

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
September 23, 2010
1:30 pm

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, August 19, 2010 in Nashville, Tennessee at 1:30 p.m. Chairman Jones, Commissioner Mathews and Commissioner Cynthia Bond were present. Executive Director Danielle Elks, Assistant Director Carolyn Smith, CLEO Hutchens and SAC Al Watson were present.

1. **The Minutes for August 19, 2010 Commission Meeting were approved.**

2. **NEW BUSINESS--RETAIL**

A. **JACKSON WINE & SPIRITS**
KINGSTON SPRINGS, TENNESSEE (CHEATHAM COUNTY)

Licensee: Gary and Deborah Jackson
Applicant: Jackson Wine & Spirits, LLC
Stockholder: Gary and Deborah Jackson

Before the Commission is a request for a transfer of ownership of the retail store located at 174 Luyben Hills Road in Kingston Springs, Tennessee. The current licensee, Gary and Deborah Jackson, wish to incorporate and operate their business as such. The lease has been updated to reflect the change. They would remain the sole members of the LLC. All documentation has been submitted with the exception of the following:

- a. Copy of the charter.
- b. Signature page of lease.

Discussion/Action Taken:

Gary and Deborah Jackson were present. Director Elks reviewed the matter to the Commissioners and recommended approval subject to the receipt of the requested documents..

Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion and it passed with 3 ayes.

**B. MEMORIAL LIQUOR AND WINE
MURFREESBORO, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: Chamunda Mata, Inc.
Stockholders: Tushar J. Otia and Sheetal Otia

Before the Commission is a request for a new retail store to be located at 110 North Thompson Lane in Murfreesboro, Tennessee. Tushar and Sheetal Otia wish to initially invest \$100,000 to operate the business, and if approved, be licensed as a corporation. Financing is based upon existing personal funds. The corporate applicant will be leasing the property from MTRC, LLC for a period of 5 years at \$3200/month. All documentation has been submitted with the exception of the following:

- a. TABC inspection;
- b. Acknowledgment of the rules/regulations; and
- c. Use and Occupancy permit.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of the following documentation:

- a. TABC inspection;
- b. Acknowledgment of the rules/regulations; and
- c. Use and Occupancy permit.

Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion and it passed with 3 ayes.

**C. A to Z SPIRITS
LAWRENCEBURG, TENNESSEE (LAWRENCE COUNTY)**

Licensee/Seller: Deborah Hill
Proposed New Investors: Dallas E. Hill and Delana Hill Boyle

Before the Commission is a request for a partial transfer of ownership of the retail store located at 117 Weakley Creek Road in Lawrenceburg, Tennessee. Ms. Deborah Hill is wishing to transfer some of her interest in the business to Dallas E. Hill and Delana Hill Boyle. The proposed new partnership will lease the property from Deborah and Dallas E. Hill for a period of five years at \$500/month. All documentation has been submitted with the exception of the following;

- a. Bill of sale;
- b. Percentage of ownership;
- c. Partnership agreement.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval.

Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion and it passed with 3 ayes.

**D. FORKED VINE WINE AND SPIRITS
JACKSON, TENNESSEE (MADISON COUNTY)**

Licensee: The Forked Vine Wine and Spirits, LLC
Members: John Everett and Fred Teague
Proposed New Member: Michael Everett

Before the Commission is a request for a partial transfer of ownership of the retail store located at 621-A2 Old Hickory Boulevard, in Jackson, Tennessee. Mr. John Everett is the current owns 85% interest in the LLC, and he proposes to sell all 85% to Mr. Michael Everett for \$650,000. Financing is based upon a promissory note with the seller. Mr. Teague will maintain his 15% interest in the business. The LLC will remain the licensee. All documentation has been submitted.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval.

Commissioner Bond made a motion to approve. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**E. SMYRNA WINE AND SPIRITS
SMYRNA, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: Smyrna Wine & Spirits, LLC
**Members: Deborah Sue Lee; John Austin Lee, III; and
Thomas Neil Tolleson**

Before the Commission is a request for a new retail store to be located at 440 Sam Ridley Parkway, in Smyrna, Tennessee. The members of the LLC wish to initially invest the following to operate the business: Ms. Lee--\$306,000; Mr. Lee--\$144,000; and Mr. Tolleson--\$150,000. Financing is based upon existing personal funds. The LLC will be leasing the property from Genie Place, LLC for a period of ten years with monthly rent beginning at \$11,666.67 and increasing to \$13,524.86 per month over the term of the lease. The applicant has 2 options to renew with monthly rent beginning at \$16,149, and increasing to \$21,071 over the term of the renewal lease. It should be noted that John Lee, Jr.—husband of Deborah Sue Lee and father of John Austin Lee, III—is the sole member of Genie Place, LLC and also owns a retail store in Brentwood, Tennessee. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgment of the rules/regulations;
- c. Use and Occupancy permit;
- d. Verification that the rental amount for the property is commercially consistent with other properties in the area for the same size of the applicant;
- e. Updated financials
- f. Signature page of lease and verification of who the guarantee is for lease.

