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*Chairman*

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Alcoholic Beverages Control Commission  
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## **DECISION**

**ALFRED ADDEZIO D/B/A SALUTE  
611 MAIN STREET  
WINCHESTER, MA 01890  
LICENSE#: NEW  
HEARD: 07/19/2017**

This is an appeal of the action of the Town of Winchester Board of Selectmen (the "Local Board" or "Winchester") for denying the M.G.L. c. 138, § 15 all-alcohol retail package store license application of Alfred Addezio d/b/a Salute (the "Applicant" or "Salute") to be exercised at 611 Main Street, Winchester, Massachusetts. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a hearing was held on Wednesday, July 19, 2017.

The following documents are in evidence as exhibits:

1. Application of Salute, 3/27/2017;
2. Local Board's Meeting Minutes, 3/13/2017;
3. Local Board's Meeting Minutes, 3/20/2017;
4. Local Board's Meeting Minutes, 4/10/2017;
5. Local Board's Decision to M. Vaughn, 4/18/2017;
6. Local Board's Decision to J. Tarby, 4/18/2017;
7. Applicant's Notice of Appeal to ABCC, 4/24/2017;
8. Recording of Local Board's Meeting, 4/10/2017;
9. Applicant's Petition of Citizen's Support;
10. Local Board's Rules of Procedures;
11. Winchester's Home Rule Charter, rev. 11/2001; and
12. Local Board's Meeting Docket, 5/15/2017.

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

## FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Alfred Addezio is an individual who filed a § 15 all-alcohol retail package store application under his name as the sole proprietor d/b/a Salute (“Salute”) with a business address of 611 Main Street, Winchester, Massachusetts.<sup>1</sup> Mr. Addezio is also the proposed manager of record.
2. The cover letter to the Salute application describes the Salute business as a “specialty retail store with an emphasis on gift baskets which would offer sales of alcohol products accompanied by pre-packaged food items in decorative baskets.” (Exhibit 1)
3. While gift baskets were intended to be Salute’s main business, Salute intended for its patrons also to be able to purchase craft beers, wines, and spirits without a gift basket. Such sale of alcoholic beverages not in gift baskets would comprise about 20% of the proposed business, and those beverages would not be refrigerated. (Testimony; Exhibit 8)
4. Generally, around the same time as Mr. Addezio, Kajal and Kevin I LLC d/b/a Liquor Junction (“Liquor Junction”) filed a § 15 all-alcohol retail package store application to be located at 632 Main Street, Winchester, Massachusetts. (Exhibit 2) Liquor Junction’s business plan was to operate a traditional package store. (Exhibit 8)
5. As of early 2017, there was only one § 15 package store license available in Winchester. (Exhibit 8; Testimony)
6. The Local Board held a hearing on March 13, 2017, but after some discussion and public comment, the Salute and Liquor Junction applications were continued to a new hearing date, March 20, 2017. Salute had raised the possibility of amending its application to propose a new location. (Exhibit 2)
7. At the Board’s hearing on March 20, 2017, Salute proposed the new location of 611 Main Street, Winchester, and given that the hearing would need to be re-advertised with the new location, both the Salute and Liquor Junction hearings were rescheduled for April 10, 2017. (Exhibit 3)
8. At the April 10, 2017 Local Board hearing, one Local Board member, David Errico, recused himself from both the Salute and Liquor Store applications. (Exhibit 2)
9. At that April 10<sup>th</sup> meeting, the Local Board first heard testimony about the Salute application and was presented with evidence that Salute’s proposed premises was under 900 square feet; that Salute would be more of a “retail store” than a traditional “package store”; that there would be three off-street parking spaces in the rear of the building; and that Addezio has a good reputation in the community. (Exhibit 8)

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<sup>1</sup> Salute changed its proposed location to 611 Main Street after filing its initial application but before the ultimate hearing before the Local Board. (Exhibit 3)

10. More than two hundred people signed a petition in support of Addezio's proposed business. (Exhibit 9)
11. During deliberations on the Salute application, Local Board members noted that the offerings proposed by Addezio were narrow in scope and that gift baskets were already offered elsewhere. (Exhibit 8)
12. Local Board member Goluboff was not in the room during the deliberations on Salute's application. However, Goluboff was present for the presentation of Salute's application to the Local Board, returned to the hearing room for the vote, and voted in favor of granting Salute's application. (Exhibit 8)
13. The Board voted 2-2 on Salute's application. Without a quorum, the vote failed, and Salute's application was denied. (Exhibits 2, 8)
14. Subsequently, on the Liquor Junction application, the Board voted 2-1 in favor of approval. (Exhibits 2, 8)
15. By decision dated April 18, 2017, the Local Board notified Salute that its application was denied. The decision referred to statements made by Grezeback at the meeting that "the business plan for a specialty basket only and not all alcohol retail sales was not in the public best interest for the public good." (Exhibit 5)
16. On the same date, the Local Board notified Liquor Junction that its application was approved. (Exhibit 6)
17. On April 24, 2017, Salute filed its Notice of Appeal to the ABCC. (Exhibit 7)
18. On May 9, 2017, Salute filed an emergency motion with the Commission to stay the Local Board from issuing the license to Liquor Junction pending this appeal (the "Emergency Motion"). (Commission File)
19. On May 9, 2017, after receiving the Emergency Motion, the Commission denied it because "[t]he Commission approved the application of Liquor Junction yesterday, May 8, 2017." (Commission File)

