

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
April 22, 2010
1:30 p.m.

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, March 25, 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 Mark Hutchens, SAC Al Watson, SA Amy Lamping, SA Brad Allison and SA Cary Webb were present.

1. The Minutes for March 25, 2010 Commission Meeting were approved.

2. A. RETAIL

**1. FUZZY DUCK
COLUMBIA, TENNESSEE (MAURY COUNTY)**

Licensee/Seller: John Totty
Applicant/Buyer: Mobilewala Enterprise Company
Stockholder: Bhadresh Patel

Before the Commission is a request for a transfer of ownership of the retail store located at 203 West 6th Street, in Columbia, Tennessee. Mr. Patel proposes to purchase the business for \$250,000 plus inventory. Financing will be based upon the sale of an existing convenience store owned by Mr. Patel. Mr. Patel is leasing the property from the current owner for a period of 20 years, with rent beginning at \$1650/month and increasing to \$2196.15/month. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules/regulations;
- c. Lease to Mobilewala Enterprise Company;
- d. Tax Stamp in corporate name;
- e. Bill of sale for convenience store.

Discussion/Action Taken:

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

- a. TABC Inspection;
- b. Acknowledgement of the rules/regulations;
- c. Lease to Mobilewala Enterprise Company;

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**2. UNIVERSITY PACKAGE WINE & LIQUOR WAREHOUSE
MURFREESBORO, TENNESSEE (RUTHERFORD COUNTY)**

Licensee/Seller: University Liquor, Inc.
Stockholder: Hiren Patel
Proposed New Stockholder: Bhartiben Patel

Before the Commission is a request for a transfer of ownership of the retail store located 2834 Middle Tennessee Boulevard in Murfreesboro, Tennessee. Mr. Hiren Patel wishes to sell 100% of the stock in the corporation to his mother, Bhartiben Patel for \$160,000, plus the inventory for \$180,000. The licensee and lease will remain the same as is currently in effect. Financing is based upon a promissory note with Hiren Patel. All documentation has been submitted with the exception of the following:

- a. TABC Inspection
- b. Acknowledgement of the rules/regulations;
- c. Interest of Bulabbhai Patel;
- d. Copy of promissory note and security agreement.

Discussion/Action Taken:

Hiren and Bhartiben Patel were present at the meeting. Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of a copy of the promissory note and security agreement.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**3. MERCHANT'S LIQUOR STORE
KNOXVILLE, TENNESSEE (KNOX COUNTY)**

Licensee/Seller: Jena, Inc.
Stockholder: Iqbal Hussain Bhimani
Applicant/Buyer: Rajab, LLC
Member: Salima Mohammed

Before the Commission is a request for a transfer of ownership of the retail store to be located at 107 Cedar Lane, in Knoxville, Tennessee. Mr.

Mohammed wishes to purchase the business for \$120,000 (includes inventory). Financing is based upon family gifts and an owner-financing agreement with Iqbal Bhimani. The LLC applicant is leasing the property from Iqbal Bhimani and Barkat Bhimani for a period of five years at \$3000/month. All documentation has been submitted with the exception of the following:

- a. Relationship between Salima Mohammed and Iqbal Bhimani—if any;
- b. Verification Mohammed is not a co-signer or lender for licensee at either Magnolia Package Store or Holston Package Store.

Discussion/Action Taken:

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

- a. Verification Mohammed is not a co-signer or lender for licensee at either Magnolia Package Store or Holston Package Store.

Chairman Jones made a motion to approve upon submission of the pending documentation. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**4. MIDDLEBROOK PACKAGE STORE
KNOXVILLE, TENNESSEE (KNOX COUNTY)**

Licensee/Seller: Arthur Ely, II
Applicant/Buyer: Shreenathji Corporation
Stockholders: Kalpesh Trambadia and Nilaykumar Trambadia

Before the Commission is a request for a transfer of ownership of the retail store currently located at 7413 Middlebrook Pike in Knoxville, Tennessee. Mr. Kalpesh Trambadia and Mr. Nilaykumar Trambadia wish to purchase the business and property for \$850,000: \$500,000 for property and building; \$200,000 for fixtures; and \$150,000 for inventory. Financing is based upon \$75,000 in personal accounts from both Kalpesh Trambadia and Nilaykumar Trambadia, and the balance of \$700,000 owner financed by Arthur Ely, II. All documentation has been submitted with the exception of the following:

- a. Verification of \$75,000 in both Kalpesh Trambadia and Nilaykumar Trambadia's personal accounts;
- b. Deed to Shereenathji Corporation.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of a copy of the deed to Shereenathji Corporation.

