

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
January 21, 2010
1:30 p.m.

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, January 21, 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 Mike Cawthon, ASAC Al Watson, SA Carey Webb and SA Amy Lamping were present.

1. **The Minutes for December 17, 2009 Commission Meeting were approved.**

2. **A. RETAIL—OLD BUSINESS (Postponed from the November 19, 2009 meeting)**
 1. **SAM RIDLEY WINE AND SPIRITS
SMYRNA, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: Sam Ridley Wine and Spirits, Inc.
Stockholder: D. Lee Nettles

Before the Commission is a request for a new retail store to be located at 611 President Place in Smyrna, Tennessee. Mr. Nettles intends to initially invest \$2,000,000 for the purchase of the property and to operate the business. Financing is based upon a loan with Cap Star Bank. Mr. Nettles is leasing the property to the corporate applicant for a period of three years at \$11,000/month. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules/regulations;
- c. Use and Occupancy permit;
- d. Loan agreement with Cap Star Bank.

Discussion/Action Taken:

Lee Nettles was present at the meeting. Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the following information:

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

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

B. NEW BUSINESS

**1. TAYLOR WINE & SPIRITS
PORTLAND, TENNESSEE (SUMNER COUNTY)**

Applicant: Catherine Ann Taylor

Before the Commission is a request for a new retail license to be located 707 North Broadway, in Portland, Tennessee. Catherine Taylor wishes to invest \$150,000 to operate the business as a sole proprietorship—if approved. Financing is based upon an inheritance. She is currently leasing the property from Tyler Collins for \$350/month; however, she intends to ultimately purchase the property for \$85,000. 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;
- d. Sales tax number.

Discussion/Action Taken:

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

- a. TABC Inspection;
- b. Use and Occupancy permit;
- c. Acknowledgement of the rules/regulations;
- d. Sales tax number.

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

**2. M & J'S HOUSTON LEVEE WINE & SPIRITS
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Licensee: M & J's Houston Levee Wine & Spirits, Inc.
Stockholders: Earnesta Isabel
New Stockholder: Melvin Isabel, Sr.

Before the Commission is a request for a transfer of stock from the current stockholder, Earnesta Isabel to her husband, Melvin Isabel, Sr. The purchase price would be \$10.00, and he would become the sole stockholder. The corporate licensee would remain the same, as well as all lease provisions. All documentation has been submitted with the exception of the following:

- a. Outstanding citation for late renewal.

Discussion/Action Taken:

Director Elks reviewed the application to the Commissioners, and recommended approval upon payment of the outstanding citation. She advised the Commission that Ms Isabel had a new job at a bank, and the bank prohibited her ownership interest in a retail store—stating it created a possible conflict of interest.

Commissioner Bond made a motion to approve upon payment of the outstanding citation. Commissioner Mathews seconded the motion and it passed with 3 ayes.

4. WHOLESALE MATTERS

**A. PREMIUM BRANDS
CHATTANOOGA, TENNESSEE (HAMILTON COUNTY)**

Applicant: Premium Brands, Inc.
Stockholders: Blair Carter and Robert Garret

Before the Commission is a request for a new wholesaler's license to be located at 1307 Broad Street in Chattanooga, Tennessee. Blair Carter and Robert Garret wish to invest \$50,000, and if approved, operate the business as a corporation. Mr. Carter would own 51% of the stock, while Mr. Garret would own 49%. Financing is based upon existing business income and stock. Premium Brands, Inc. is leasing the property from Carter Distributing Company for \$100/month. It should be noted that Carter Distributing is a beer distributor. All documentation has been submitted with the exception of the following:

- a. Written acknowledgement that the beer distributorship and the wholesale business must be operated and maintained separate and distinct from one another.

Discussion/Action Taken:

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

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

**B. LIPMAN BROTHERS, INC.
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

**Licensee: Lipman Brothers, Inc.
Stockholder: Robert Lipman**

Before the Commission is a request for a transfer of stock ownership from Robert Lipman to two trusts established for the benefit of his daughters: Gracie Lipman and Margaret Lipman. Each trust would own 22.5% of the stock (or 45%), while Mr. Lipman would retain 55% of the stock-- as well as the positions President and CEO. It should be noted that the corporation has been domiciled in Tennessee for more than 25 years. All documentation has been provided with the exception of the following:

- a. Questionnaires for Margaret and Gracie Lipman.

Discussion/Action Taken:

Catherine Butcher, attorney, was present at the meeting. Director Elks reviewed the application to the Commissioners and recommended approval.

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

6. CONTESTED HEARINGS

A. CONTINUED FROM DECEMBER, 2009 MEETING:

**1. TABC v. ODELL TIDWELL AND MARY GRACE TIDWELL
License Number: 13,720**

The purpose of this hearing is to determine whether the renewal application for License Number 13, 720 should be denied for the following reason(s): T.C.A. §57-4-201(b)(2) sets forth that “No license may be granted hereunder to any establishment when any person, firm or

corporation having at least a five percent (5%) ownership interest in the establishment has been convicted within ten (10) years prior to the application for a license hereunder for a violation of the laws governing the sale or manufacture of alcoholic beverages or any felony. It is the position of the TABC staff that the renewal application should be denied because the Odell and Mary Grace Tidwell were convicted of felonies on May 28, 2009 for tax evasion and fraud.

