

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Yogi's Wine & Liquor
Yogesh Patel, Applicant
Yogi's Wine & Liquor LLC, Backer
Liquor Permit No. LIP.14763
Case No. 2011-237

Docket No. 2011-759
November 10, 2011

MEMORANDUM OF DECISION

This matter involves a new application for a package store liquor permit for Yogi's Wine & Liquor, 7 Glenwood Road, Clinton, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection on October 6, 2011. Yogesh Patel, applicant and sole member of the backer limited liability company, appeared with counsel. The hearing was held in accordance with Sec. 30-39(c), Connecticut General Statutes, as a result of a legally sufficient remonstrance questioning the suitability of the proposed location, and Sec. 30-14a, Connecticut General Statutes, questioning the availability of a package store permit in Clinton, Connecticut. Remonstrants appeared on behalf of the remonstrance to oppose the application.

We will first consider the issue of whether there is a package store liquor permit available in the town of Clinton.

Connecticut General Statutes Sec. 30-14a regulates the number of package store permits available in each town. Its purpose is to ensure that each municipality is served by an adequate but not excessive number of package store permits.

Section 30-14a, Connecticut General Statutes provides, in relevant part:

... Commencing June 8, 1986, the Department of Consumer Protection may issue one package store permit for every twenty-five hundred residents of a town as determined by the most recently completed decennial census. The department may authorize the holder of such permit to remove his permit premises to a location in another town provided such removal complies with the provisions of this chapter. (Emphasis added)

Based upon the evidence adduced at the hearing, we find the following facts. Liquor Control Agent Anderson conducted a complete and thorough investigation of the new application and remonstrance for the proposed package store, Yogi's Wine & Liquor. As part of his investigation, he determined that Clinton is allowed five package store permits based upon its census population. There are currently five active package store liquor permits in Clinton, Connecticut. The most recently approved package store liquor permit in Clinton was granted by the Liquor Control Commission on January 25, 2011. The permit was for an application for a package store liquor permit located at 19 East Main Street, Clinton, Connecticut and was submitted by another applicant on September 27, 2010. Such application was submitted with proof that the applicant had the right to occupy the premises, which is a statutory requirement in order for a liquor permit to be approved.

On September 20, 2010, the applicant submitted its first package store liquor permit application to the department. This application was for a package store premises located at 114-116 East Main Street, Clinton, Connecticut. The applicant did not have or provide evidence of the right to occupy 114-116 East Main Street, Clinton, and the application was incomplete. In early October,

Agent Anderson made arrangements to meet with the applicant at the 114-116 East Main St. location. Upon his arrival at 114-116 East Main St., he was directed by the applicant's real estate agent to 7 Glenwood Road, Clinton, Connecticut. Agent Anderson met with the applicant at the 7 Glenwood location, an empty store in a strip mall; he was advised that the applicant's package store would be located at the 7 Glenwood Road location rather than the 114-116 East Main St. location. Agent Anderson thereupon gave the applicant a "removal application" and they began to complete it. Agent Anderson advised the applicant that in order to "remove" his permit from 114-116 East Main St., he would need to provide the department with proof of his right to occupy 114-116 East Main St. and also the required Zoning Enforcement and Town Clerk signatures for the 7 Glenwood Road location. Agent Anderson clearly advised the applicant that once he had obtained a lease for the 114-116 East Main St. location and required signatures, the removal application could be submitted and considered by the department for processing. Agent Anderson further advised the applicant that without a lease for the 114-116 East Main St. location, the application could not be considered a "removal" and would be a new application for the 7 Glenwood Road location.

On October 18, 2010, the applicant submitted a second application for a package store liquor permit; this application for premises at 341 East Main Street, Clinton, contained Zoning Enforcement authority and Town Clerk signatures dated September 30, 2010. This was not the removal application which had been discussed by Agent Anderson and the applicant, but rather a new application by the applicant for a third address in Clinton. The applicant did not

have or provide evidence of the right to occupy 341 East Main Street, Clinton, and the application was incomplete.

On or after October 19, 2010, the applicant submitted a third application to the department for a package store liquor permit; this application for premises located at 7 Glenwood Road, Clinton, contained Zoning Enforcement authority and Town Clerk signatures dated October 19, 2010. At the time the application was submitted, the applicant did not have the right to occupy 7 Glenwood Road, Clinton and the application was incomplete. On December 20, 2010, the department received a copy of an executed lease for 7 Glenwood Road as evidence of the right to occupy 7 Glenwood Road; such lease was executed on November 22, 2010, “made effective November 3, 2010” and obligated the applicant to commence rental payments 120 days after the lessee’s receipt of the approvals necessary to operate a liquor store at the leased premises.

In view of the provisions of Section 30-14a, Connecticut General Statutes, which limit package store permits by population, it would be improper to allow “place holding” by any applicant’s submission of an incomplete liquor permit application to this department. While the application process for this applicant has been circuitous, the substantial evidence remains that the only location in Clinton for which there has been the required right to occupy is for 7 Glenwood Road; therefore, the subject matter of this remonstrance and new application hearing is the third new liquor permit application for Mr. Patel, which contains the October 19, 2010 signatures (*See* Sec. 30-46(5), Connecticut General Statutes) and was submitted to the department on or after October 19, 2010.

The strip mall which contains 7 Glenwood Road abuts the property line for the Morgan School, Clinton's public high school. Remonstrants appeared and testified in opposition to the granting of this package store permit at 7 Glenwood Road, Clinton, Connecticut, contending that there are no available package store permits available and also that the proposed location's proximity to the Morgan School would have a detrimental effect on the high school students and youth of the community. The department also received written objections to the granting of a liquor permit at 7 Glenwood Road from interested individuals including Clinton Chief of Police Lawrie, Clinton Superintendent of Schools Cross. The determination of factual matters with regard to the suitability of the location of proposed liquor permit premises is vested with the Liquor Control Commission. Brown v. Liquor Control Commission, 176 Conn. 428, 407 A.2d 1020 (1973).

The applicant's package store permit application for 7 Glenwood Road, Clinton, Connecticut cannot be granted in view of the fact this would be the sixth package store liquor permit in Clinton, exceeding the number of permits permitted by Sec. 30-14a, Connecticut General Statutes. Therefore, it is not necessary to determine whether the location is suitable within the meaning of Sec. 30-46(a)(1), Connecticut General Statutes.

Mr. Patel had previously been provided with an opportunity to withdraw his package store permit application in view of the unavailability of a package store liquor permit in Clinton. If he wishes to avail himself of that opportunity, he may do so within the next seven days. If his application has not been withdrawn within seven days, we must deny Yogesh Patel's application for a

package store liquor permit at 7 Glenwood Road, Clinton, based upon the unavailability of any package store permits in Clinton.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION**

BY:

Elisa A. Nahas, Esq.
Designated Presiding Officer

Angelo J. Faenza, Commissioner

Stephen R. Somma, Commissioner

Parties:

Yogesh Patel, Applicant, 320 Boston Post Road, Guilford, CT 06437
(Via US Mail and Certified Mail # 7010 1670 0000 0762 0948)

Jeffrey T. Beatty, Esq., Beatty & Betty, LLC , 25 Boston Street, Guilford, CT 06437

Kristin E. Brooks, Agent for Remonstrants, 23 Christina Court, Clinton, CT 06413
(Via US Mail and Certified Mail #7010 1670 0000 0762 0955)

Nonparties:

John Suchy, Director, Liquor Control Division

Connecticut Beverage Journal, 2508 Whitney Ave., P.O. Box 185159, Hamden,
CT 06518

Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106