

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Agenda
February 17, 2011
1:30 pm

1. **Approval of Minutes for January 20, 2011 Commission Meeting and Audit Committee**
2. **OLD BUSINESS—RETAIL APPLICATION**
 - A. **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 Engelman¹. 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

¹Original Agenda Information—August, 2010:

Licensee: Jack's Wine and Liquor, Inc.
Stockholder: Mi Ai Kim and Seung Hee Kim
Applicant: VF Liquors, General Partnership
Partners: Marshall Engelman and Sabrina Chambers

Before the Commission is a request for a transfer of ownership of the retail store located at 4230 Winchester Road in Memphis, Tennessee. Marshall Engelman and Sabrina Chambers wish to purchase the business from Mi Ai Kim and Seun Hee Kim for \$15,000, plus the cost of inventory not to exceed \$50,000. Mr. Engelman and Ms. Chambers wish to invest \$30,000 each and share in the business equally. Financing is based upon existing personal funds. The partnership is leasing the property from Development, LP for a period of 3 years at \$2000/month. All documentation has been submitted with the exception of the following:

- a. Lease from Wingood Partners to Deveopments, LP
- b. TABC Inspection;
- c. Acknowledgment of the rules/regulations.

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, you have the ultimate sale being 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.

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 (December 16, 2010):

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 (January 20, 2011):

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 and at the time Rob Pinson, at the time, 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 not 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 own a corporation and that corporation holds a beer license and the beer company has applied for a license and the corporation 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 you support or oppose 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.

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

Applicant: BonusBev, LLC
Members: Kurtis 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 (January 20, 2011):

Curtis Owen Strickmaker and William Cheek, III, attorney, were present at the meeting. Director Elks stated that according to 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.

4. NEW BUSINESS: RETAIL

**A. HAPPY LIQUOR AND WINE
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Applicant: JAI Gurudev, LLC
Member: Shantilal Patel

Before the Commission is a request for a new retail store to be located at 1674 Whitten Road, Suite 101, in Memphis, Tennessee. Mr. Patel wishes to initially invest \$75,000 to operate the business as a LLC. Financing is based upon existing personal funds and loans from family members. Mr. Patel is leasing the property from North Mississippi Real Estate Management, LLC for a period of five years with monthly rent beginning at \$1625 and increasing to \$2125/month over the term of the lease. All documentation has been submitted with the exception of the following:

- a. Questionnaires for Sanat Patel, Prity Patel, Anand Patel, and Neelam Patel.
- b. Assignment of the lease to Jai Gurudev, LLC;
- c. TABC Inspection;
- d. Acknowledgement of the rules/regulations;
- e. Use and Occupancy permit;
- f. Sales Tax number;
- g. Verification of sufficient personal funds;
- h. Verification that Skyway Inn does not have a LBD license

**B. EZ CORNER WINE AND SPIRIT
MURFREESBORO, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: Mangal Marti, Inc.
Stockholder: Tejas Patel

Before the Commission is a request for a new retail store to be located at 350 North Thompson Lane in Murfreesboro, Tennessee. Mr. Patel wishes to initially invest \$175,000 to operate the store with all funds being personally secured. Mr. Patel and Jigna Patel own the property and is leasing the property to the corporate applicant for a period of ten years at \$2500/month. All documentation has been submitted with the exception of the following:

- a. Written acknowledgement that this store and Bansari Patel's store must be maintained and operated separately;
- b. Written acknowledgement that the retail store and the adjoining convenience store must be maintained and operated separately;
- c. Additional statements from First Savings indicating source of funding;
- d. Use and Occupancy permit;
- e. TABC Inspection;
- f. Acknowledgement of the rules and regulations

**C. NASHVILLE WINE AND SPIRITS
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Licensee: Nashville Wine and Spirits, LLC
Members: William Bryant

Before the Commission is a request for a transfer of location from 4550 Harding Pike to 4556 Harding Pike in Nashville, Tennessee. Due to the 2010 floods in Nashville, the 4556 Harding Pike location was underwater. The Commission approved a temporary transfer to a location on the second floor of the complex in June, 2010. Renovations have been completed, and the licensee is requesting a transfer to its original location. All documentation has been submitted with the exception of the following:

- a. Use and Occupancy permit;
- b. TABC Inspection;
- c. Signatures on lease.

**D. PARKWAY DISCOUNT WINE AND LIQUOR
JOHNSON CITY, TENNESSEE (WASHINGTON COUNTY)**

Licensee: Creekside Package Store, Inc.
Stockholders: Howell Sherrod, Jr. and Leon Smith
Applicant: Kelly Sherrod Bajko

Before the Commission is a request for a partial transfer of ownership of the retail store located at 1901 S. Roan Street in Johnson City, Tennessee. Mr. Leon Smith has transferred his five percent ownership interest in the business to Kelly Sherrod Bajko for no consideration. This transfer occurred in 2008, and although certain documentation was submitted related to the transfer, the documentation was never completed. All documentation has now been submitted; however, TABC staff is not requesting a monetary fine because the request for additional documentation should have been checked upon prior to this date.

