

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
December 20, 2007
1:30 p.m.

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, August 23, 2007 in Nashville, Tennessee at 1:30 p.m. Chairman John Jones, Commissioner Cynthia Bond and Commissioner Harlan Mathews were present. Executive Director Danielle Elks, Assistant Director Carolyn Smith and SA B. V. Cathey were present.

1. The Minutes for November 16, 2007 Commission Meeting were approved.

2. OLD BUSINESS:

A. YN WINE
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)

Applicant: YN, Inc.
Stockholder: Ed Fryer, III

At the November 16, 2007, the Commission heard opposition to YN, Inc.'s application for a new retail store. The opposing party, PLB, Inc. d/b/a Bud's Liquors and Wines, opposed the application stating that the following:

- (1) Ed Fryer, III, is an "indirect operator of an existing retail liquor store, The Wine Shoppe at Green Hills";
- (2) The proposed location for YN, Inc is not on a public street...;
- (3) The public policy of the State would be undermined if the Commission grants this application; and
- (4) Unfair advantage while currently working in wife's store and applying for this license.

After hearing arguments, the Commission approved the application pending the submission of requested documentation. On November 30, 2007, PLB, Inc. filed a Motion to Reconsider Issuance of Permit to YN, Inc. in this office. On December 13, 2007, YN, Inc. filed its response to the Motion to Reconsider. The Motion to Reconsider is before the Commission for discussion.

Discussion/Action Taken:

Ed Fryer, III and Dan Haskell, Attorney for YN Wine, were present at the meeting. Also, Will Cheek, attorney for Bud's Liquors and Wines, was present. Executive Director Danielle Elks stated that YN, Inc., with Ed Fryer, sole stockholder, had filed for a new retail package store at the November Commission meeting. Director Elks stated that on November 30,

2007, PLB, Inc. filed a motion to the Commission to reconsider its decision to grant the license. Director Elks stated that the motion alleged that Mr. Fryer was an indirect operator of The Wine Shoppe at Green Hills which is owned by Mr. Fryer's wife. The second reason was the proposed location for the new store is not on a public street. The third reason that the public policy of the State would be undermined if the Commission granted this application and fourth, that an unfair advantage would occur because Mr. Fryer was still working in his wife's store while applying for this license. Director Elks stated that The Motion to Reconsider is properly before the Commission. She further stated that Dan Haskell filed a response to the opposition.

William Cheek stated that when the Commission acted last month on this matter, that his client had considered appealing to the Chancery Court. Mr. Cheek stated that they filed a Motion to Reconsider because of the factual issues of whether or not it was a public street. Mr. Cheek also stated that he wanted clarification if a family member owned more than one store if the individual had to quit working in the other retail package store upon submission of the new application.

Director Elks stated that applicants and licensees with family members who have more than one retail package store are advised the following practices are prohibited: ordering from the wholesalers in jointly; the hiring, firing and managing of employees jointly; they cannot offer discounts because of larger purchases; they cannot have joint advertising; they cannot have joint checking accounts; it has to be separate and distinct. The businesses and various aspects of the businesses cannot be run together, and the applicants and licensees file affidavits attesting such.

Director Elks stated that the other prohibitions when obtaining a retail package store is that the applicant cannot be a public official, and the applicant cannot have an interest in a liquor-by-the-drink establishment. Director Elks stated that individuals that are in that capacity that have applied for retail stores in the past have not been required to resign from the liquor-by-the-drink establishment or the wholesale business before such time as a license is issued. She stated that similarly if you are a public official, the staff has not made them resign until that license is ready to be issued.

Director Elks stated that the Commission could establish a policy related to this issue without requiring a rule-making hearing or a legislative change for future applications.

Chairman Jones made a motion to deny the Motion to Reconsideration. Commissioner Bond seconded and the motion. Commissioner Mathews passed. The motion passed with 2 ayes.

3. NEW BUSINESS

RETAIL

**A. GREEN MEADOW WINE AND SPIRITS
ALCOA, TENNESSEE (BLOUNT COUNTY)**

Applicant: Green Meadow Wine and Spirits, LLC
Members: Patricia Trosclair, Earl Whaley, and Michael Norris

Before the Commission is a request for a new retail store to be located at 1147 Hunters Crossing in Alcoa, Tennessee. Ms. Patricia Trosclair (50% ownership) intends to invest \$200,000, and Earl Whaley (25% ownership) and Michael Norris (25% ownership) intend to invest \$100,000 each. Financing is based upon the following: the LLC has a loan for \$400,000 with TNBank of Oak Ridge; Ms. Trosclair has an additional promissory note with Marc Norris for \$100,000. Green Meadow Land Holdings, LLC is the landlord of the property, and monthly rent is \$7916. (Green Meadow Land Holdings, LLC consists of the members of the applicant, as well as Marc Norris. This LLC has a \$1,432,500 loan with TNBank for the purchase of the property.) All documentation has been submitted with the exception of the following:

- a. Financial background for Patricia Trosclair.

