

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

MINUTES
Tuesday, March 22, 2016
1:30 pm

Chairperson Mary McDaniel, Commissioner Jones, and Commission Kaegi were present. Director Bell, Asst. Director, Ginna Winfree, Staff Attorney, Joshua Stepp, and CLEO Mark Hutchens were in attendance.

1. APPROVAL OF THE FEBRUARY COMMISSION MEETING MINUTES-

Discussion/Action Taken. Commissioner Jones motioned for approval and Commissioner Kaegi seconded the motion; it passed with three ayes.

2. RETAIL MATTERS

A. OLD BUSINESS

B. NEW BUSINESS

**1. VICTORY VILLAGE LIQUOR & WINE (LICENSE NO. 3605)
MURFREESBORO, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: Jai Varahi Mata, Inc.

Shareholder(s): Ankit Patel, 100%

<u>Current Shareholders:</u>		<u>Proposed:</u>	
Ankit Patel	90 %	Ankit Patel	100 %
Tushar J. Otia	10 %		

Before the Commission is a request for a change in shareholders and shareholder interest in corporation doing business at 4167 Franklin Rd, suite 5A, Murfreesboro, TN 37128. Ankit Patel is acquiring the 10% shareholder interest currently held by Tushar J. Otia for \$10k, leaving Ankit Patel with 100% ownership interest. The TABC staff recommends approval of this request.

Discussion/Action Taken Commissioner Kaegi motioned for approval and Commissioner Jones seconded the motion; it passed with three ayes.

**2. CAROTHERS WINE & SPIRITS
FRANKLIN, TENNESSEE (WILLIAMSON COUNTY)**

Applicant: Surati Retail Investments 3, LLC

Member(s): Hemel R. Surati, Vrushank R. Surati, Vikash R. Surati, Ashesh A. Patel, Dharmesh R. Surati, Timir Y. Surati, and Wyatt J. England

Current d/b/a name: Brinkmann's Wine & Spirits

Proposed d/b/a name: Carothers Wine & Spirits

The licensee (license no. 4045) doing business at 103 International Dr., Franklin, Tennessee is requesting approval of a d/b/a name change as specified above. The TABC staff recommends approval of this request.

Discussion/Action Taken: Commissioner Kaegi motioned for approval and Commissioner Jones seconded the motion, it passed with 3 ayes. Update: database updated with new name and license re-printed with updated name on 3.23.16

**3. UNIVERSAL WINE & SPIRITS (LICENSEE No. 3750)
JOHNSON CITY, TENNESSEE (WASHINGTON COUNTY)**

Applicant: Universal Wine and Spirits, LLC

Member(s): Shane Abraham and Jamie Abraham

The licensee doing business at 230 Marketplace Blvd., Ste. 100, Johnson City, TN 37604 is requesting approval to expand the premises of the package store. The expansion will add approximately 2,500 sq. ft., and per a lease addendum, the applicant will lease the premises (including the expansion area) for approximately \$9,000.00 per month. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection (after build-out)
- b. Certificate of occupancy (after build-out)

Discussion/Action taken: Commissioner Jones motioned for conditional approval and Commissioner Kaegi seconded the motion. It passed with 3 ayes.

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

Applicant: Metropolitan Wine, Inc.¹

Shareholder(s): Nardir Mardonov, 100%

Before the Commission is a request for licensing of a new retail store to be located at 178 2nd Ave. North, Nashville, Tennessee 37201. Mr. Mardonov is investing \$60k into the store using funds from his existing business. The applicant will lease the premises from landlord, 178 2nd Avenue, Inc., for an initial term of five years at an annual base rent of \$45,600, plus a 3% increase at the beginning of each successive year.² The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

¹ Metropolitan Wine, Inc. (dba Metropolitan Wine) also holds a retail license (no. 3736) at 401 Church St. suite 1, Nashville, TN 37219. Applicant also has another item on this agenda. See item # 5.

² The lease includes two options to renew.