**E. WAYNE'S WINE AND LIQUORS
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Licensee: Koba Enterprises, LLC
Members: Robert Baker and Maureen Kolb
Proposed New Member: Anne Baker

Before the Commission is a request for a partial transfer of ownership of the retail store located at 8485 Highway 64, Suite 103 in Memphis, Tennessee. Robert Baker and Maureen Kolb currently own 50% interest each. Ms. Anne Baker wishes to purchase Ms. Kolb's 50% interest for \$63,364.00. Financing is based upon a home equity loan. Koba Enterprises, LLC will remain the licensee. All documentation has been submitted with the exception of the following:

- a. Newspaper notice and affidavit;
- b. Copy of home equity loan.

**F. FOX RIDGE
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Licensee/Seller: Fox Ridge Discount Liquor, LLC
Members: Larry and Gloria Coker
Applicant/Buyer: Fox Ridge Liquors, LLC
Members: LeAnn and Powers Manley

Before the Commission is a request for a transfer of ownership of the retail store located at 3204 Hickory Hill, in Memphis Tennessee. LeAnn and Powers Manley wish to purchase the business for \$250,000 plus the cost of inventory. Financing is based upon existing personal funds. If approved, the Manleys will be operating the business as a LLC. The applicant LLC has assumed the current lease with the permission of the Landlord (MAPCO Express, Inc.), and will be paying monthly rent of \$3300. All documentation has been submitted with the exception of the following:

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

**G. CORKS AND VINES (CURRENTLY DBA K & K WINES AND SPIRITS)
KNOXVILLE, TENNESSEE (KNOX COUNTY)**

Licensee/Seller: Steven Safford
Applicant/Buyer: Corks and Vines, LLC
Member: Robert Creasman

Before the Commission is a request for a transfer of ownership of the retail store located at 5746 Western Avenue in Knoxville, Tennessee. Mr. Creasman wishes to purchase the business for \$165,000 plus inventory. Financing is based upon a loan from Sara Epperson and a SBA loan with Suntrust Bank. If approved, Mr. Creasman wishes to operate the business as a LLC and change the business name to Corks and Vines. The LLC is leasing the property from Leigh Ann Haynes for a period of three years at \$1400/month. All documentation has been submitted with the exception of the following:

- a. Acknowledgement from Sara Epperson and Kim Creasman that their loans create at least an indirect interest in the business, and cannot have any interest in any other retail liquor business.

5. HEARINGS: NOTICE OF REVIEW

TABC V. PROFITT'S DISCOUNT LIQUOR WAREHOUSE, INC.
DOCKET NUMBER: 33.01-107620j

Before the Commission is a review of the Initial Order rendered in the above-styled case, wherein Administrative Law Judge Anthony Adgent ordered that the retail license held by Profitt's Discount Liquor Warehouse, Inc. be revoked for the failure to provide a certificate of compliance issued by the municipality where the store is located. The Initial Order was issued on October 20, 2010, and a Notice of Review was granted on October 26, 2010. The Commission will review the Order and will either adopt, amend or deny the Initial Order.

Discussion/Action Taken:

Randall Smith, owner, and Patrick Foge, attorney, were present at the meeting. Director Elks stated that in 2009 Mr. Smith submitted his renewal application but was unable to provide his Certificate of Compliance from the city of Nashville. She further stated that every two years is a requirement of a certificate of compliance for all retail licensees. Because of Mr. Smith's inability to submit the requisite certificate of compliance, TABC staff conducted a hearing to revoke the license and on October 20, 2010 the administrative law judge issued an Initial Order revoking Mr. Smith's license. Director Elks stated the staff filed a Notice of Review for the Commission to review on October 26, 2010, and this Notice of Review is before the Commission.

Mr. Foge stated that the reason Mr. Smith was not able to obtain a Certificate of Compliance was because an employee of Mr. Smith's was selling novelty items that were being used by patrons as drug paraphernalia. Mr. Smith and an employee were both working at the store that adjoined the retail package store where the employee was doing this act. Mr. Foge stated that they were both charged with selling the paraphernalia.

Mr. Foge stated that the matter has not gone to trial at this time. He further stated that he believes in early 2011 that Mr. Smith will be vindicated, but while this charge is pending that the mayor's office is unwilling to grant the certificate of compliance. Mr. Foge requested that the Commission defer this matter until the criminal case is finished.

Chairman Jones asked Director Elks whether the Commission must immediately take action to amend, adopt or review the Order.

When told research would be necessary to determine the exact time frame, Commissioner Mathews made a motion to continue this matter to the February, 2011, Commission meeting to allow the TABC staff to research this matter. Commissioner Bond seconded the motion and it passed with 3 ayes.

6. BUDGET

7. CONSENT ORDERS

8. PENDING MATTERS LIST

9. MISCELLANEOUS

A. Monthly Summary of TABC Activity

B. Issue: Will the TABC continue to take cash for permits?

10. DATE OF NEXT MEETING