

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
January 20, 2011
1:30 pm

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, January 20, 2011 in Nashville, Tennessee at 1:30 p.m. Although Commissioner Bond was not present, a quorum was present with Chairman Jones and Commissioner Harlan Mathews, therefore, the meeting was conducted. Executive Director Danielle Elks, Melinda Arrington, Attorney, CLEO Mark Hutchens and SAC Al Watson were present.

1. **The Minutes for December 16, 2010 Commission Meeting were approved.**
2. **OLD BUSINESS--RETAIL**
 - A. **SPIRITS OF NISSAN DRIVE
SMYRNA, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: Spirits of Nissan Drive, General Partnership
Partners: Jerry Onks and Thomas Tolleson

Before the Commission is a request for a new retail store to be located at 830 Nissan Drive, Suites 150, 160 and 170, in Smyrna, Tennessee. Jerry Onks and Thomas Tolleson wish to initially invest \$375,000 and \$125,000, respectively, with Mr. Onks owning 75% of the partnership, and Mr. Tolleson, 25%. Financing is based upon existing personal funds and a line of credit with Pinnacle Bank for Mr. Onks. The partnership will be leasing the property from Smyrna Commons Gallery Partners for a period of four years with the first year rent free, and the remaining years at \$6475/month. All documentation has been submitted with the exception of the following:

- a. Explanation of tax debt;
- b. Amendment of the Certificate of Compliance to reflect individuals' names;
- c. TABC Inspection;
- d. Acknowledgement of the rules/regulations;
- e. Verification of funds in Mr. Onks and Mr. Tolleson's accounts for financing;
- f. Partnership agreement.

This matter was deferred until the January, 2011 Commission meeting for the applicants' failure to submit verification of financing for the store.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of the TABC Inspection and the Acknowledgement of the Rules and Regulations.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Chairman Jones seconded the motion and it passed with 2 ayes.

**B. VESCOVO'S ARLINGTON LIQUORS
ARLINGTON, TENNESSEE (SHELBY COUNTY)**

Licensee/Seller: Steve Vescovo
Applicant/Buyer: Vescovo's Arlington Liquors, LLC
Member: Steve Vescovo

Before the Commission is a request for a transfer of ownership of the retail store located at 11949 Highway 70, in Arlington, Tennessee. A review of the licensee's file indicates Mr. Vescovo is the sole proprietor of this business, and he now wishes to incorporate and operate at Vescovo's Arlington Liquors, LLC, with himself as the sole member. Mr. Vescovo also owns the property, and will be leasing the property to the LLC for a period of ten years, with rent beginning at \$1500/month and increasing to \$3000/month. All documentation related to this transfer, with the exception of the following has been submitted. However, in conjunction with the transfer documentation, a bill of sale has been provided indicating that a Mr. Remy Johnson is transferring his 25% interest in the business to Mr. Vescovo. As evidenced below, information has been requested regarding this transaction.

- a. TABC Inspection;
- b. Use and Occupancy permit;
- c. Sales tax Number
- d. Information regarding Mr. Remy Johnson's 25% interest in Arlington Liquors (When obtained, amount invested, residence, etc.)

This matter was deferred until the January, 2011, Commission meeting to determine the specifics of Mr. Johnson's interest in the business.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of the pending documentation.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Chairman Jones seconded the motion and it passed with 2 ayes.

3. OLD BUSINESS—WHOLESALE

**A. EAGLE BEVERAGES
KNOXVILLE, TENNESSEE (KNOX COUNTY)**

Applicant: Eagle Beverages, Inc.
Stockholders: Eagle Distributing Company, Inc.

Before the Commission is a request for a new wholesale business to be located at 310 Radford Place in Knoxville, Tennessee. Lucy and Raymond Hand wish to initially invest \$40,000 to operate the business Eagle Beverages, Inc. is leasing space from Eagle Distributing Company, Inc. on a month-to-month lease at \$1000/month. All documentation has been submitted with the exception of the following:

- a. Verification of nature of business for Eagle Distributing;
- b. Written acknowledgment that Eagle Distributing Company, Inc. and Eagle Beverages, Inc. must be maintained separately for all purposes;
- c. Charter for Eagle Distributing Company, Inc.
- d. List of stockholders and officers with questionnaires for Eagle Distributing.

Discussion/Action Taken:

Rob Pinson, attorney, was present at the meeting. Mr. Pinson stated that Eagle Beverages, Inc. is solely owned by Eagle Distributing Company, Inc. Mr. Pinson stated that all of the voting shares of Eagle Distributing Company, Inc. are owned by Mr. Raymond D. Hand. Mr. Hand also owns approximately 40% of the Class B shares, which is more the financial rights and is non-voting shares. Mrs. Lucy Hand is the trustee for three irrevocable trusts for their children. Mr. Pinson stated that in that capacity she owns the remaining 60%, split 3 ways of those non-voting Class B shares. Mr. Pinson stated that Mr. Hand has all the voting power control of Eagle Distributing Company, Inc. Mr. Pinson requested a continuance to the January meeting because the ownership may need to be changed and the shareholders may need to own the distributing company.