Discussion/Action Taken:

Sean Norris and Earl Whaley were present at the meeting. Director Elks reviewed the application to the Commissioners and stated that the financial background for Patricia Trosclair had been received by the staff and recommended approval. Chairman Jones made a motion to approve. Commissioner Mathews seconded and the motion passed with 3 ayes.

**B. KIRBY PARKWAY
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Seller/Licensee: Kirby Parkway Liquors, Inc.
Stockholders: Barbara and Bill Spruell
Buyer/Applicant: MAJE, LLC
Members: Melanie Bell and Christopher Vescovo

Before the Commission is a request for a transfer of ownership of the retail store located at 1829 Kirby Parkway in Memphis, Tennessee. Ms. Melanie Bell and

Christopher Vescovo wishes to purchase this business for \$200,000, plus inventory. Financing is based upon a \$250,000 loan with Renasant Bank. If approved, each member would own 50% of the business. The applicant is leasing the property from Barbara Spruell for a five year term, with monthly rent beginning at \$4500/month for two years, and increasing to \$5000/month for the last two years. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules and regulations;
- c. TABC Report.

Discussion/Action Taken:

Christopher Hugan, attorney, was present at the meeting. Director Elks reviewed the application to the Commissioners and stated that all pending documentation had been submitted to the staff and recommended approval. Commissioner Bond made a motion to approve. Commissioner Mathews seconded and the motion passed with 3 ayes.

**C. WINE AND SPIRITS OF HALLS
HALLS, TENNESSEE (LAUDERDALE COUNTY)**

Seller/Licensee: Tom Tims
Buyer/Applicant: Rebecca McWilliams

Before the Commission is a request for a transfer of ownership of the retail store located at 11722 Highway 51, North Suite 4, in Halls, Tennessee. Ms. Rebecca McWilliams intends to purchase the business for \$50,000, plus inventory, and operate as a sole proprietorship. Financing is based upon personal funds. The applicant is leasing the property from Grassy Hill Properties, Inc for \$750.00 per month. All documentation has been submitted with the exception of the following:

- a. Financial background of applicant;
- b. Affidavit from newspaper;
- c. TABC Inspection and Report.

Discussion/Action Taken:

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the financial background of applicant, affidavit from newspaper and TABC Inspection and Report. Commissioner Bond made a motion to approve. Commissioner Mathews seconded and the motion passed with 3 ayes.

**D. BROWN’S CREEK WINE AND SPIRITS
MARYVILLE, TENNESSEE (BLOUNT COUNTY)**

Licensee: Brown’s Creek Wine and Spirits, LLC
Members: Kurt Williams and Joel Williams
Applicant: Hilary Williams Burgin

Before the Commission is a request for a partial transfer of ownership of the retail store located at 1701 A.E. Lamar Alexander Parkway in Maryville, Tennessee. Mr. Joel Williams wishes to sell his 25% interest in the business to his daughter for \$90,000, resulting in her owning 25%, and her brother remaining at 75% interest. Financing is based upon a loan from First Tennessee Bank. All documentation has been submitted with the exception of the following:

- a. Loan agreement from First Tennessee Bank.

Discussion/Action Taken:

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the loan agreement from First Tennessee Bank. Chairman Jones made a motion to approve. Commissioner Mathews seconded and the motion passed with 3 ayes.

**E. F & G LIQUORS
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Seller/Licensee: Hudson’s Liquors, Inc.
Stockholder: Sandra Hudson
Buyer/Applicant: Minga Liquors, Inc.
Stockholder: Cory Minga

Before the Commission is a request for a transfer of ownership of the retail store located at 2636 Southern Avenue, in Memphis, Tennessee. Mr. Cory Minga wishes to purchase the business for \$220,000, plus inventory, and operate the business as a corporation. Financing is based upon a gift from his father in the amount of \$125,000, and the remaining amount is based upon a promissory note with Sandra Hudson, payable over a three year period. The lease is for a five year term at \$1100/month. All documentation has been submitted with the exception of the following:

- a. Financial background form for Cory Minga;
- b. Financial and bank check for Harold Minga;
- c. TABC Report.