### DISCUSSION

This is an appeal brought by Salute under M.G.L. c. 138, § 67 for the Local Board's denial of Salute's M.G.L. c. 138, § 15 all-alcohol retail package store license application. The issue before the Commission is whether the Local Board committed an error of law or abused its discretion in denying the license. Great Atlantic & Pacific Tea Co., Inc. v. Board of License Comm'rs of Springfield, 387 Mass. 833, 837, 838 (1983) (noting that 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."); see 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").

Liquor Junction's license application—and subsequent approval of it—is not before the Commission. Although the Applicant's notice of appeal declared that it was also appealing the granting of Liquor Junction's license, Section 67 does not permit such appeals.<sup>2</sup> See M.G.L. c. 138, § 67. Section 67 only permits appeals from *denials* of applications, of a local board's failure to act on a license within 30 days, and of the action of a local board in “modifying, suspending, cancelling, revoking or declaring forfeited” a license. *Id.*

The Applicant argues that the Local Board made procedural irregularities and therefore that the applications of Salute and Liquor Junction should be remanded to the Local Board.<sup>3</sup> There is no evidence before the Commission that the Local Board made errors in its procedure of reviewing and deciding the Salute application.<sup>4</sup> Moreover, the Local Board voted to deny Salute's application before it took up a vote on Liquor Junction's application. (Exhibit 8) All of Salute's other assertions of procedural errors—which it states should result in the Commission remanding both applications to the Local Board-- relate to Liquor Junction's application, which is not before the Commission.

This case is distinguishable from that of Bd. of Selectmen of Barnstable v. ABCC, 373 Mass. 708 (1977), which Salute relies upon. In that case, the Town of Barnstable became eligible for granting seven new annual all-alcohol on-premises alcoholic beverages licenses. Bd. of Selectmen of Barnstable v. ABCC, 373 Mass. at 709. The town received twenty-seven applications, one of which was from the husband of one of the board members. *Id.* While that board member recused

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<sup>2</sup> The Commission's Notice of Appeal Hearing specifies that the July 19, 2017 hearing was for an “Appeal from the action of the Town of Winchester Board of Selectmen for denying the § 15 all alcohol retail package store license application of Alfred Addezio d/b/a Salute to be exercised at 611 Main St., Winchester, MA.” Likewise, on June 28, 2017, the Commission denied Liquor Junction's motion to intervene stating that “[t]he appeal hearing scheduled for July 19, 2017 is limited to an appeal from the Local Board's action in denying the § 15 license application of Alfred Addezio d/b/a Addezio.” (Commission File)

<sup>3</sup> Liquor Junction's application cannot be remanded to the Local Board not only because that application is not before the Commission but also because the Commission already approved that license application, and the Local Board has issued the license. (Commission File) Salute argues that the Commission should cancel Liquor Junction's license, but the law only permits the cancellation of licenses for nonuse. See M.G.L. c. 138, § 77. Nonuse is not an issue with regard to Liquor Junction. Additionally, Salute asserts that the Commission should revoke Liquor Junction's license pursuant to Section 64. However, revocation under Section 64 is for licenses issued in excess of the quota, licenses issued in violation of Chapter 138, and licensees who have violated a law of the Commonwealth. See M.G.L. c. 138, § 64. Liquor Junction's license was within the quota, and there is no evidence that the license was issued in violation of Chapter 138 or that Liquor Junction itself violated the law.