- a. TABC inspection
- b. Acknowledgment of TABC Rules & Regulations
- c. Certificate of occupancy
- d. License fee

Discussion/Action Taken: Commissioner Kaegi motioned for conditional approval and Commissioner Jones seconded the motion; motion passed with 3 ayes. License for new owner not issued as of 4.20.16

**5. BELLE MEADE WINE AND SPIRITS
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Applicant: Metropolitan Wine, Inc.³

Shareholder(s): Nadir Mardonov, 100%

Current: CME, Inc⁴, d/b/a Belle Meade Wine and Spirits (license no. 3947)
Proposed: Metropolitan Wine, Inc. d/b/a Belle Meade Wine and Spirits

Before the Commission is a request for a complete transfer of ownership concerning the retail store doing business at 4556A Harding Rd., Nashville, Tennessee 37205. The applicant is using personal funds to purchase the business (furniture, fixtures, and equipment) from the current owner for \$10k.⁵ The applicant is leasing the premises from landlord, BMP Partnership², for approximately \$3,800 per month.⁶ The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection
- b. Acknowledgement of TABC Rules & Regulations
- c. Certificate of occupancy
- d. License fee

Discussion/Action Taken: Commissioner Kaegi motioned for conditional approval and Commissioner Jones seconded the motion; it passed with three ayes. License for new owner not issued as of 4.20.16

**6. JAX LIQUORS (LICENSE NO. 3839)
CHATTANOOGA, TENNESSEE (HAMILTON COUNTY)**

Applicant: 4 Friends, LLC

³ Metropolitan Wine, Inc. (dba Metropolitan Wine) also holds a retail license (no. 3736) at 401 Church St. suite 1, Nashville, TN 37219. Applicant also has another request for licensing on this agenda. See item # 4.

⁴ Ellen Chiripko is the 100% shareholder

⁵ In accordance with Tennessee law, Sellers are to transfer title and possession of the liquor inventory to the applicant via TABC licensed wholesalers' involvement.

⁶ The landlord agreed for the assignment of the current owner's lease to the applicant. The five year lease commenced in May of 2014 and includes options to renew.

Member(s): Jiten Patel, Jasmin Patel, Punit Patel

The retail licensee doing business at 216 Market Street, Chattanooga, TN 37402 is constructing a new building at the same location as the existing store, and is requesting approval for those changes. The applicant will continue to operate out of the existing structure until new building is ready.⁷ The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection (after build-out)
- b. Certificate of occupancy (after build-out)

Discussion/Action Taken: Commissioner Jones motioned for conditional approval and Commissioner Kaegi seconded the motion; it passed with three ayes.

**7. TOAST WINE & SPIRITS (LICENSEE NO. 3941)
JONESBOROUGH, TENNESSEE (WASHINGTON COUNTY)**

Applicant: Tortise Race II, LLC⁸

The retail licensee doing business at 1537 E. Jackson Blvd., Jonesborough, Tennessee⁹ is requesting approval for the addition of storage space by expanding the premises into the vacant space next door to, and adjoining, the current establishment. Per the lease addendum, the landlord has agreed to lease the new space (approx. 410 sq. ft.) for an additional \$200 per month.¹⁰ The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection (after build-out)
- b. Certificate of occupancy (after build-out)

Discussion/Action Taken: Commissioner Jones motioned for conditional approval and Commissioner Kaegi seconded the motion; it passed with three ayes.

**8. ATHENA WINE & SPIRITS
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Applicant: E. L. B. Enterprise, LLC

Member(s): Eddie Behnam, 100%

Before the Commission is a request for licensing of a new retail store to be located at 457 Donelson Pike, Ste. 102, Nashville, Tennessee 37214. Mr. Behnam is investing 75-

⁷ The applicant is leasing the premises from JJMP GP, for an initial term of four years at a monthly rental rate of \$17k.

⁸ LLC members are Matthew E. Williams and Toni D. Lorio

⁹ Zipcode: 37659

¹⁰ The lease includes a monthly base rent of \$3,200.

100k into the business using personal funds. The applicant will lease the premises from Donelson Pike Partners, LLC for an initial term of five years at a monthly rental rate of approximately \$4,300.¹¹ The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection
- b. Acknowledgement of TABC Rules & Regulations
- c. Certificate of occupancy
- d. License fee

Disc/Action Taken: Commissioner Kaegi motioned for conditional approval and Commissioner Jones seconded the motion. It passed with 3 ayes. Update: License 4069 effective 4.4.16