Discussion/Action Taken:

Cory Minga was present at the meeting. Director Elks reviewed the application to the Commissioners and stated that all documentation has been submitted and she recommended approval. Commissioner Bond made a motion to approve. Commissioner Mathews seconded and the motion passed with 3 ayes.

**F. MID TOWN WINE AND SPIRITS
JACKSON, TENNESSEE (MADISON COUNTY)**

Seller/Licensee: Artie & Lea, Inc.
Stockholders: Artie Jones and Lea Moore
Buyer/Applicant: TCMC Associates, LLC
Member: Matthew Cleek

Before the Commission is a request for a transfer of ownership of the retail store located at 930 Campbell Street in Jackson, Tennessee. Matthew Cleek wishes to purchase the business for \$210,000, including inventory, and operate the business as an LLC. Financing is based upon the following: \$200,000 promissory note to TCMC Associates, LLC from Darrell and Mary Christian; \$76,000 loan to Matthew Cleek from Darrell and Mary Christian; a \$24,000 gift to Matthew Cleek from Darrell and Mary Christian; and a \$100,000 line of credit with Bank of Jackson. The lease with Arvy Ledbetter is for a period of three years, with monthly rent beginning at \$1666, and increasing to \$1750 over the term of the lease. All documentation has been submitted with the exception of the following:

- a. Financial and bank check for Mary and Darrel Christian;
- b. Assignment of lease to TCMC Associates, LLC;
- c. Bank of Jackson Line of Credit;
- d. TABC Report.

Discussion/Action Taken:

Darrell Christian was present at the meeting. Director Elks reviewed the application to the Commissioners and stated that all documentation has been received by the staff and she recommended approval. Commissioner Bond made a motion to approve. Commissioner Mathews seconded and the motion passed with 3 ayes.

**G. FRUGAL FREDDIE'S
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Seller/Licensee: Diane Hall
Buyer/Applicant: J & J Investments, LLC
Members: William Likes

Before the Commission is a request for a transfer of ownership of the retail store located at 2096 Covington Pike, in Memphis, Tennessee. William Likes wishes to purchase the business for \$325,000, including inventory, and if approved, operate the business as an LLC. Financing is based upon a \$315,000 loan with First Tennessee Bank National Association. The applicant is leasing the premises from Montesi-Fratini partnership for a period of five years at \$4785/month. All documentation has been submitted with the exception of the following:

- a. Use and Occupancy permit.

Discussion/Action Taken:

William Likes was present at the meeting. Director Elks reviewed the application to the Commissioners and stated she stated that all documentation has been submitted to the staff and she recommended approval. Upon Commissioner Bond made a motion to approve. Commissioner Mathews seconded and the motion passed with 3 ayes.

**H. QUALITY LIQUORS
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Seller/Licensee: Quality Liquors, Inc.
Stockholders: Jerry Paul Kelly and Paul K. Kelly
Buyer/Applicant: Empact Holdings, LLC
Members: Myles Gill

Before the Commission is a request for a transfer of ownership of the retail store located at 3001 Lamar Avenue in Memphis, Tennessee. Mr. Myles Gill wishes to purchase the business for \$142,000, not including the inventory, and if approved, will operate the business as a LLC. Financing is based upon a \$50,000 loan with First Tennessee Bank; \$15,000 line of credit with Trustmark; and \$125,000 personal funds. The applicant is assuming the existing lease from the current licensee, with Loeb Realty, LP as the landlord. The term of the lease appears to be for 4 years, with the monthly rent at \$1904/month. All documentation has been submitted with the exception of the following:

- a. Acknowledgement of the rules and regulations;
- b. Loan document with First Tennessee Bank.
- c. Lease from Loeb Realty, LP to Quality Liquors, Inc.

Discussion/Action Taken:

Miles Gill was present at the meeting. Director Elks reviewed the application to the Commissioners and stated that the acknowledgement of the rules and regulations and lease from Loeb Realty, LP to Quality Liquors,

Inc. has been submitted to the staff and she recommended approval upon submission of the loan document with First Tennessee Bank. Commissioner Bond made a motion to approve upon submission of the loan document with First Tennessee Bank and satisfactory review of the loan document. Commissioner Mathews seconded and the motion passed with 3 ayes.