Chairman Jones made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

3. DISTILLERY MATTERS

**A. CORSAIR ARTISAN, LLC
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Applicant: Corsair Artisan, LLC
Members: Andrew Webber and Darek Bell

Before the Commission is a request for a new distillery. Corsair Artisan is a producer of malt beverages, and wishes to produce high alcoholic content beer—that would be classified as an alcoholic beverage and subject to the distribution system in place for beverages under the TABC jurisdiction. Currently, the business is located in Kentucky. The applicant LLC will be leasing the property from Barry Walker for a period of four years. Rent will begin at \$3150/month and increase to \$4200/month. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules/regulations.

Discussion/Action Taken:

Darek Bell and William Cheek, III, attorney, was present at the meeting. Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of a copy of the TABC Inspection and acknowledgement of the rules/regulations.

Commission Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

4. A. **CONTESTED HEARINGS**

1. **TABC v. BUCK WILD SALOON, LLC D/B/A BUCK WILD SALOON**
License No. 52321

Continued from March, 2010 meeting.

The purpose of this hearing is to determine whether License No. 52321 should be revoked. Tenn. Code Ann. § 57-4-102(27)(A) sets forth the definition of a "restaurant" as an entity that can hold an on-premise liquor-by-the-drink license. Prior to being amended on July 1, 2009, the "restaurant" definition required that the establishment operate at least four days a week and that the serving of meals be the principal business conducted. Two food audits conducted by TABC agents in 2007 and in 2009 disclosed that Buck Wild is not meeting the requirements of a "restaurant" because food sales were only 1.2% and 2.44%, respectively, of the total sales. It is the position of the TABC staff that the license should be suspended or revoked.

During the March, 2010 Commission meeting, Assistant Director Carolyn Smith stated that the licensee has retained William Cheek, III as their attorney and that William Cheek requested that the matter be continued to the April meeting so he would have time to review the application to meet with his client and meet with the staff.

Commissioner Mathews made a motion to defer the matter to the April meeting. Commissioner Bond seconded the motion and it passed with 3 ayes.

Discussion/Action Taken – April 22, 2010:

Eddie Eanes, Michelle Terrazas, Natalie Erwin and William Cheek, III, attorney, were present at the meeting. Assistant Director Smith began her opening statement by stating that the purpose of the hearing was to determine if the establishment's license should be revoked for the failure to meet the requirements of an on-premise license restaurant. She stated that it was TABC staff's position that the license should be revoked. Assistant Director Smith reviewed that the food audit conducted by the TABC in 2009 indicated the average food sales was approximately 2½ percent, while another food audit conducted in 2007 indicated approximately 1.2 percent gross sales derived from food.

Upon taking the witness stand, Director Elks testified the definition of a LBD restaurant was as follows: First, the establishment must be held up to the general public where meals are served and be a place where meals

are actually served. Director Elks further testified that they must have an adequate and sanitary kitchen to serve meals on the premises; the establishment must have an adequate and sufficient number of employees to prepare and serve food; serve one meal a day five days a week unless the establishment only open three days a week and then it must have to serve meals each of those days. It is also required that the principal business of the establishment be the serving of meals each day that the business is open with a minimum of three days.