3. WINERY MATTERS -

A. OLD BUSINESS -none

B. NEW BUSINESS

1. AMBER FALLS WINERY NASHVILLE, TENNESSEE (DAVIDSON COUNTY)

Applicant: Amber Falls Winery and Cellars, LLC¹²

Amber Falls Winery¹³ is requesting approval for licensing of a satellite facility to be located at 2905 12th Ave. South #107/108 in Nashville, Tennessee 37204. The applicant is investing personal funds (up to \$250k) into the business and will lease the premises from David Adams, landlord, for an initial term of five years at a monthly rental rate of approximately \$7,000.¹⁴ The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection
- b. Acknowledgement of TABC Rules & Regulations
- c. Certificate of occupancy

Disc/Action Taken: Commissioner Kaegi motioned for conditional approval and Commissioner Jones seconded the motion; it passed with three ayes. Update: permit not issued as of 4.20.16

4. FARM WINERY MATTERS - none

¹¹ The lease includes two options to renew.

¹² LLC members: Timothy D. Zaunbrecher and Judy C. Zaunbrecher

¹³ Amber Falls Winery (TABC license W-51) is located at 794 Ridgetop Rd., in Hampshire, Tennessee 38461

¹⁴ Monthly rent will have increased to \$7,700 (approx.) by month 49 of the term. The lease includes an option to renew.

5. WHOLESALE MATTERS

A. NEW BUSINESS

1. DELTA WHOLESALE LIQUORS (WHOLESALE LICENSE NO. 43) MEMPHIS, TENNESSEE (SHELBY COUNTY)

Applicant: Delta Wholesale Liquors, Inc.

Current Location: 802 Rozelle Street, Memphis, Tennessee 38104

Proposed Location: 3676 East Raines Road, Memphis, Tennessee 38118

Before the Commission is a request for wholesale licensee no. 43 to transfer locations as specified above. This will be a full transfer of operations. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection after transfer
- b. certificate of occupancy
- c. ~~lease/or proof of possession of premises~~ deed received
- d. zoning letter
- e. amended federal basic permit

Discussion/Action Taken: Commissioner Kaegi motioned for conditional approval and Commissioner Jones seconded the motion; it passed with three ayes.

2. ATHENS DISTRIBUTING CO. OF KNOXVILLE KNOXVILLE, TENNESSEE (KNOX COUNTY)

Applicant: Athens Distributing Co. of Knoxville¹⁵

Before the Commission is a request for licensing of a wholesaler to be located at 2567 Prime Way, ste. 102 in Knoxville, Tennessee 37918. The applicant will sub-lease the premises from Athens Logistics Company for a term of 36 months at a monthly rental rate of approximately \$11k.¹⁶ The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC agent report
- b. TABC inspection
- c. acknowledgment of TABC Rules & Regulations
- d. ~~sales tax #~~ (Director Bell removed this as a requirement at the meeting)
- e. federal basic permit

¹⁵ Owners: Athens Distributing Co. of Chattanooga, 33.3333%; Athens Distributing Co. of Nashville, 33.3333%; Athens Distributing Co. of Memphis, 33.3333%. All three were approved for partial transfers of stock ownership at the December 15, 2015 Commission meeting.

¹⁶ Landlord, 640 Business Park, LLC is leasing the premises to Athens Dist. Co. of Chattanooga, which in turn intends to assign its lease to Athens Logistics Company. Athens Logistics Company will sub-lease the premises to the applicant.

f. license Fee

Discussion/Action taken: Commissioner Jones motioned for conditional approval and Commissioner Kaegi seconded the motion; it passed with three ayes. Update: license not issued as of 4.20.16

6. DISTILLERY/BREWERY

A. NEW BUSINESS

**1. LEIPER'S FORK DISTILLERY
FRANKLIN, TENNESSEE (WILLIAMSON COUNTY)**

Applicant: Leiper's Fork Distillery, LLC

Member(s):	L.L. Kennedy and Sons Distilling, LLC ¹⁷	70 %
	Kennedy Distilling Partners, LLC ¹⁸	25 %
	Locke Distilling Partners, LLC ¹⁹	5 %
	Lee Locke Kennedy	0 %
	Nick Locke	0 %
	Gayle Locke Kennedy	0 %
	Wesley Laine Kennedy	0 %

The Applicant was conditionally approved for licensing at the November 17, 2015 Commission meeting.²⁰ Director Bell approved an initial thirty day extension, and the applicant is now requesting their second and final thirty day extension, which must come before the full Commission. If approved, the applicant will have until April 15, 2016 to become operational; however, construction is expected to be completed before that date. The TABC staff recommends approval of this request.

