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Re: Town of Chelmsford: Application of BM Carpenter, LLC for a Retail Wine and Malt Package Store License

DECISION

Appeal from the action of the Licensing Board of the Town of Chelmsford for denying the application of Leonard Carpenter, BM Carpenters LLC dba The Meat House, for a Beer and Malt Package Store License to be exercised on the premises at 120 Chelmsford Street.

Facts

BM Carpenter, LLC dba The Meat House is a Massachusetts Limited Liability Company with a principle place of business at 2 Bannan Drive, North Andover, Massachusetts. In May of 2010, the applicant opened a franchised location of the Meat House in the Town of Chelmsford. He now seeks a beer and wine license.

The Local Board's Notice of Decision, dated June 22, 2010, denied the Wine and Malt Package Store License for various reasons. The most compelling being, public need.

At the hearing counsel for both parties submitted exhibits and provided testimony on their client's behalf. The Town along with the applicant provided a joint pre-hearing memorandum.

Issue: Was the Town of Chelmsford justified in denying the Wine and Malt Package Store License to the applicant on a public need argument?
Should the applicants experience in the restaurant liveliness be a factor in granting the license?

Discussion

Under Ballarin, Inc. v. Licensing Board of Boston, 49 Mass App. Ct. 506 (2000), the Court found that when reviewing the Local Liquor Board's authority, they do not assess the evidence but rather "examine the record for errors of laws or abuse of discretion that add up to arbitrary and capricious decision-making." Id at 512. Public

need is discussed at length in Ballarin and is explained in that one need not interpret its application literally. The test of the public need, as Ballarin interprets it, clearly included a combination of the competing interests if the “public want” and the appropriateness of the location. In other words, if a licensee were to petition for a liquor license for an establishment near an elementary school, the public appropriateness may out weight the public need.

The Town argued that there was no public need for a new liquor license at this establishment due to its consideration of many factors. The Town firstly considered that there were already two (2) liquor stores in close proximity to the applicant’s location and felt that there was no need for another liquor license.

The applicant rebutted with the argument that there was a necessity for a liquor license in that area since the applicant would provide alcohol as a supplement to his “upscale” types of foods. The applicant maintains that the Meat House is an upscale butcher shop selling gourmet types of meats and other foods.

The Local Licensing Board maintains that while the applicant may have experience in the restaurant business, the Local Licensing Board maintained that the nature his license created opportunity for theft and sales to minors that is not present in the operation of a restaurant. The argument that the applicant does not have enough experience to monitor the responsible distribution of alcohol in the proposed business setting to obtain a Beer and Wine Package Store License is without merit.

While the Board of Selectman may have a policy to thoroughly scrutinize each application, which is it’s duty as a board member, to articulate in its reasoning that the applicant has not met his burden of responsibility, is looked upon with skepticism by the Alcoholic Beverages Control Commission and is again not considered in our determination.

The most convincing arguments set forth by the Town was the one of public need. There are already two (2) existing liquor stores nearby the proposed applicants premises and there are seven (7) in the Town of Chelmsford, which the Town believes, fulfils the public need.

In determining whether to grant a license, the Board considers many factors in its determination. See Connolly v. Alcoholic Beverages Control Commission 334 Mass. 613, 617-618 (1956), (Consideration of the number of existing dispensaries in a locality is a proper concern; Newbury Junior College. Brookline, 19 Mass app. ct. av. (2002) (Where Town and City Boards exercise judgment over liquor licenses, is very broad but not untrammled, is discussed).

In reviewing the Town Boards decision, the Alcoholic Beverages Control Commission would be remiss if it did not look to Town of Middleton v. Alcoholic Beverages Control Commission 64 Mass. App. Ct. 1108(2005).

In Middleton, supra, a licensee owned a gasoline station and a convenient store and sought a liquor license. The store was on a major thoroughfare and the facts were very similar to what is before us in that the Town was (in their estimation) adequately served by the existing number of licensees. The Court found that they did not have to go further than the first issue the Town set forth for denial, which was public need, due to

the fact that the Town Board has such wide statutory discretion. Under G.L. Ch. 138 §23, as amended by St 1965, Ch. 399, the statute enables a local authority to issue liquor licenses in order to “serve the public need and in such a manner as to protect the common good, and, to that end, to provided, in the opinion of the licensing authority, an adequate number of places at which the public may obtain...different sorts of alcoholic beverages.” In citing Ballarin supra, the Middleton Court stresses that the determination of public need is based on “assessment of public want and [the] appropriateness of a liquor license in a particular location. A local authority may consider the number of existing dispensaries in a particular location in determining whether or not to grant a new license. Ibid.

Conclusion

It is clear that the Local Board considered public need in determining whether to issue the Wine and Malt Package Store License to the applicant. In an analysis of what the Town took into consideration it seemed to be the most significant issue. Since it is well established that Local Licensing Authorities have very broad discretions deciding whether or not to grant a license to a proposed licensee, it is clear the Town Board acted within its discretion and was not arbitrary or capricious. The Commission agrees with the decision solely on the basis of public need and dismisses the other claims as meritless. Therefore, the Commission **upholds the decision of the Local Licensing Board to deny the application of Leonard Carpenter, BM Carpenter, LLC dba The Meat House for a Wine and Malt Package Store License on the Premises at 120 Chelmsford Street.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner _____

Deleted:

Robert H. Cronin, Commissioner _____

Dated at Boston, Massachusetts this 5th day of October 2010.

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty days of receipt of this decision.

cc: Chelmsford Licensing Board
Jeffrey T. Blake, Esq. via facsimile 617-654-1735
File