<sup>4</sup> The only procedural error Salute argues that the Local Board made pertaining to its own application is the fact that Local Board member Goluboff was not in the room during the deliberations on Salute's application. However, Goluboff was present for the presentation of Salute's application to the Local Board, returned to the hearing room for the vote, and voted in favor of granting Salute's application. (Exhibit 8) Therefore, there was no harm to Salute relative to Goluboff, and the Local Board cannot be found to have abused its discretion or made an error of law on Salute's application because of that issue.

herself from the hearing on her husband's application, she participated in other hearings on other applications. Id. at 709-713. One of the applicants whose application had been denied appealed to the ABCC, which determined that there had been a procedural impropriety. Id. at 709. The ABCC withheld approval of six of the licenses granted by the local board and remanded to the local board the applications for those licenses. Id. While the Superior Court reversed the Commission's decision, the Supreme Judicial Court reversed the Superior Court's decision and reinstated the Commission's decision. Id. at 719. As the Supreme Judicial Court stated, "[i]n remitting the matter to the board for further proceedings, the commission was taking a prophylactic measure to insure that decision would be reached fairly and with the appearance of fairness." Id. at 718. Unlike the Bd. of Selectmen of Barnstable case, here, there were no procedural errors made by the local board with regard to the appellant's own application. The alleged procedural errors relate to the hearing on the competing applicant's application, not Salute's.

The issue should be whether the Local Board committed an error of law or abused its discretion in determining that there was a lack of public need for Salute's particular operation of the sale of specialty baskets containing alcoholic beverages, as opposed to traditional all alcohol sales. (Exhibits 5, 8)

A local licensing authority has broad discretion to determine public convenience, public need, and public good with respect to whether to grant a license to sell alcoholic beverages. See Donovan, 65 Mass. App. Ct. at 378-379; Ballarin, 49 Mass. App. Ct. at 510-511. 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. Id. at 380. In Ballarin, the Appeals Court held that "[n]eed 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. "Consideration of the number of existing dispensaries in a locality is a proper concern . . . as are the views of the inhabitants of the locality in which a license is sought . . . 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." Id.

Salute's proposed business is "a specialty retail store with an emphasis on gift baskets, which would offer sales of alcohol products accompanied by pre-packaged food items in decorative baskets." (Exhibit 1) While gift baskets are intended to be Salute's main business, Salute intends for its patrons also to be able to purchase a limited variety of craft beers, wines, and spirits without a gift basket. (Exhibit 8; Testimony) Such sale of alcoholic beverages not in gift baskets would comprise about 20% of the proposed business, and those beverages would not be refrigerated. (Testimony; Exhibit 8) There was testimony before the Local Board that Addezio has a good reputation in the community and that more than two hundred people signed a petition in favor of Addezio's license application. (Exhibit 8) However, the Local Board considered the particular type of business Salute intended to run—a retail store with an emphasis on the sale of gift baskets containing alcoholic beverages and pre-packaged food items – and determined that there was not a public need for it. (Exhibits 1, 8) Local Board members noted that the offerings proposed by Salute were narrow in scope and already offered elsewhere. (Exhibit 8) The Local Board did not abuse its discretion in determining that there was a lack of public need for this particular type of

business. Salute's type of business is similar to the proposed business at issue in the case of Donovan v. City of Woburn, 65 Mass. App. Ct. 375 (2006). In that case, the Appeals Court took issue with the fact that the Local Board in denying the license application had not considered the particular type of business the applicant sought to run. Donovan, 65 Mass. App. Ct. at 381 (stating "[a]t a very minimum, sound exercise of discretion required the commission to consider the need for the business Donovan sought to run. . ."). Here, there was no error of law where the Local Board considered Salute's gift basket model and determined that there was not a public need for Salute's business consisting primarily of the sales of specialty gift baskets containing alcoholic beverages. (Exhibit 5)

#### SALUTE'S MOTION TO DEFAULT

The Local Board presented a witness at the hearing before the Commission who was late to the hearing but appeared in time to present testimony, which related to Exhibit 10. Salute objected to her testimony because (1) she was not present at the start of the hearing, (2) she was not on the joint pre-hearing memorandum, and (3) Salute claimed that she was not qualified to testify. Consequently, Salute moved to default the Local Board for "failure to appear." The witness was permitted to testify after Salute declined the opportunity to continue the hearing to a new date. The Commission denies the motion for a default. The Commission notes that the witness's testimony related to Exhibit 10, which Salute asserts supports its position there were procedural irregularities with Liquor Junction's application. As set forth above, Liquor Junction's application is not before the Commission.

#### CONCLUSION AND DISPOSITION

Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the Town of Winchester for denying the M.G.L. c. 138, § 15 all alcohol retail package store license application of Alfred Addezio d/b/a Salute.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth Lashway, Commissioner

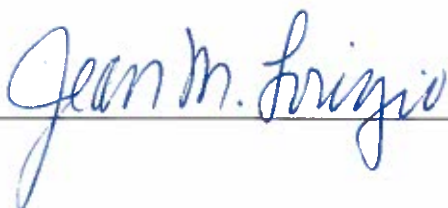


Kathleen McNally, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Jean M. Lorizio, Chairman



Dated: October 24, 2017

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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cc: John Connell, Esq. via facsimile 617-227-3222  
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Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File