Discussion/Action taken: Commissioner Kaegi motioned for approval of the extension and Commissioner Jones seconded the motion; it passed with three ayes. Update: license# 140 issued 4.12.16

**2. OLD GLORY DISTILLING CO.
CLARKSVILLE, TENNESSEE (MONTGOMERY COUNTY)**

Applicant: Cunningham Spirits, LLC

Member(s): Matthew Cunningham, 100%

Before the Commission is a request for licensing of a new distillery to be located at 451 Alfred Thun Rd., Clarksville, Tennessee 37043. Financing for the business will come from personal funds and a \$2.3 million (approximate) bank loan. The applicant

¹⁷ L.L. Kennedy and Sons Distilling, LLC (Lee Locke Kennedy, 100%)

¹⁸ Kennedy Distilling Partners, LLC (Gayle Locke Kennedy, 51%; Wesley Laine Kennedy, 49%)

¹⁹ Locke Distilling Partners, LLC (Nick Carter Locke, 100%)

²⁰ Conditional approval subject to receipt of a TABC inspection after build-out, acknowledgment of TABC Rules & Regulations, certificate of occupancy (after build-out), and the license fee.

owns the real property where the distillery will be located. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC inspection
- b. Acknowledgement of TABC rules & Regulations
- c. Certificate of occupancy
- d. License fee

Discussion/Action Taken: Commissioner Kaegi motioned for conditional approval and Commissioner Jones seconded the motion; it passed with three ayes. Update: license not issued as of 4.20.16

3. NATURAL INFUSIONS CHATTANOOGA, TENNESSEE (HAMILTON COUNTY)

Applicant: Natural Infusions, LLC

Member(s): Brian Clifford, 28 %
Danette Newton, 33 %
Jeff Viggers, 38 %

Before the Commission is a request for applicant to be licensed to do business at 4295 Cromwell Rd., suite 517 in Chattanooga, Tennessee 37241. Mr. Viggers is providing the initial investment of \$50k for the business. The applicant is leasing the premises from Pryor Bacon, Jr., for approximately \$700 per month. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- ~~a. proof of funds for investment~~
- b. TABC inspection
- c. acknowledgment of TABC Rules & Regulations
- d. federal basic permit showing correct suite number
- e. zoning letter showing correct suite number or letter from city

Discussion/Action taken: item (a) was received prior to the meeting. Commissioner Jones motioned for conditional approval and Commissioner Kaegi seconded the motion; it passed with three ayes. License not issued as of 4.20.16

7. PRIVATE CLUBS –none

8. RETAIL FOOD STORES

1. STEPHERSON INCORPORATED 5150 American Way, Memphis, TN 38115

Stepherson Incorporated has submitted retail food store applications for the following six stores:

- a. Superlo Foods (Superlo Foods #1) doing business at 4744 Spottswood, Memphis, TN 38117
- b. Superlo Foods (Superlo Foods #2) doing business at 2155 Covington Pike, Memphis, TN 38128
- c. Superlo Foods (Superlo Foods #3) doing business at 3327 N. Watkins, Memphis, TN 38127
- d. Superlo Foods (Superlo #4) doing business at 6532 Winchester, Memphis, TN 38115
- e. Sterpherson's (Superlo #5) doing business at 3942 Macon Rd., Memphis, TN 38122
- f. Superlo Foods (Superlo Foods #6) doing business at 4571 Quince Rd., Memphis, TN 38117

TABC staff recommends conditional approval of the above retail food store applications, subject to the following:

- a. effective date of license to be July 1, 2016
- b. TABC inspection
- c. acknowledgment of TABC Rules & Regulations
- d. designation of manager
- e. license fee

Discussion/Action Taken: Commissioner Jones motioned to continue this matter to the April agenda, Commissioner Kaegi seconded the motion and is passed with three yes.