**I. STOP-N-SHOP DISCOUNT LIQUOR AND WINE
MURFREESBORO, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: A & H, Inc.
Stockholders: George Hanna and Hanni Abdelmelek

Before the Commission is a request for a new retail store to be located at 490 Saint Andrew Drive, Suite 102, in Murfreesboro, Tennessee. Mr. George Hanna and Mr. Hanni Abdelmelek intend to initially invest \$25,000 each, and if approved, operate the business as a corporation. Financing is based upon personal funds. The applicant is leasing the premises from Elgin Oliver, Jr. for a period of one year at \$2000/month. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules and regulations;
- c. Use and occupancy permit.

Discussion/Action Taken:

George Hanna and Hani Abdelmelek were present at the meeting. Director Elks reviewed the application to the Commissioners and stated that the Use and Occupancy has been submitted and she recommended approval upon submission of the TABC Inspection and the Acknowledgement of the rules and regulations. Upon Commissioner Mathews made a motion to approve upon submission of the remaining documentation. Commissioner Bond seconded and the motion passed with 3 ayes.

**J. RAY'S LIQUOR STORE
NEWBERN, TENNESSEE (DYER COUNTY)**

Seller/Licensee: Shirley Rice
Buyer/Applicant: Mohamad Abu-tubikh

Before the Commission is a request for a transfer of ownership of a retail store located at 112 East Main Street in Newbern, Tennessee. On May 23, 2007, Mrs. Shirley Rice passed away. A daughter of Mrs. Rice, Lucy Tubikh, is married

to the applicant. Mr. Mohamad Abu-tubikh is wishing to take over the business, as Lucy is employed at a school. The applicant is leasing the premises from Earl Uitendall for a period of 2 years at \$275 the first year, and \$280 the second year. All documentation has been submitted with the exception of the following:

- a. Resignation of applicant from Doubletree Hotel;
- b. Federal tax stamp in applicant's name;
- c. Acknowledgement of the rules and regulations;
- d. Document showing sale of business to applicant from estate or inheritance.

Discussion/Action Taken:

Director Elks stated that she talked with Mr. Mohamad Abu-tubikh and he is an employee of a liquor-by-the-drink licensee and his wife is a public employee. Director Elks stated that neither is statutorily able to hold a retail license. After talking with Ms. Rice's daughter, Lucy, Director Elks suggested that she place the license in the estate's name. Lucy stated that they would withdraw this application and apply in the estate's name.

**K. BROADWAY LIQUORS
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Seller/Licensee: Rosa Shim Johnson
Buyer/Applicant: MAA, LLC
Member: Kirtiba Chudasama

Before the Commission is a request for a transfer of ownership of a retail store located at 909 8th Avenue, North, (909 Rosa Parks Boulevard) in Nashville, Tennessee. Mrs. Kirtiba Chudasama wishes to purchase the business for \$70,000, plus inventory, and if approved, operate the business as a LLC. Financing is based upon personal funds accumulated with her husband. She has separated her share of the monies, and opened her own account. The applicant is leasing the premises from Jay Shim for a period of five years at \$3000/month. All documentation has been submitted with the exception of the following:

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

Discussion/Action Taken:

Kirtiba Chudasama was present at the meeting. Director Elks reviewed the application to the Commissioners and stated that she recommended approval upon submission of the TABC Inspection and Acknowledgement of the rules and regulations. Commissioner Mathews

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

4. WHOLESALE MATTERS

**a. BOONE DOCKS DISTRIBUTION
NASHILLE, TENNESSEE (DAVIDSON COUNTY)**

Applicant: Boone Docks Distribution, LLC
Members: Jeanne Boone, Larry Boone, Meredith Sullivan

Before the Commission is a request for a new wholesale business to be located at 830 Fesslers Parkway, Suite 112, in Nashville, Tennessee. Jeanne Boone and Larry Boone (\$150,000) and Meredith Sullivan (\$100,000) intend to initially invest a total of \$250,000, with each owning 1/3 interest. Financing is based upon the following: \$140,000 line of credit with GreenBank, and the remaining in personal funds. The applicant is leasing the premises from Blevins Family Investments, LP for a period of three years, with the rent beginning at \$1545/month and increasing to \$1646/month over the life of the lease. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules and regulations; and
- c. Use and Occupancy permit.

Discussion/Action Taken:

Larry and Jeanne Boone and Dan Haskell, attorney, were present at the meeting. Director Elks reviewed the application to the Commissioners and she recommended approval upon submission of the Use and Occupancy, TABC Inspection and the Acknowledgement of the rules and regulations. Commissioner Mathews made a motion to approve upon submission of the remaining documentation. Commissioner Bond seconded and the motion passed with 3 ayes.