Discussion/Action Taken:

Odell Tidwell and Coleman Garrett, attorney, were present at the meeting. Assistant Director Smith stated that the owners have felony convictions for tax evasion. Assistant Director stated that the felony convictions were in May 28, 2009 and asked the renewal application be denied based upon the statutory prohibition of individuals with felony convictions from having any ownership interest for an establishment for a period of ten years from the date of conviction.

Coleman Garrett requested permission to question and to allow testimony of Odell Tidwell to establish a record for an appeal. The Commission allowed the questioning by Attorney Coleman Garrett of Odell Tidwell. Attorney Garrett proceeded with his questioning of Otis Tidwell for the record—which included his admission of their felony convictions for tax evasion.

Commissioner Bond made a motion to deny the renewal of the application. Commissioner Mathews seconded the motion and it passed with 3 ayes.

B. SERVER PERMIT REVOCATION

ZANETA BATTS WARE

On December 17, 2009, Ms. Ware submitted an application for a replacement server permit. The original permit was issued in 2006. On the application she listed a conviction for solicitation and estimated to TABC agent Webb that the conviction occurred in 1999 which means it would not prevent her from obtaining a server permit under the requirements set forth in TCA 57-3-704. Section 704(2) prevents an individual with a conviction for any sex-related crime from getting a server permit for a period of eight (8) years from the conviction date. Agent Webb subsequently discovered that on Ms. Ware's original server permit application in 2006 she did not disclose any convictions. Upon contacting the Criminal Court Clerk's Office in Nashville, Agent Webb learned that Ms. Ware has had several solicitation

convictions, the latest in 2004. Having a solicitation conviction in 2004 prevents Ms. Ware from having a server permit until 2012.

Discussion/Action Taken:

Assistant Director Carolyn Smith requested that a default judgment be made. Chairman Jones made a motion to grant a default motion. Commissioner Bond seconded the motion and it passed with 3 ayes.

The Commission revoked Ms. Ware's server permit for providing false information regarding her convictions on the 2006 permit application. The Commission ruled that subsequent investigation proved Ms. Ware was actually prohibited from having a permit in 2006 due to several solicitation convictions—the latest in 2004. This conviction would prohibit her from obtaining a permit until 2012. Further, T.C.A. §57-3-704 sets forth that anyone who has had a server permit revoked is prohibited from having another permit issued for five years from the date of revocation.

Commissioner Mathews made a motion to revoke the server permit and from obtaining another permit until 2012. Commissioner Bond seconded the motion and it passed with 3 ayes.

C. TABC vs. STEPHEN KISS D/B/A TRAX
License No. 52219

The purpose of this hearing is to determine whether License No. 52219 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 serve meals as its principal business conducted. Two food audits conducted by TABC agents disclosed that Trax is not meeting the requirements of a "restaurant." In addition, during an inspection by a TABC agent on February 22, 2007, Trax did not have the required number of seats to qualify as a "restaurant". Finally, Trax failed to timely comply with the TABC's request for information related to the food audit in violation of TABC Rule 0100-1-.03(5). It is the position of the TABC staff that the license should be revoked.

Discussion/Action Taken:

Stephen Kiss was present at the meeting. Stephen Kiss requested that his matter be continued to the February Commission meeting. Mr. Kiss stated that he was requesting the continuance because his attorney could not be present at the meeting.

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

5. **BUDGET**

6. **CONSENT ORDERS**

7. **PENDING MATTERS LIST**

8. **MISCELLANEOUS**

- A. **Kim Pouncey (Straight UP, LLC):** Request to be on agenda to discuss the prohibition of someone other than the applicant submitting and obtaining server permits.

Discussion/Action Taken:

Kim Pouncey and Brad Greene were present at the meeting. Kim Pouncey stated the trainers had picked up 46% of the server permit cards that were issued in the State of Tennessee in 2009. Director Elks stated that the same amount of cards will be issued with the servers obtaining the cards themselves. Director Elks stated that the auditors' primary objection stressed by them was to eliminate the opportunities for fraud. Although Ms. Pouncey's trainers and Mr. Green did not have complaints registered against them, the TABC office had received an increasing number of complaints regarding trainers. Specifically, trainers would require additional payment from attendees/servers to have trainers pick up the server's permit. The servers would pay for the permit, as well as the additional charge, yet the trainer would not send the server the permit. Thus, the server would have to spend additional monies to obtain a permit. Director Elks stated that by requiring the servers to obtain the permits themselves it diminished the opportunity for fraud by trainers.

The Commission directed TABC to conduct an additional meeting with Ms. Pouncey and Mr. Greene to determine if alternatives existed and continued this matter until the March meeting.

B. **Monthly Summary of TABC Activity**

9. **DATE OF NEXT MEETING** – Thursday, February 18 and Thursday, March 25 at 1:30 p.m.

John A. Jones
Chairman

Shari Danielle Elks
Executive Director