9. INITIAL ORDERS TO BE REVIEWED BY THE COMMISSION –

In the Matter of: Southern Fun, Inc. dba Silky O'Sullivan's Restaurant

Docket: 33.01-130154J

On June 9, 2015 a contested case concerning a violation of Tenn. Code Ann. § 57-4-203(b)(1)(B) was heard in Nashville, Tennessee before Administrative Judge Kim Summers. Joshua Stepp represented the TABC and Mr. Irvin M. Salky represented Southern Fun, Inc. Pursuant to an Initial Order issued on September 2, 2015, Judge Summers determined the license should be suspended for a period of seven days. Mr. Salky petitioned for an appeal and on September 17, 2015 the TABC staff received notice that the order did not become final. Pursuant to Tenn. Code Ann. § 4-5-315(d)²¹ the TABC, upon review of the initial order “shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing.” Such review shall not be limited, except as provided in Tenn. Code

²¹ Tenn. Code Ann. § 4-5-315(d): The person reviewing an initial order shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing, except to the extent that the issues subject to review are limited by rule or statute or by the agency upon notice to all parties

Ann § 4-5-319(d)²², and any portion of the I/O may be reviewed by the Commission, including, but not limited to, the imposition of a 7 day suspension, whether or not a longer or shorter suspension period is appropriate, and whether or not the TABC's costs associated with the hearing and/or appeal should be awarded to the TABC pursuant to Tenn. Code Ann § 57-1-213. Please see the attached Initial Order and Petition for Appeal.

Disc/Action taken: Each side was afforded an opportunity to address the Commission. The first matter addressed by the Commission was Respondent's Constitutional arguments questioning the legal authority of the Commission to issue a suspension in this case as specified in Respondent's Petition for Appeal. After hearing arguments from both sides, Commissioner Jones motioned that the constitutional question challenge as presented by Attorney Irvin Salky on behalf Southern Fun Inc. be denied and that the Commission move forward to hear the remaining issues. Commissioner Kaegi seconded the motion and it passed with three ayes.

After hearing arguments from both sides and considering the entire record as to the Initial Order of this matter, Commissioner Kaegi made a motion to uphold the seven (7) day suspension, provided that the suspension is to be served non-consecutively as agreed upon by the parties, and to impose court costs upon the licensee. Commissioner Jones seconded the motion and it passed with three ayes. A Final Order will be filed with the Administrative Procedures Division once entered.

9. SERVER APPEALS - none

10. MISC – none

11. NEXT MEETING – Tuesday, April 26, 2016 at 1:30 p.m.

12. UPCOMING MEETINGS

- Tuesday, April 26, 2016 at 1:30 p.m.
- Tuesday, May 24, 2016 at 1:30 p.m.
- June meeting date (TBD)
- June meeting date: Tuesday, June 28, 2016 at 1:30 pm

**APPROVED FOR ENTRY UPON THE MINUTE BOOKS OF THE TENNESSEE
ALCOHOLIC BEVERAGE COMMISSION THIS THE 26th DAY OF APRIL, 2016.**


Mary McDaniel
Chairperson


Ginna Winfree
Interim Director

²² Tenn. Code Ann. § 4-5-319(d): Except to the extent that this chapter or another statute provides otherwise, the agency record shall constitute the exclusive basis for agency action in adjudicative proceedings under this chapter, and for judicial review thereof.



STATE OF TENNESSEE
ALCOHOLIC BEVERAGE COMMISSION
DAVY CROCKETT TOWER, 3RD FLOOR
NASHVILLE, TENNESSEE 37243-0755



PHONE 615.741.1602

FAX 615.741.0847

IN THE MATTER OF:)

TENNESSEE ALCOHOLIC BEVERAGE)
COMMISSION)

Petitioner)

v.)

SOUTHERN FUN, INC.)

SILKY O'SULLIVAN'S RESTAURANT)

183 BEALE STREET)

MEMPHIS, TENNESSEE 38103)

PERMIT # 13028)

Respondent)

DOCKET NO. 33.01-130154J

FINAL ORDER AMENDING IN PART THE INTIAL ORDER

This matter came to be heard by the Tennessee Alcoholic Beverage Commission (“the TABC” or “the Commission”) during a regularly scheduled meeting of the Commission on February 25, 2015, as a properly filed appeal from an Initial Order executed by Judge Kim D. Summers of the Tennessee Administrative Procedures Division (APD) on November 5, 2015. The meeting was held in full compliance with the open meetings laws, compiled in title 8, chapter 44 of the Tennessee Code Annotated (T.C.A.), and a quorum of the Commission was present with all members being present. The statements made in this order are consistent with the statements made at the commission meeting on February 25, 2015, and are hereby rendered in writing in accordance with T.C.A. § 4-5-315.