Discussion/Action Taken:

Rob Pinson, Attorney, was present at the meeting. Mr. Pinson stated that he was not sure if his client wishes to pursue the opening of the retail package store. Therefore, Mr. Pinson requested a continuance of the matter.

Commissioner Mathews made a motion to continue the matter to the October Commission meeting. Commissioner Bond seconded the motion and it passed with 3 ayes.

**F. UNCLE KOTO LIQUOR STORE
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Licensee: Elamir Nashed and Melad Sawiers
Applicant: Melad Sawiers

Before the Commission is a request for a partial transfer of ownership of the retail store located at 4035 Nolensville Pike in Nashville, Tennessee. Melad Sawiers wishes to buy out Elamir Nashed's interest in the business and operate the business as a sole

proprietorship. The purchase price is \$110,000, and financing is based upon an existing credit agreement with Regions Bank. Mr. Sawiers is leasing the property from himself and Kathy Sawiers for a period of five years at \$2000/month. All documentation has been submitted with the exception of the following:

- a. Explanation why Regions Bank document is in the name of Melad Bekhit.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of the explanation why the Regions Bank document is in the name of Melad Bekhit.

Commissioner Bond made a motion to approve. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**G. THE RESERVE, HOME OF FINE WINE AND SPIRITS
MARYVILLE, TENNESSEE (BLOUNT COUNTY)**

Licensee: The Reserve, Wine and Spirits, LLC
Members: William Riley, Kelley Calloway
Proposed New Member: Julia Hunt

Before the Commission is a request for a partial transfer of ownership of the retail store located at 2025 East Hunt Road in Maryville, Tennessee. William Riley and Kelley Calloway each had a 50% interest in the business. In 2007, each sold approximately 16.45% interest to Julia Hunt so that each would own 33 1/3 interest in the business. Total purchase price was \$75,000. Helen Calloway, Ms. Hunt's grandmother, loaned Ms. Hunt \$51,000 and the remainder was provided from existing personal funds. The TABC was not notified of the change in ownership until 2009, and documentation was not submitted until 2010. The LLC will remain the licensee. All documentation has now been submitted.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval with the receipt of a \$750 fine. (Failure to notify the Commission usually warranted a \$1500 fine; however, Director Elks indicated that it was her belief that TABC Personnel should have followed up on information in 2009 and, therefore, requested a reduced citation).

Chairman Jones made a motion to approve pending the receipt of payment for the fine. Commissioner Mathews seconded the motion and it passed with 3 ayes.

3. WHOLESALE MATTERS

**A. BOONE DOCKS DISTRIBUTION, LLC
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Licensee: Boone Docks Distribution, LLC
Members: Joanne Boone, Larry Boone, and Meridith Sullivan

Before the Commission is a request for a transfer of location of the wholesale business currently located at 830 Fesslers Parkway, Suite 112 in Nashville, Tennessee. The new proposed location is 830 Fesslers Parkway, Suite 111; however, upon the signing of the lease, the landlord will re-number the suite to 112. The reason for the move is to expand the premises. Boonedocks Distribution, LLC is leasing the property from Blevins Family Investments, LP for a period of five years, with the rent beginning at \$2,453 and increasing by 3% each year over the course of the lease. All documentation has been submitted with the exception of the following:

1. TABC Inspection;
2. Use and Occupancy Permit.

Discussion/Action Taken:

Larry Boone was present at the meeting. Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of the TABC Inspection and Use and Occupancy Permit.

Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion and it passed with 3 ayes.

**B. D AND V DISTRIBUTING COMPANY
KNOXVILLE, TENNESSEE (KNOX COUNTY)**

Licensee: D & V DISTRIBUTING COMPANY
Partners: Kimball Nelson; Lucien Bailey & Company; Victor McLean, Jr; Margaret McLean; Victor McLean, III; James McLean; Louis Nelson
Proposed New Member: Skyland Park, LLC

Before the Commission is a request for a partial transfer of ownership of the wholesale business located at 5608 Middlebrook Pike, in Knoxville, Tennessee. Victor McLean, Jr, Barbara McLEan, Victor McLean, III, and James F. McLean are all current partners in the business; however, for estate purposes desire to transfer their shares, in the same proportional percentage of ownership, to a new LLC called Skyland Park, LLC. Everything else will remain the same. All documentation has been submitted.