Chairman Jones made a motion to defer the matter to the January Commission meeting. Commissioner Mathews seconded the motion and it passed with 3 ayes.

Discussion/Action Taken:

William Cheek, III, attorney for Eagle Beverages and Curtis R. Harrington, II, attorney for Wine & Spirits Wholesalers of Tennessee, were present at the meeting. Director Elks stated that there was some information that was requested at the time Rob Pinson was representing Eagle Beverages, Inc. Director Elks stated that during the discussion of the application, Henry Hildebrand, III, attorney, raised an issue whether the requirements of T.C.A. §57-3-203 are being met as the corporation has not been in existence in Tennessee for the last 5 years as the statute requires. Mr. Harrington stated that he is not opposed to the issuance of the license, but to reiterate and question the challenge of the validity of the business as it is presently structured. Mr. Harrington stated that they do not feel that it is appropriate for the license to be issued to a subsidiary of a beer distributing company.

William Cheek stated that the issue is that T.C.A. §57-3-203 states that individuals that own a Tennessee wholesaler business have to be Tennessee residents. Mr. Cheek also stated that the statute states all capital stock of a corporation must be owned by individuals that are Tennessee residents. Mr. Cheek stated that Mr. Hildebrand's interpretation of the statute is that Tennessee residents who have applied for a license who owns a corporation that holds a beer license, and is not directly owned by Tennessee residents is a violation of the statute. Mr. Cheek stated that his interpretation of the statute is that the individuals who own the corporation have to be residents of the corporation.

Chairman Jones made a motion for Mr. Harrington and Mr. Cheek to submit a brief and a diagram at the February meeting that addresses, on either side, why he supports or opposes the license being issued. Chairman Jones also made a motion to defer the matter to the February meeting. Commissioner Mathews seconded the motion and it passed with 2 ayes.

4. NEW BUSINESS: RETAIL

**A. AAA PACKAGE STORE
JOHNSON CITY, TENNESSEE (WASHINGTON COUNTY)**

Licensee/Seller: AAA Package Store, Inc.
Stockholder: Ahmed Usso
Applicant: H & S Liquor, Inc.
Stockholder: Chirag Patel

Before the Commission is a request for a transfer of ownership of the retail store to be located at 910 W. Market Street in Johnson City, Tennessee. Mr. Patel wishes to purchase the business for \$120,000 plus inventory. The corporate applicant will be sub-leasing the property from Mr. Usso for a period of five years at \$1100/month. All documentation has been submitted.

Discussion/Action Taken:

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 2 ayes.

**B. JACK’S WINE AND LIQUOR
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Licensee/Seller: Jack’s Wine and Liquor, Inc.
Stockholder: Mi Ai Kim and Seung Hee Kim
Applicant: VF Liquors, General Partnership
Partners: Sabrina and Charles Chambers

At the August, 2010 Commission meeting, the Commission tentatively approved the transfer of ownership of this retail store (located at 4230 Winchester Road in Memphis, Tennessee)—from Mi Ai Kim and Seung Hee Kim to Sabina Chambers and Marshall Engelman. Certain other documents were required to be submitted before final approval. In September, 2010, and prior to the issuance of the new license to Engelman and Sabrina Chambers, Charles Chambers indicated that he had purchased Mr. Engelman’s interest in the business for \$30,000. Additional information was requested related to Mr. Chambers; however, such was not forthcoming until December, 2010. A license to Sabrina Chambers and Marshall Engelman was never issued. Therefore, the transfer to ultimately be considered is between the Kims and the Chambers. VF Liquors, GP continue to be the applicant and the lease remains in effect. The following documents are required to be submitted to complete the application:

- a. Sales Tax Number;
- b. Marshall Engelman removed from the lease;
- c. TABC Inspection;
- d. Acknowledgement of the rules and regulations;
- e. Verification of who has been operating the business since August, 2010.

Discussion/Action Taken:

Director Elks stated that the matter previously came before the Commission in August, 2010 where the Commission tentatively approved the transfer of ownership of this retail package store. Director Elks stated that the Kims were selling the business to Sabrina Chambers and Marsha Engelman. She stated that there were other documents that had to be submitted prior to the issuance of the license. Director Elks stated that in September, 2010 prior to the issuance of the license, Charles Chambers indicated that he was going to purchase Marsha Engelman's interest in this license. Director Elks stated that the staff had requested additional information from Mr. Chambers, however, that was not forthcoming until December, 2010. Director Elks stated that since no license was issued to Sabrina Chambers and Marsha Engelman, the ultimate sale was from the Kims to the Chambers. Director Elks stated that the issue is who has been operating the store, since the new license has never been issued to anyone because the documents were not forthcoming. Director Elks stated that the Kims should have never relinquished control or operation of the business.

Chairman Jones made a motion to defer this matter to the February Commission meeting. Commissioner Mathews seconded the motion and it passed with 2 ayes.