Pursuant to T.C.A. § 4-5-315(e), the Commission afforded each party an opportunity to present briefs and an opportunity to present oral argument. The first matter addressed by the commission was Respondent’s Constitutional arguments questioning the legal authority of the Commission to issue a suspension in this case as specified in Respondent’s Petition for Appeal. After hearing argument from both sides, Commissioner John Jones motioned that the constitutional challenge be denied and that the Commission move forward to hear the rest of the issues of the matter. Commissioner Kaegi seconded the motion and that motion was voted in the affirmative and approved by all members of the Commission. After considering the entire record and hearing arguments from both sides as to the Initial Order of this matter, Commissioner Bryan Kaegi made a proper motion to uphold the seven (7) day suspension of Respondent’s license issued by the Initial Order, provided that such suspension may be held non-consecutively as agreed upon between counsel; impose court costs upon Respondent pursuant to an affidavit of costs to be filed by staff of the TABC; and to modify the Initial Order executed on September 2,

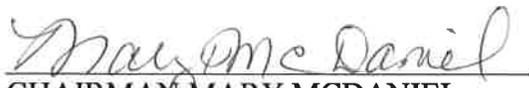
2015 in accordance with this motion and the comments of the Commission. That motion was seconded by Commissioner John Jones and that motion was voted in the affirmative and approved by all members of the Commission. The findings of Judge Kim D. Summers (attached hereto as Exhibit A) have been affirmed by the Commission, except with regards to the following paragraphs which are hereby amended as follows:

- Paragraphs 6 - 13 of "ANALYSIS and CONCLUSIONS OF LAW" are hereby are hereby rewritten to instead read as follows"
 - o 6. The Commission HAS SHOWN AND FOUND that a suspension of Respondent's license for a period of 7 days is warranted, in accordance with the specific facts of this case.
 - o 7. The 7 day suspension of Respondent's license, license # 13028, shall be held from 12:01 a.m. to 11:59 p.m. on the following days:
 - Monday, May 2, 2016;
 - Monday, May 30, 2016 (Memorial Day);
 - Monday, June 6, 2016;
 - Monday, June 13, 2016;
 - Monday, June 20, 2016;
 - Monday, July 4, 2016 (Fourth of July); and
 - Monday, September 5, 2016 (Labor Day).
 - o 8. On days of suspension no sales of alcoholic beverages shall occur, no orders for alcoholic beverages shall be placed with wholesalers, and no deliveries of alcoholic beverages shall be accepted.
 - o 9. The Commission HAS SHOWN AND FOUND that the assessment of applicable court costs against Respondent pursuant to T.C.A. § 57-1-213. Respondent shall pay to the Commission \$470 in court costs as detailed and itemized in the affidavit of costs attached to this Final Order as Exhibit B. Such costs shall be paid to the Commission no later than July 22, 2016.
 - o 10. Accordingly, the Commission hereby orders that the license of Southern Fun, Inc. d/b/a Silky O' Sullivan's Restaurant, license #105306, be SUSPENDED for a period of SEVEN DAYS in the manner specified in this order, and that COURT COSTS as specified in this order shall be ASSESSED TO SOUTHERN FUN, INC.

As specified in Appendix A to the Initial Oder of Judge Kim D. Summers, the Respondent has fifteen (15) days after the initial order becomes a Final Order to petition for reconsideration of the Final Order, and pursuant to T.C.A. § 4-5-316, a party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. Pursuant to T.C.A. § 4-5-322, parties may file a petition for review in the chancery court of Davidson county within sixty (60) days after the entry of the Final Order.

It is so **ORDERED**,

This FINAL ORDER AMENDING IN PART THE INITIAL ORDER entered and effective this the 26 day of April, 2016.


CHAIRMAN MARY MCDANIEL


COMMISSIONER BRYAN KAEGI


COMMISSIONER JOHN JONES

This Final Order has been filed Administrative Procedures Division, Office of the Secretary of State by hand delivery on this the ____ day of _____, 2016, by:

Joshua Stepp
Staff Attorney
Tennessee Alcoholic Beverage Commission
(615)741-8916

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the State's Witness and Proposed Exhibit List was sent by U.S. Certified Mail, Return Receipt Requested, to Attorney for Respondent, Irvin Salky, at 240 Hawthorne Street, Memphis, Tennessee 38112 on this _____ of _____, 2016.

