

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Stew's Wines and Spirits of Newington
William N. Sweedler, Applicant
Stew's Wines and Spirits of Newington LLC, Backer
Liquor Permit No. LIP.14203
Docket No. 07-205

October 14, 2008

REVISED MEMORANDUM OF DECISION

This matter involves a new application for a package store liquor permit for Stew's Wines and Spirits of Newington, 3475 Berlin Turnpike, Newington, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection on February 8, 2007, at which time William N. Sweedler, applicant, appeared with counsel. The hearing was held in accordance with Section 30-39(c), Connecticut General Statutes, as a result of a legally sufficient remonstrance.

The Liquor Commission issued a Memorandum of Decision dated March 27, 2007, in which it denied the remonstrance and granted the liquor permit to the applicant. The Remonstrants took an appeal to the Superior Court. The Superior Court, Judge Henry S. Cohn, issued a decision dated June 17, 2008, remanding the case to the Commission for a clarification of the findings of fact. On remand, it was determined that the factual issues raised by the Superior Court were adequately presented in the original record and, therefore, additional hearings were not deemed necessary.

FINDINGS OF FACT

Based upon the testimony and evidence presented at the hearing, we find the following facts:

1. William Sweedler, as permittee, filed a new application for a package store permit for Stew's Wines and Spirits for 3475 Berlin Turnpike, Newington, Connecticut on June 13, 2006. (Remonstrants Exhibit 1; Commission Exhibit A).

2. Stew's Wines and Spirits of Newington, LLC is the backer of this application. (Remonstrants Exhibit 1; Commission Exhibit A).

3. A Remonstrance was filed against the application on July 17, 2006. (Commission Exhibit B, Attachment 1).

4. Department of Consumer Protection Liquor Control Agent Gerald Finnegan conducted an investigation in connection with the new application and the remonstrance. Agent Finnegan found nothing questionable about the applicant or the proposed location. There is proper zoning approval. (Testimony of John Suchy, Transcript pp. 9-22; Commission Exhibit A).

5. Stewart J. Leonard, Jr. holds an interest in two liquor permits. (Testimony of Stewart Leonard, Jr., Transcript pp. 145-146)

6. The Stewart J. Leonard, Jr. Family Trust is an irrevocable trust and is the sole member of Stew's Wines and Spirits of Newington, LLC. (Testimony of William Sweedler, Transcript p. 71; Testimony of John Musicaro, Transcript pp. 202 and 204; Commission Exhibit B, Attachment 3; Commission Exhibit E, p. 12; Applicant's Exhibit AA).

7. William Sweedler is the sole Trustee of the Stewart J. Leonard, Jr. Family Trust, and is the sole person in control of the Trust. (Testimony of William Sweedler,

Transcript p. 71; Testimony of John Musicaro, Transcript pp. 199-201; Commission Exhibit E, pp. 1 and 22).

8. Stewart J. Leonard, Jr. is not a Trustee of the Stewart J. Leonard, Jr. Family Trust. (Testimony of William Sweedler, Transcript p. 71; Testimony of John Musicaro, Transcript pp. 199-200; Commission Exhibit E, pp. 1 and 22).

9. Stewart J. Leonard, Jr. does not have control over the Stewart J. Leonard, Jr. Family Trust through his business or personal relationship with the Trustee or successor Trustee of the Stewart J. Leonard, Jr. Family Trust. (Testimony of John Suchy, Transcript pp. 12, 15 and 16; Testimony of William Sweedler, Transcript pp. 98-100; Testimony of Stewart Leonard, Jr., Transcript pp. 165-167; Testimony of Vincent Summa, Transcript pp. 192-193; Commission Exhibit E).

10. Stewart J. Leonard, Jr. does not hold, and will not obtain, an interest in the Newington liquor store permit through his children, who are the beneficiaries of the Stewart J. Leonard, Jr. Family Trust. The children cannot demand distribution, do not have control over the trust principal and cannot remove or appoint the Trustee (Testimony of John Musicaro, Transcript pp. 206-208; Commission Exhibit E).

11. Stewart J. Leonard, Jr., his spouse, and his children do not have the power to appoint or remove the Trustee of the Stewart J. Leonard, Jr. Family Trust if the Trust holds a liquor store permit. (Testimony of John Musicaro, Transcript pp. 200 and 207; Commission Exhibit E, pp. 4, 5, and 14).

12. The children of Stewart J. Leonard, Jr. do not have access or control over the corpus of the Stewart J. Leonard, Jr. Family Trust. (Testimony of John Musicaro, Transcript pp. 207-208; Commission Exhibit E).

13. The children of Stewart J. Leonard, Jr. are beneficiaries of trusts that have an interest in two liquor permits. (Testimony of Vincent Summa, Transcript p. 183; Applicant's Exhibit AA).

DISCUSSION

The Remonstrants have raised two issues in opposition to the granting of the permit:

1) an existing backer (Stewart J. Leonard, Jr.) will acquire an interest in more than two liquor permits in violation of Connecticut General Statutes, Section 30-48a; and

2) the applicant, William Sweedler, has not been delegated full authority and control of the premises in violation of Connecticut General Statutes, Section 30-47(6).

Based upon the substantial evidence presented, we do not find the applicant to be unsuitable for a package store liquor permit. The determination of factual matters with respect to applications for liquor permits is vested in the Liquor Control Commission. Brown v. Liquor Control Commission, 176 Conn. 428, 407 A.2d 1020 (1973). The determination of factual issues on conflicting testimony is within the province of the Commission. Noyes v. Liquor Control Commission, 151 Conn. 524, 527, 200 A.2d 467 (1964).

As for the question on the two permit rule, the Attorney General has issued an opinion on a similar fact situation dealing with a trust (Attorney General's Opinion, November 28, 2000). This opinion stated that Connecticut General Statutes, Section 30-48a, may bar a liquor permit if it is found that the trust in question was controlled by

disqualified members of the family of the existing permit holder. It is specifically found and concluded that Stewart J. Leonard, Jr. does not have control over the trust. It is specifically found and concluded that that no family member of Stewart J. Leonard, Jr. has control over the trust.

As to the second issue, it is specifically found and concluded that Mr. Sweedler has been delegated full authority and complete control of the permit premises.

DECISION

Accordingly, we hereby deny the remonstrance and grant the final package store liquor permit to William Sweedler and Stew's Wines & Spirits of Newington, subject to the agent's final requirements.

DEPARTMENT OF CONSUMER PROTECTION LIQUOR CONTROL COMMISSION

BY:

Steven Schwane
Presiding Officer

Angelo Faenza
Commissioner

Parties:

William N. Sweedler, Applicant

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Matthew G. Conway, Attorney for Remonstrants, 818 Farmington Avenue, West Hartford, CT 06119

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

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