**C. BUCCANEERS IMPORTED WINE AND SPIRITS
PORTLAND, TENNESSEE (SUMNER COUNTY)**

Licensee/Seller: BCAL, Inc.
Stockholders: Howard Austin
Proposed New Stockholder: Jerry Johns

Before the Commission is a request for a partial transfer of ownership of the retail store located at 6074 31W Highway North in Portland, Tennessee, from Howard Austin to Jerry Johns. In March, 2010, Mr. Austin was approved for a retail store at this location. Mr. Johns apparently loaned Mr. Austin money to operate the business and did not have any ownership interest initially. In September, 2010, Mr. Johns invested additional monies, and to protect his loans, obtained 55% ownership interest in the business. This transaction was completed without the Commission's approval. Upon inquiry by TABC agents, Mr. Johns and Mr. Austin readily admitted Mr. Johns' interest in the business. A fine was paid for the failure to notify the Commission of true ownership. All documentation for the transfer has now been submitted and is ready for review.

Discussion/Action Taken:

Jerry Johns was present at the meeting. Director Elks reviewed the matter to the Commissioners and recommended approval.

Commissioner Mathews made a motion to approve. Chairman Jones seconded the motion and it passed with 2 ayes.

5. WHOLESALERS

**A. BONUSBEV
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Applicant: BonusBev, LLC
Members: Curtis Owen Strickmaker

Before the Commission is a request for a new wholesale license to distribute high alcoholic content beer from 3628-B Trousdale Drive in Nashville, Tennessee. Mr. Strickmaker wishes to initially invest \$20,000 to operate the business. He is sub-leasing the property from Bounty Bev, LLC for a period of one year at \$500/month. All documentation has been submitted with the exception of the following:

- a. Use and Occupancy permit;
- b. Written verification that applicant and stockholder meet the requirements of T.C.A. §57-3-203(f).

Discussion/Action Taken:

Curtis Owen Strickmaker and William Cheek, III, attorney, were present at the meeting. Director Elks stated that T.C.A. §57-3-203(f) requires the applicant be a resident of Tennessee for two years and the stockholders of the corporation be residents for five years. Mr. Strickmaker stated that he is a Limited Liability Company and that a LLC is not a corporation but basically a sole proprietor. Chairman Jones stated there is a possibility the statute is out of date. Chairman Jones stated that all the beer wholesalers that the Commission has acted on will need to be researched and see if the prior beer wholesaler licenses issued was acted on properly.

Commissioner Mathews made a motion to defer the matter to the February Commission meeting. Chairman Jones seconded the motion and it passed with 2 ayes.

Chairman Jones requested that the staff review the wholesaler licenses and see if the licenses are out of compliance and if they are then the staff should set show cause hearings and see why they should be allowed to remain in business. Director Elks stated that the staff will review the licenses and make a report to be presented at the February Commission meeting.

6. HEARINGS: NOTICE OF REVIEW

**In the Matter of: Olivia's Opera House d/b/a Opera House Restaurant
Docket Number: 33.01-109149J**

Before the Commission is a review of the Initial Order entered on November 22, 2010 in the above-styled case. TABC staff argued that the licensee was late renewing her restaurant license because the licensee did not have a valid bond posted with the Department of Revenue as required by statute and requested that the license be suspended. The licensee's defense was that the insurance company did not properly comply with the Department of Revenue's instructions—thus, making the filing of the bond late. The Initial Order ruled that the TABC did fail to carry its burden of proof by a preponderance of the evidence. TABC staff filed a notice of review, and the Initial Order is before the Commission for review.

Discussion/Action Taken:

Director Elks stated the licensee's defense was that they felt that it was the responsibility of the insurance company that their license was not renewed. Director Elks stated that the staff's position is that ultimately it is the licensee's responsibility that all aspects of the license, including the bond and taxes are proper and in order.

Director Elks stated that the judge found that the TABC did not meet the burden of proof because of the letter that was sent giving them until December 29th to have the bond in place. In this same letter, the staff advised the licensee that they were not in compliance and that a citation would be issued. It was issued in the amount of \$250.00. Director Elks stated the judge ruled that way because the insurance company was at fault in not making the bond valid with the Tennessee Department of Revenue. The licensee was not at fault and should not be held responsible.

Director Elks stated the staff filed a Notice of Review and this Initial Order is before the Commission for their review.

Chairman Jones indicated he believed that the licensee was responsible for the timely renewal of the license. Senator Mathews suggested the language in the renewal letter be amended for clarification. Chairman Jones made a motion to amend the Initial Order to uphold the staff's citation to the licensee in the amount of \$250.00. Commissioner Mathews seconded the motion and it passed with 2 ayes.

- 7. BUDGET**
- 8. CONSENT ORDERS**
- 9. PENDING MATTERS LIST**
- 10. PERSONNEL MATTERS** – Melinda Arrington was appointed acting Assistant Director.
- 11. MISCELLANEOUS**
 - A. Monthly Summary of TABC Activity**
- 11. DATE OF NEXT MEETING** – Thursday, February 17, 2011 at 1:30 p.m.

John A. Jones
Chairman

Shari Danielle Elks
Executive Director