running Stephen's Liquors together.
  18. The Local Board relied upon the Commission's findings of fact in its decision dated August 24, 2012, in rendering its decision that is the subject of this appeal.
  19. The Local Board found that the illegal license transfer and undisclosed interest involved the actions of Mr. Raju. Specifically, the Local Board found that Mr. Raju was an accomplice to the violations found by the Commission against the Previous Licensee as Mr. Raju participated in perpetuating the fraud of the Previous Licensee.
  20. The Local Board went on to find that:
    - In 2003 Mr. Hasmukh applied for license as its sole managing member, and the license manager of the Previous Licensee;
    - In 2004 Mr. Hasmukh testified that his residence and ownership was in an apartment with his brother-in-law Mr. Raju in Springfield, MA;
    - Pursuant to the 2003 License Application and approval, Mr. Hasmukh was the only person to have a direct or indirect beneficial interest in said license;
    - An affidavit dated October 13, 2004, by Mr. Hasmukh stated that no investor listed in the purchase of real estate located at the Proposed Location had any direct or indirect beneficial interest in any alcohol beverage license with the Commonwealth;
    - However, the owning LLC for the Proposed Location lists Mr. Raju as a manager of said LLC;
    - An application dated April 20, 2010, for a pledge of the Previous Licensee, which was disapproved by the Commission, revealed an entity other than the sole managing member Mr. Hasmukh. Mr. Raju, purportedly only an employee under the previous license,

signed as a pledgee under said application for Pledge, signed a Petition for License Transaction as Manager, and signed Written Consent in Lieu of a Corporate Vote along with Mr. Hasmukh, listing Mr. Raju as Director and Manager.

- Commission investigators found that based upon testimony on December 3, 2010 by Mr. Raju, that he had in fact been the manager of the previous licensed premises for six (6) years; he is a member of the LLC; he hires and fires all the employees; he orders and pays for the alcoholic beverages; he pays the employees through a payroll company; and he writes and signs all checks for the business;
  - A review of all cancelled checks from January 2010 through October 31, 2010, for the Previous Licensee revealed Mr. Raju's signature on all checks; and
  - A review of the Secretary of State, Corporations Division website shows the following documents [which were] not submitted for approval to the Local Board or Commission:
    - 2006 Annual Report, signed under the pains and penalties of perjury, listed both Mr. Hasmukh and Mr. Raju as managers;
    - 2007 Annual Report, signed under the pains and penalties of perjury, listed both Mr. Hasmukh and Mr. Raju as managers; and
    - 2008 Annual Report, signed under the pains and penalties of perjury, listed both Mr. Hasmukh and Mr. Raju as managers.
  - The conclusion of the Commission was read into the record which stated that "there was, at least twice, a transfer of license without first obtaining permission from both the local board and the Commission as required by statute, M.G.L. c.138, §23. The pattern of unlawfully transferring the license and interests in the license persuades the Commission that this is a pattern of conduct that appears to be the usual method of doing business and not any bona fide error or oversight."
21. The Applicant presented a petition signed by approximately three hundred and forty-five (345) residents in the neighborhood of the Proposed Location supporting the Application. However, the Local Board discredited the signature petition presented by the Applicant based upon the number of signatures of parties who appear to reside outside the neighborhood of the Proposed Location and the fact that none appeared to speak at the hearing in support of the Application. No members of the public spoke in favor of the Application at the hearing.
22. The operation of businesses at the Proposed Location has changed over the years as what was once a gas station now encompasses a convenience store with Keno parlor and Dunkin Donuts with drive-through.
23. The traffic that existed while the Previous Licensee operated exceeded an acceptable level to the neighborhood, and the granting of the license would restore the Proposed Location to those traffic levels.
24. The Proposed Location is served by the Upper Hill Residents Council ("Upper Hill") a/k/a Hungry Hill Neighborhood Council which is comprised of residents within the immediate and/or abutting area. The Council recommended that the Local Board deny the application
25. The proposed manager of record has no prior history as a manager of record with the Local Board.
26. Chairman Sygnator and Commission Casey opined that the Local Board was being asked to ignore Mr. Raju's participation in the transgressions of Hasmukh with respect to the Previous Licensee. Chairman Sygnator stated that Mr. Raju's participation with the continuing operation

of the Previous Licensee, under improper circumstances, should be considered in determining his reputation and fitness as an Applicant and proposed manager under the current Application.

27. After discussion, the Board voted unanimously to deny the new license based upon:
- a. Fitness and reputation of the Applicant as the Applicant and proposed manager knowingly participated in the fraud perpetuated by the Previous Licensee;
  - b. Lack of public need as the number of existing licenses in the locality are adequate to serve the needs of the public including the availability of wine and malt beverages on the same street approximately 0.2 mile from the Proposed Location;
  - c. Opposition of the neighborhood to the Application as evidenced by the vote against the Application by the Upper Hill, and lack of any members of the public speaking in support of the Application at the hearing; and
  - d. Threat to increased traffic as the businesses located at the Proposed Location have changed over the years increasing the flow of traffic to potentially unacceptable levels should the license be granted.

### DISCUSSION

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 Commn., 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 Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996). Section 2 of c. 138 provides, in pertinent part: "No person shall ... sell ... alcoholic beverages or alcohol, except as authorized by this chapter [.]"

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. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 619, (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."

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

The Appeals Court has held that a local board may deny a license even if the facts show that a license could be lawfully granted. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379. A local board's determination to deny an application based on the lack of public need is not contrary to law where the local board considers the need for the particular business that the applicant sought to run and the local board applies its analysis to the applicant's proposed business and to the location of the proposed business. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 380 (2004).

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). "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). However, "a board may not deny a permit simply by conjuring up a parade of horrors, particularly when it has the power to prevent them. Donovan v. City of Woburn, 65 Mass. App. Ct. 375 (2002) citing Britton v. Zoning Bd. of Appeals of Gloucester, 59 Mass. App. Ct. 68, 75, 794 N.E. 2d 1198 (2003).

The Local Board "may exercise judgment about public convenience and public good that is very broad, but it is not untrammelled." Ballarin, supra at 511. Instead, "[w]here the factual premise 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). 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.)

In this case, the Local Board fulfilled its responsibility. It made particularized and specific findings which were supported by the evidence. Furthermore, the factors that the Local Board considered and used to support its decision were based upon those cited in Ballarin. See Ballarin, supra. As such, the Local Board's decision was not arbitrary and capricious<sup>1</sup>.

Here, Mr. Raju had been illegally operating a §15 licensed premises, although he had never been authorized to do so by the licensing authorities. This was a violation of a fundamental requirement of

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<sup>1</sup> This is not to say that a different Local Board would not have reached a different conclusion based on the same set of facts.

M.G.L. c. 138. As such, the Local Board based its decision in large part on Mr. Raju's reputation. This was well within their rights under Ballarin. Id.

The Local Board essentially found that Mr. Raju's involvement in the illegal transfer of a §15 license left his character and fitness deficient to hold this §15 license. Although the circumstances under which Mr. Raju assumed control of the premises from the Previous Owner, his brother-in law, were tragic, he nevertheless violated the provisions of M.G.L. c 138. Moreover, at the time of the illegal transfer, he was not a person individually qualified to hold a beneficial interest in a license.

CONCLUSION

The Alcoholic Beverages Control Commission **APPROVES** the action of the Local Board in denying the application of Liberty Beer and Wine, LLC.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kim S. Gainsboro, Chairman, \_\_\_\_\_

Kathleen McNally, Commissioner \_\_\_\_\_

Dated: August 8, 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.

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