

**TENNESSEE ALCOHOLIC BEVERAGE COMMISSION**

**Minutes**

**Tuesday, February 16, 2010**

**1:30 p.m.**

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The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Tuesday, February 16, 2010 in Nashville, Tennessee at 1:30 p.m. The meeting was changed from Thursday, February 18 to Tuesday, February 16, 2010 due to a scheduling conflict. Chairman Jones and Commissioner Mathews were present. Although Commissioner Cynthia Bond was not present, a quorum was present and the meeting was held. Executive Director Danielle Elks, Assistant Director Carolyn Smith, CLEO Mark Hutchens, SAC Mike Cawthon, ASAC Al Watson and SA Brad Smith were present.

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**1. The Minutes for January 21, 2010 Commission Meeting were approved.**

**2. A. RETAIL**

**1. PAL'S PACKAGE STORE  
CLARKSVILLE, TENNESSEE (MONTGOMERY COUNTY)**

**Licensee: Pal's Package Store, LLC  
Members: Amber and James Heggie**

Before the Commission is a request for a transfer of location of the retail store currently located at 1810 Madison Street in Clarksville, Tennessee. The licensee wishes to transfer location to 1820 Madison Street, Suite G, in Clarksville. The request is based upon the fact that Mr. Heggie and a partner (Jeffery Robinson) have purchased the property for the proposed location. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Use and Occupancy permit;
- c. Certificate of Compliance.

**Discussion/Action Taken:**

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the TABC Inspection and the Use and Occupancy permit.

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

**2. VINE AND BARREL  
CHATTANOOGA, TENNESSEE (HAMILTON COUNTY)**

**Licensee:** Vine & Barrel, LLC  
**Members:** J. Anthony Cobble and Emily Cameron  
**New Member:** Robert Treadway, Jr.

Before the Commission is a request for transfer of stock ownership in the retail licensee located at 5506 Hixson Pike, Suite 100 in Chattanooga, Tennessee. Emily Cameron currently has 99% ownership interest, and her son, J. Anthony Cobble has 1% ownership interest. Robert Treadway, Jr. is the manager of the retail store. Ms. Cameron would like to transfer 50% of her interest to Mr. Treadway in recognition of his contribution to the operation of the business—the financial condition of the establishment improved greatly under his management. In recognition of the financial contribution and work performed Mr. Cobble, Ms. Cameron wishes to transfer 25% to him. Thus, Ms. Cameron would maintain 24% ownership interest; Mr. Cobble, 25% interest; and Mr. Treadway, 50% interest. It should be noted that Mr. Treadway’s brother, David Treadway, is the current licensee at Louie’s Liquor. Mr. Treadway sold his interest in the store to be manager at this store. All documentation has been submitted with the exception of the following:

- a. Financial records for store for the past two years.

**Discussion/Action Taken:**

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the financial records for store for the past two years.

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

**3. AIRWAYS DISCOUNT LIQUORS  
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

**Licensee:** BFIC, Inc.  
**Stockholders:** Carey Irby  
**Applicant:** Liquor Works, LLC  
**Member:** Rigel Allen

Before the Commission is a request for a transfer of ownership in the retail store located at 4907 Airways Boulevard in Memphis, Tennessee. Mr. Allen wishes to purchase the store for \$35,000, plus the cost of inventory

(currently valued at \$8000). Financing is based upon an annuity retirement fund. The corporate applicant will be leasing the property from Lawal Ibadat. All documentation has been submitted with the exception of the following:

- a. Citation paid for Mr. Irby obtaining 100% ownership in business without prior approval;
- b. TABC Inspection;
- c. Acknowledgement of the rules and regulations;
- d. Use and Occupancy permit
- e. Lease to Liquor Works, LLC

**Discussion/Action Taken:**

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

- a. Citation paid for Mr. Irby obtaining 100% ownership in business without prior approval;
- b. Inspection;
- c. Acknowledgement of the rules and regulations;
- d. Use and Occupancy permit
- e. Lease to Liquor Works, LLC

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

**4. BY-PASS LIQUORS  
LEWISBURG, TENNESSEE (MARSHALL COUNTY)**

**Licensee: Dash, Inc.**  
**Stockholders: Prabir Dash and Prajesh Dash**  
**Applicant: Shakti, Inc.**  
**Stockholder: Mukesh Patel**

Before the Commission is a request for a transfer of ownership for the retail located at 538 North Ellington Parkway in Lewisburg, Tennessee. Mr. Patel wishes to purchase the assets of the business for \$5000—not including the inventory. Financing is based upon existing personal funds. Shakti, Inc. will be leasing the property from Smit, LLC. Mr. Patel owns both Shakti, Inc. and Smit, LLC. All documentation has been submitted with the exception of the following:

- a. Certificate of compliance should reflect individual's name;
- b. Use and Occupancy permit;
- c. TABC Inspection;
- d. Acknowledgement of the rules and regulations;
- e. Lease from Smit, LLC to Shakti, Inc.