Director Elks testified that when an applicant is applying for a LBD restaurant license, there is a question on the application that requires the applicant to set forth a percentage of projected food sales for the establishment. Director Elks testified that when the agent performs an inspection, the establishment receives a notice of the TABC's interpretation of the definition of a LBD "restaurant" license which the establishment is required to sign and to acknowledge. Director Elks testified that the staff of TABC has interpreted since the early 1980's, that when an establishment has 50% food sales, then it is prima facie evidence that the establishment is operating as a full service restaurant. When a food audit is performed, the agents consider several factors to determine the percentage of food being sold. Director Elks testified that agents will look at hours of operation, as well as the variety of the menu that is in the file or on the premises. The agents will look also at the advertisements to see how the establishment is held out to the general public, the variety of the employees as to whether there are enough employees to cook the food. Director Elks further testified that the agents will look at the variety of kitchen equipment in the establishment and whether there is actually food on the premises.

Assistant Director Smith questioned Director Elks regarding the application filed with the TABC by Buck Wild Saloon's in relation to projected food sales are for the establishment. Director Elks testified that on the application dated November 4, 2009, the applicant estimated that the food sales were 15%. Director Elks testified that on the application dated December 16, 2008, the applicant estimated 10% food sales. Director Elks testified that on the application dated October 11, 2007, the applicant estimated 60% food sales.

SA Brad Allison testified that during a renewal inspection of the premises, food was not present on the premises of the establishment and that there were no patrons eating while he was there. SA Allison believed that a food audit should be performed on the establishment. SA Allison testified that he requested receipts and invoices for the establishment for the months of April, May and June, 2009. SA Allison testified that his food audit showed the food sales for April were 4.53%, May was 1.28% and June was 1.51%.

Buck Wild owner Eddie Eanes and manager Michelle Terrazas testified that they have made efforts to increase food sales since the food audit. Testimony included descriptions of a new food buffet on Fridays and Saturdays, newly purchased additional food preparation equipment, an expanded menu and new efforts to promote food sales to the customers.

Bookkeeper Natalie Erwin testified that in 2010, food sales at Buck Wild have increased.

Commissioner Mathews made a motion to suspend the LBD license for 90 days to begin immediately with a stay of order 60 days subject to an appeal by the licensee. If the appeal does not take place, then the suspension begins on June 21, 2010. Chairman Jones seconded the motion and it passed with 3 ayes.

2. **TABC v. KWANG STORMS D/B/A CALLEE’S TOO**
License No. 40204

The purpose of this hearing is to determine whether License No. 40204 should be revoked. TABC Rules and Regulation 0100-01-.03(7) sets forth the requirement for a licensee to be responsible for law and order on the licensed premises. Callee’s Too has incurred approximately forty-two (42) severe complaints to the Clarksville Police Department since October 2008, which does not include minor incidents including calls regarding alarms, automobile accidents and domestic violence incidents in the parking lot, traffic stops of individuals leaving the establishment, or the issuance of warrants. Additionally, on September 27, 2009, a physical altercation occurred within Callee’s Too. During the fight, a patron pulled a gun and shot two (2) other patrons. It is the position of the TABC staff that the license should be revoked.

Discussion/Action Taken:

Kwang Storms and Mike Morgan, attorney, were present. Mr. Mike Morgan requested of the Commission for this matter to be continued due to health reasons that had recently arose for him. Mr. Morgan stated that due to these health problems, he could not provide adequate representation for his client.

Chairman Jones stated that he had a great concern that by postponing this matter it could be putting the citizens of the Tennessee in harms way. Assistant Director Smith stated that she prefer this matter not be deferred to the June Commission, as the Chairman stated, meeting because this is a potential safety issue.

Chairman Jones made a motion to have this matter deferred to the June Commission meeting. Commissioner Mathews amended the motion by stating that if there is another altercation during that period of time that the license would be summarily suspended immediately. Chairman Jones accepted the amended motion, and the motion as amended passed with three ayes.