Joshua Stepp, Staff Attorney

AFFIDAVIT OF COSTS

I, Joshua Stepp, after being duly sworn, do hereby depose and state as follows:

1. I am the staff attorney of the Tennessee Alcoholic Beverage Commission (TABC), and as such, I am authorized pursuant to Rule 0100-04-.02(3) to file a sworn affidavit setting forth an itemized statement of the services rendered regarding a contested matter. This affidavit is presented in relation to TABC v. Southern Fun, Inc. d/b/a Silky O' Sullivan's Restaurant docket number 33.01-130154J..
2. The TABC has been assessed and billed by Tennessee Administrative Procedures Division (APD) for the following court and court-related costs in this matter, totaling \$470.
 - a. \$200 for the initial docketing fee for this matter;
 - b. \$40 for prehearing preparation and travel by APD;
 - c. \$200 billed by the APD for the hearing of this matter on 06/09/2015; and
 - d. \$30 billed by the APD for the preparation of the Initial Order.
3. Transcription costs had been paid by Southern Fun, Inc. and no transcription or other costs have been billed or paid to the TABC.


Joshua Stepp

State of Tennessee

County of Davidson

Subscribed and sworn to before me this 21 day of April, 2016 by Rosemary S Adams


Notary Public

My Commission Expires: Jan 8, 2019





State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

September 02, 2015

E. Keith Bell, Director
Tennessee Alcoholic Beverage Commission
3rd Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243-1602

Joshua Stepp
Tennessee Alcoholic Beverage Commission
Davy Crockett Tower, 3rd Floor
500 James Robertson Parkway
Nashville, TN 37243

Irvin Salky, Esq.
240 Hawthorne St.
Memphis, TN 38112

RE: In the Matter of: Southern Fun, Inc. -Silky O'Sullivan's Restaurant
Docket No. 33.01-130154J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/ncp
Enclosure

SEP 4 2015

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

**SOUTHERN FUN, INC.
SILKY O'SULLIVAN'S RESTAURANT**

DOCKET NO.: 33.01-130154J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN September 17, 2015.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, 615/741-7008 OR 741-5042, FAX 615/741-4472. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

SEP 14 2015

BEFORE THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

**TENNESSEE ALCOHOLIC BEVERAGE
COMMISSION,
*Petitioner,***

v.

**SOUTHERN FUN, INC.
SILKY O'SULLIVAN'S RESTAURANT
183 Beale Street
Memphis, Tennessee 38102
Permit No. 13028
*Respondent.***

DOCKET NO: 33.01-130154J

INITIAL ORDER

This contested case was heard in Nashville, Tennessee on June 9, 2015, before Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Alcoholic Beverage Commission (ABC). Joshua Stepp, Staff Attorney, represented the ABC in this matter. The Respondent was represented by Irvin Salky, Esq.

The issue in this matter is the Respondent's alleged violation of Tenn. Code Ann. § 57-4-203. After consideration of the entire record, it is determined that the alleged violations have been proven by a preponderance of the evidence. This determination is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

Four individuals provided witness testimony: Bond Tubbs, Special Agent in Charge with the ABC; Ginna Winfree, ABC Assistant Director; David Hooper, Manager of Silky O'Sullivan's; and Jocelynn Sullivan, Owner of Silky O'Sullivan's.

The Parties did not contest the essential facts of the violation, only the resulting penalty that should be imposed.

FINDINGS OF FACT

1. Silky O'Sullivan's is located on Beale Street in Memphis and has been in business for forty-three years. It is licensed as a retail establishment for the resale of alcoholic beverages.

2. As a licensed establishment on Beale Street, Silky O'Sullivan's is permitted to sell alcoholic beverages to individuals on the street at its walk-up window. Employees of Silky O'Sullivan's check IDs of all individuals ordering alcoholic beverages, whether on the street or inside the restaurant and, after 8 pm, all individuals entering the restaurant.¹

3. On December 5, 2014, Silky O'Sullivan's was issued a citation and assessed a \$1500 civil penalty for selling a beer to an eighteen year old who was participating with the ABC on a compliance check on Beale Street.

4. Silky O'Sullivan's was informed that a recheck would be done within the following ninety days.

5. Silky O'Sullivan's invited the ABC to speak to its employees and installed two large digital "Born On" clocks to inform employees of the eligibility date for customers to purchase an alcoholic beverage.

6. During the recheck on February 6, 2015, a beer was, again, sold to an eighteen year old.

7. Neither offending employee was terminated from employment with Silky O'Sullivan's.

8. Prior to 2014, Silky O'Sullivan's had not been fined for a violation since 2007 for a violation that had occurred in 2005.