Discussion/Action Taken:

Hank Hildebrand, attorney, was present at the meeting. Director Elks reviewed the matter to the Commissioners and recommended approval.

Chairman Jones made a motion to approve. Commissioner Mathews seconded the motion and it passed with 3 ayes.

4. ADMINISTRATIVE CITATIONS

A. ABBY REITER

On August 11, 2010, TABC Agent William Gammel observed the Respondent sell an alcoholic beverage to the nineteen year-old confidential operative at the retail establishment doing business as Carl's Wine and Liquor in Memphis, Tennessee. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

The administrative citation was paid prior to the Commission meeting; therefore, no action is necessary.

5. BUDGET

6. CONSENT ORDERS

7. PENDING MATTERS LIST

8. MISCELLANEOUS

A. Monthly Summary of TABC Activity

B. Discussion on Requiring Background Checks on LBD Applicants (Continued from August, 2010 meeting).

Director Elks stated that on October 1 the staff will begin doing random background checks on several server permit applicants. Director Elks explained that there will be no cost to the applicants because the TABC will absorb the cost of the background checks. Director Elks stated that for the retail package stores, the city performs the criminal background checks on the applicants when they issue the Certificate of Compliance.

Director Elks stated that the staff of the TABC will be doing random background checks on liquor by the drink applicants.

Commissioner Mathews made a motion to approve the random background checks. Commissioner Bond seconded the motion and it was approved with 3 ayes.

C. Discussion on Requirements for Limited Services Restaurants

Assistant Director Carolyn Smith stated that as of June 30, 2010, due to new legislation, the TABC now has a Limited Services Restaurant licenses that is available to liquor by the drink establishments.

Assistant Director Smith stated that the Limited Services Restaurants are those establishments that have 50% or less food sales, with a minimum seating capacity of at least 40 and a menu of prepared food for the patrons. Assistant Director Smith stated for the purposes of prepared foods that the statute states that it does not include prepared foods as being chips, pretzels, popcorn, peanuts or similar snack items. Assistant Director Smith states that there is not any particular language in the statute about kitchen equipment or kitchen staff that is required. She stated that there are different levels of restaurant limited service restaurants: they are 15% to 20% of the gross sales being food with a \$4,000.00 annual license fee; 20% to 30% of the gross sales from food with a \$3,000.00 annual license fee and 30% to 50% of the gross sales from food with a \$2,000.00 annual license fee. Assistant Director Smith stated that if the food sales of the gross sales are 50% or more, then the license fee will be the normal restaurant license fees.

She further explained that two issues that have arisen. First, a provision exists that allows current restaurant licensees to exchange their restaurant license and become limited service restaurants upon submitting an application, a \$300 application fee and submit a sworn statement indicating the gross revenue from the previous year derived from food sales and gross revenue derived from liquor sales. She stated that this statement is supposed to provide a basis to determine what their Limited Services Restaurant license fee will be. Assistant Director Smith stated that the staff has conducted food audits on restaurant licensees where their gross foods sales

are less than 15%. Situations exist where those licensees that have had a food audit are trying to get a Limited Services Restaurant license which starts at 15%. Thus first issue is whether the licensees must have 15% food sales for a year prior to the application or whether they are able to show the staff that going forward they will be at 15%. Second, she requested the Commission to interpret the definition of gross sales. This becomes important because of the additional tax on an alcoholic beverage, calculating sales, when the alcohol sales are not proportional to food sales. She stated that there are sales taxes on the food and liquor has an additional 15% tax on liquor by the drink. Assistant Director said when you are calculating what your sales are, if you are including the taxes that come in, it is going to weigh in what your liquor sales are.

Leila Vartanian, owner of Bluegrass Inn, 418 Broadway, Nashville, Tennessee stated that it would work better for an establishment if they base their foods sales on the liquor taxes to be able to obtain their 15% food sales.

Director Elks stated that the statute states gross sales. Director Elks stated that historically when the staff has done the food audits the staff has included taxes. She further stated that the statute states gross sales derived from food sales and gross revenue derived from liquor sales.

Chairman Jones stated the he is going to recommend the matter be continued to the October Commission meeting. Commissioner Mathews made a motion to continue the matter to the October meeting. Commissioner Bond seconded the motion and it passed with 3 ayes.

- 9. DATE OF NEXT MEETING** – Thursday, October 21, Thursday, November 18 and Thursday, December 16, 2010 at 1:30 p.m.

John A. Jones
Chairman

Shari Danielle Elks
Executive Director