**Discussion/Action Taken:**

Mukesh Patel and William Cheek, III, attorney, were present at the meeting. Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the following documentation:

- a. Certificate of compliance should reflect individual's name;
- b. TABC Inspection;
- c. Acknowledgement of the rules and regulations;
- d. Lease from Smit, LLC to Shakti, Inc.

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

**6. CONTESTED HEARINGS**

**A. CONTINUED FROM JANUARY, 2010 MEETING:**

**1. 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:**

Steven Kiss and Paul Housch, attorney, were present at the meeting. Assistant Director Smith stated that this matter was brought before the Commission because the staff is asking that the Commission revoke license #52219 held by Steven Kiss, d/b/a Trax. Assistant Director Smith stated that there have been several outstanding citations that have been issued to this establishment and they have not been paid; however, Assistant Director stated that the matter is being brought before the Commission primarily because there have been two (2) food audits done on the establishment and the establishment does not meet the T.C.A. statute definition of a “restaurant” to keep the license. The first food audit was done on the end of 2006 and the beginning of 2007. The most recent food audit was conducted in the spring of 2009. Assistant Director Smith stated that at the time the food audits were done, the law required restaurants to be open at least four days a week and if they were open at least five days a week the establishment had to serve at least one meal a day five days a week, but the principal business had to be the serving of meals. The definition changed in 2009 in that now an establishment can be open only three days a week. However, the requirement for food service is more stringent in that each day that an establishment is open, the serving of meals has to be the principal business conducted. The results of those food audits showed that the average food sales as compared to liquor and beer and other sales was a slightly over 5% in 2006/2007 and approximately 2¼ % in 2009.

SA Brad Allison testified that when he does a renewal inspection, he notes how much food is available at the establishment, the kitchen equipment to cook the food, whether or not the patrons are consuming the food and the owners’ estimate of what the actual food sales are at the establishment. SA Allison testified that these factors determine whether he will conduct a food audit. At that point, a letter is sent out requesting all food, beer, alcoholic beverage receipts and other merchandise sold at the establishment for a three (3) month period. SA Allison further testified that Trax’s audit 2009 showed Trax had total food sales of 2%, liquor sales were approximately 63%, and 35% for beer during the 3 month period. SA Allison testified that during a walk through inspection, there were no cooks, no waiters, six (6) bartenders, no security personnel and one manager with a total of seven (7) personnel. SA Allison testified that the kitchen consisted of 25 square feet with a microwave, two small pizza ovens and a grill on the patio/deck area.

Mr. Kiss testified that the establishment has tried to operate as a restaurant—that food was present and available. The problem arises when the establishment cannot make people eat. Further, he testified that Trax has met the other requirements of a restaurant but for the percentage of food service. Mr. Housch agreed that Mr. Kiss failed to pay his citation for the

outstanding citation; however, may have been the result of miscommunication.

Commissioner Mathews stated that if the establishment had had a record of selling to minors, loitering or any disorderly conduct or other violations they could have controlled, but did not, he could not vote to give them a second chance. Chairman Jones stated that it appears that the licensee has the appearance of trying to be a restaurant, specifically being open 7 days a week and open for lunch and that the establishment has tried to sell food and open the hours to serve food.

Director Elks stated that in addition to the two food audits indicating less than 5% food sales each, Assistant Director Smith had concerns over food service with the initial application and required Mr. Kiss to submit additional information specifically regarding his food service operations. Thus, throughout the licensing period, the licensee was aware the TABC had concerns related to food service.

Chairman Jones made a motion to suspend the license for ninety 90 days beginning midnight on February 17, 2010 and give the establishment nine (9) months to improve his food sales. Further, at some time during the nine month period, the TABC will conduct a food audit to determine if a significant increase in food service has occurred. Further, the licensee agreed that the alcohol on the premises would be pad-locked. Lastly, the licensee would make an immediate \$2,000 payment on the outstanding citation, with \$500 a month until the outstanding citation is paid in full. Commissioner Mathews seconded Chairman Jones' motion based upon the philosophy that it is better to promote business rather than putting people out of business.

**5. BUDGET**

**6. CONSENT ORDERS**

**7. PERSONNEL** – Melinda Arrington was hired as an Attorney 2 and Heath Luttrell was hired as an SA Agent 1 to be located in the Nashville office for two weeks and then he will be transferred to the Chattanooga office to work in the HIDTA area.

**8. PENDING MATTERS LIST**

**9. MISCELLANEOUS**

**A. Monthly Summary of TABC Activity**

**10. DATE OF NEXT MEETING** - Thursday, March 25 and Thursday, April 22, 2010 at 1:30 p.m.

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John A. Jones  
Chairman

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Shari Danielle Elks  
Executive Director