9. Silky O'Sullivan's has annual sales of \$2,500,000 – comprised of \$1,500,000 in food and \$1,000,000 in alcohol.

¹ After 8 pm, Silky O'Sullivan's becomes an adult-only restaurant.

10. The ABC has found that repetitive civil penalties have minimal impact on compliance because the law limits a civil penalty to a maximum of \$1500. Accordingly, it is the internal policy of the ABC to suspend the retail license of any establishment that sells to a minor two times within a three-year period. If the second sale occurs during the 90-day recheck period, it is the internal policy of the ABC to impose a twenty-day suspension. This internal ABC policy has not been promulgated in a regulation or otherwise been incorporated into any document that is available to the public.

APPLICABLE LAW

1. RULE 1360-4-1-.02(3) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies states, in pertinent part:

The “petitioner” in a contested case proceeding is the “moving” party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

2. Tenn. Code Ann. § 57-4-203(b)(1)(B) provides the following prohibition with respect to the sale of alcohol to minors –

(B) Any licensee engaging in business regulated hereunder or any employee thereof who sells, furnishes, disposes of, gives, or causes to be sold, furnished, disposed of, or given any beer or malt beverage as defined in § 57-6-102 to any person under twenty-one (21) years of age is guilty of a Class A misdemeanor.

3. Tenn. Code Ann. § 57-4-202 provides the following penalties –

The commission shall have authority to revoke or suspend any permit granted herein for the violations of any applicable provision of this chapter, and any person aggrieved by the action of this commission in revoking or suspending a permit, or in refusing to grant a permit, may have such action reviewed as provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4. Pursuant to Tenn. Code Ann. § 57-1-201(b)(1)(A), the Commission may impose a maximum fine of one thousand five hundred dollars (\$1,500) against a retailer licensed under § 57-3-204.

ANALYSIS and CONCLUSIONS OF LAW

1. It is undisputed that Tenn. Code Ann. § 57-4-203(b)(1)(B) was violated by a Silky O'Sullivan's employee two times in a period of less than three months.

2. Notwithstanding the preemptive measures taken by Silky O'Sullivan's after the first violation, it, apparently, failed to convey the gravity of the situation to its employees.

3. The ABC's stated purpose for imposing civil penalties and/or suspending a liquor license is to encourage compliance with the law.

4. Silky O'Sullivan's daily liquor sales equal approximately \$2740 / day or 40% of the daily revenue. A \$1500 civil penalty is only 21% of their daily revenue. Since the \$1500 civil penalty did not achieve compliance, it was, apparently, neither remedial nor punitive.

5. The suspension ultimately imposed need not be punitive in order to be remedial.

6. In proposing an automatic twenty-day suspension, the ABC has not considered any specific impact on the business or its employees.

7. A twenty-day suspension of Silky O'Sullivan's liquor license would result in an approximate loss of \$54,795 in revenue from liquor sales. A related loss in revenue from food sales could also be expected. This loss would also be felt by the employees of Silky O'Sullivan's, some of whom may be compelled to look elsewhere for employment.

8. The potential impact on Silky O'Sullivan's and its employees from a twenty-day license suspension appears punitive in nature and unnecessarily severe in order to achieve its remedial purpose.

9. The proposed twenty-day suspension, resulting from the internal ABC policy which has not been publicized or formalized, is not controlling in this administrative proceeding.

10. A seven-day suspension of the liquor license would result in a loss of revenue of approximately \$19,180. This loss would be consequential to both the business and its employees,

providing the remedial action sought by the ABC without the punitive effect of the proposed twenty-day suspension.

11. The Commission **HAS** shown by a preponderance of the evidence a violation of Tenn. Code Ann. § 57-4-203(b)(1)(B) for which suspension of Silky O’Sullivan’s liquor license is warranted.

12. The Commission **HAS NOT** shown that the proposed twenty-day suspension of Silky O’Sullivan’s liquor license is either necessary or appropriate under the law in order to achieve its remedial purpose of compliance.

13. Based upon the foregoing, the Commission’s decision to suspend the liquor license of Silky O’Sullivan is **UPHELD, in part**. Silky O’Sullivan’s liquor license shall be **SUSPENDED** for a period of **SEVEN DAYS**.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 2nd day of September 2015.



KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 2nd day of September 2015.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.