3. **TABC v. THE ATLANTIC GROUP OF NASHVILLE, D/B/A RAIN-NASHVILLE**

The purpose of this show cause hearing is for Rain-Nashville to prove that it meets the requirements of a “restaurant” on-premise consumption license to serve alcoholic beverages. Tenn. Code Ann. § 57-4-102(27)(A) sets forth the current definition of a “restaurant” as an entity that can hold an on-premise liquor-by-the-drink license and requires the serving of meals to be the principal business conducted each day the restaurant is open. The application submitted by Rain-Nashville on December 17, 2009, indicates the establishment intends for all food to be prepared with a microwave oven, two small pizza ovens, or from an outside vendor. Kitchen equipment includes the afore-mentioned microwave and two small pizza ovens, a refrigerator/freezer, triple sink, and hand sink. Operating in this manner gives the TABC staff concerns about the establishment’s ability to meet the food requirements of a restaurant.

Discussion/Action Taken:

Dennis Woods and Kobie Randolph were present at the meeting. Assistant Director Carolyn Smith stated the staff has concerns of the applicant’s ability to qualify as a “restaurant” under Tennessee law; therefore, the applicant comes before the Commission to articulate why a license should be issued.

SA Cary Webb testified that on March 24, 2010, he was conducting a new inspection for the establishment and as part of the new inspection one of the things he looks at is the kitchen equipment to determine whether it is suitable to prepare and serve food. SA Webb testified that during the course of the inspection, the only kitchen equipment on the premises were two small pizza ovens, a microwave, a refrigerator/freezer combination, triple sink and a hand sink. SA Webb testified that the establishment did not have any storage space to store food. SA Webb also testified that based on the equipment kitchen equipment at the time of the inspection, in his opinion, he did not believe that the serving of meals was going to be the principal business of the establishment. SA Cary Webb testified that there were small wooden benches with most of the tables being four tops and there were longer tables along the back of the establishment.

Assistant Director Smith stated that the results of SA Webb's inspection contributed to TABC staff's concerns about the serving of meals being the principal business conducted.

In an effort to show cause why a "restaurant" license should be granted, owner Dennis Woods testified that their establishment will operate as a restaurant that features live music Wednesday through Sunday. Mr. Woods testified that the food that they will be serving is primarily "heat and eat" food. Dennis Woods testified that the kitchen equipment they have at the establishment meets the requirements of the food they have and the amount of customers. Dennis Woods testified that the establishment's seating arrangement is set up for 90 people, but the establishment has the capacity to set up for larger shows for 300 people. Dennis Woods testified that when the establishment has larger shows they utilize the services of a catering company and they only have to warm the food. Dennis Woods testified that anytime the establishment has a band or a group books an event, they have in their agreement they have to serve over 50% of food. Dennis Woods testified the establishment will have a buffet and food from the menu, and the establishment will constantly advertise that they are a restaurant, will always be staffed and will meet all of the guidelines that they will be serving food. Dennis Woods also testified that they have added ovens and two freezers since they submitted their application.

Commissioner Mathews made a motion to grant the license for a period of one year to make food their principal business and if that is not accomplished then the license will be brought before the Commission and the license will be revoked. Commissioner Bond seconded the motion and it passed with 3 ayes.

5. ADMINISTRATIVE CITATIONS

A. ANDREW WATSON

On March 23, 2010, TABC Agent Rosalyn Jackson observed the Respondent sell a 750ml bottle of Burnett's Vodka to the nineteen year-old confidential operative at the retail establishment doing business as Spirits of Atoka, in Atoka, Tennessee. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that Andrew Watson has paid the administrative citation; therefore, no action is necessary.

B. JUAN CARLOS GOMEZ-MEDNEZ

On March 23, 2010, TABC Agent BV Cathey, III observed the Respondent sell an alcoholic beverage to the nineteen year-old confidential operative at the restaurant licensed establishment doing business as Las Margaritas Mexican Bar and Grill, in Atoka, Tennessee. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that Juan Carlos Gomez-Mednez has paid the administrative citation; therefore, no action is necessary.

6. BUDGET

7. CONSENT ORDERS

8. PENDING MATTERS LIST

9. MISCELLANEOUS

A. Monthly Summary of TABC Activity

B. Legislative Update

10. DATE OF NEXT MEETING – May 20, 2010 at 1:30 p.m. and June 17, 2010 at 10:30 a.m.

John A. Jones
Chairman

Shari Danielle Elks
Executive Director