5. WINERY MATTERS

**A. BEACHAVEN VINEYARDS AND WINERY
CLARKSVILLE, TENNESSEE (MONTGOMERY COUNTY)**

Licensee: Beachaven Vineyards and Winery, LP
Partners: Edward Cooke, General Partner
Applicant: Beachaven Vineyards and Winery, LLC
**Members: Edward Cooke, Louisa Cooke, Ben Kimbrough,
Sam and Margery Boaz, and Thayer Beach**

Before the Commission is a request to transfer ownership of the winery located at 1100 Dunlop Lane in Clarksville, Tennessee from a limited partnership to a LLC. The majority of the partners are being bought out, and the remaining interests are being transferred to the LLC. The purchase price of the various interests is approximately \$440,100. Financing is based upon a loan with Planters Bank. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules and regulations;
- c. Lease to the LLC applicant;
- d. List of resulting members and percentage of ownership.

Discussion/Action Taken:

Edward and Louisa Cooke and Sarah Clark, attorney, were present at the meeting. Director Elks reviewed the application to the Commissioners and she 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 remaining documentation. Commissioner Bond seconded and the motion passed with 3 ayes.

6. DENIAL OF EMPLOYEE PERMIT

On or about November 15, 2007, staff of the agency denied the employee permit application submitted by Danny Wayne Smith because of a felony conviction (4th offense driving under the influence) in 2005. T.C.A. §57-3-703 sets forth that the “applicant for employee permit must demonstrate that ... [he] has not been convicted for any felony within the previous five years. On December 5, 2007, requested a hearing for the denial of his application. It should be noted that Mr. Smith indicated on his application that he had never been convicted of any criminal offense.

Discussion/Action Taken:

Director Elks stated Mr. Danny Smith requested that the matter be continued to the January Commission meeting because Mr. Smith’s mother was in a car wreck and he could not attend this meeting. Director Elks stated she had no objection to continuing the matter to the January meeting. Commissioner Mathews made a motion to defer this matter to the January Commission meeting. Commissioner Bond seconded and the motion passed with 3 ayes.

7. ADMINISTRATIVE CITATIONS

A. RHONDA FAYE BONAIUTO

On October 23, 2007, TABC Agent BV Cathey, III observed the Respondent serve and sell an alcoholic beverage to the nineteen year-old confidential operative at the establishment doing business as CJ's Café and Grill in Millington, Tennessee. The Respondent checked the minor's identification. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Rhonda Faye Bonaiuto was not present at the meeting. Special Agent B. V. Cathey, III was present. Special Agent Cathey testified that a nineteen year-old female confidential informant went into CJ's Café and Grill, and was able to purchase an alcoholic beverage. The bartender, Ms. Bonaiuto did check the ID. Ms. Bonaiuto later informed Agent Cathey that she had checked it as 1988 and mis-calculated.

Assistant Director stated that the staff has not received any request for a continuance. Ms. Bonaiuto did receive the citation and the letter advising her of the December hearing. Assistant Director requested the Commission to uphold the fine of \$250.00 and suspend the permit card for 90 days.

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

Commissioner Bond made a motion to uphold the fine of \$250.00 and suspension of the permit card for 90 days. Commissioner Mathews seconded the motion and it passed with 3 ayes.

B. BRYAN JOHN RICHARDS

On November 7, 2007, TABC Agent BV Cathey, III observed the Respondent serve and sell an alcoholic beverage to the nineteen year-old confidential operative at the establishment doing business as Jim's Place Grille in Colliverville, Tennessee. The Respondent checked the minor's identification. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that Bryan John Richards has paid the administrative citation; so therefore, no action is necessary.

JIMMY DALE WALLSMITH

On November 8, 2007, TABC Agent Bobbie Rogers observed the Respondent sell a bottle of Burnett's Gin Liquor to the under-aged confidential operative at the retail store doing business as House of Spirits in Trenton, Tennessee. The Respondent checked the minor's identification. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that Jimmy Dale Wallsmith has paid the administrative citation; so therefore, no action is necessary.

8. **BUDGET**
9. **CONSENT ORDERS**
10. **PENDING MATTERS LIST**
11. **MISCELLANEOUS** – Chairman Jones requested the staff to furnish history of families having more than one ownership of retail package stores.
12. **DATE OF NEXT MEETING** – Wednesday, January 16 and Thursday, February 21, 2008 at 1:30 p.m.

There being no further business the meeting was adjourned.

John A. Jones
Chairman

Shari Danielle Elks
Executive Director