City of Troy

MEMORANDUM

TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney LGB
DATE: February 17, 2012
SUBJECT: Super City Smoker's Express, LLC. SDM liquor license

Enclosed please find the order issued by the Michigan Liquor Control Commissioner Edward J. Gaffney concerning Super City Smoker's Express, LLC, which is located at 2981 E. Big Beaver Road, Troy, MI. This tobacconist establishment was licensed on May 16, 2011, and has been found responsible for multiple counts of selling alcohol to minors. The order requires the business to be suspended for a five day period, starting March 9, 2012. During that time, no alcohol can be sold.

Additionally, since there have been five liquor license violations (selling alcohol to minors), the licensee will also be subjected to a suspension/revocation hearing before a full panel of the Michigan Liquor Control Commission.

I am happy to answer any additional questions about this particular liquor license or the process.

STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

IN RE: SUPER CITY SMOKER'S EXPRESS, L.L.C.
D/B/A
2981 E. BIG BEAVER
TROY, MI 48083

HEARING: JANUARY 9, 2012
PLACE: STERLING HEIGHTS
COMPLAINT NO. 1-149838
BUSINESS ID NO. 220839
SDM

/

CHARGES – NOVEMBER 11, 2011

(1) Sold or furnished alcoholic liquor to minor, Spencer William Oswald, date of birth June 26, 1994, who was less than twenty-one (21) years old, contrary to Const 1963, art 4, § 40 and contrary to Section 801(2) and/or Section 701(1) of the Michigan Liquor Control Code, MCL 436.1801(2) and/or MCL 436.1701(1).

(2) Failed to cooperate with law enforcement officer(s) and/or obstructed law enforcement officer(s) in the course of inspecting or investigating the licensed premises, while enforcing the Michigan Liquor Control Code, contrary to Section 217 of the Michigan Liquor Control Code, MCL 436.1217, and/or contrary to Rule 436.1011(4).

NEGOTIATED SETTLEMENT

Joseph Harris, member of the above Licensed Limited Liability Company, appeared before this Commissioner and was represented by Attorney Alan Applebaum. Mr. Applebaum with Susan Moody-Frezza, Assistant Attorney General representing all law enforcement in this matter, proposed the following Negotiated Settlement for the Commissioner to consider in Case No. 1-147838 pursuant to Section 903 of the Michigan Liquor Control Code and administrative rule R 436.1909 of the Michigan Liquor Control Commission (MLCC):

PROPOSED NEGOTIATED SETTLEMENT

(1) The Licensee will enter a plea of no contest to the two (2) charges cited above. The Licensee acknowledged, on the record, that while he is pleading no contest to protect his

constitutional rights regarding future legal actions, this plea of no contest is tantamount to acknowledging responsibility, for MLCC purposes, to the charge cited above. Also, the Licensee acknowledged that because this is one of five (5) no-contest pleas to Section 801(2) violations, this plea of no contest, together with other such pleas entered at the MLCC hearings on January 9, 2012, must by law, lead to a suspension/revocation hearing which will be held by Administrative Commissioners;

(2) The Commissioner will enter the Violation Report of this case and attachments thereto into the record as substantive evidence without objection. The Commissioner further will take notice of the prior record of this Licensee, since being licensed by the MLCC at the above-named location under the current ownership;

(3) The Licensee will agree to the sanction of a fine of $450 for each of the two (2) charges cited above, for a total fine of $900; and a five-day (5-day) suspension of the Licensee's liquor license, as penalty in this matter; and

(4) Both parties hereto will agree that there shall be no appeals on this matter to the Appeal Board of the MLCC or any court of law.

ORDER

In determining whether to approve the Negotiated Settlement as proposed above, the Commissioner considered support of the aforementioned settlement by Sgt. Michael Giorgi on behalf of the Troy Police Department.

In determining whether to approve the Negotiated Settlement as proposed above, the Commissioner considered the Licensee's total record, which shows no previous violations since being licensed on May 16, 2011, at the above-named location under the current ownership.

In consideration of the aforementioned circumstances and statements, the Commissioner hereby accepts the terms and conditions of the proposed Negotiated Settlement and Orders as follow:

The Commissioner accepts the Licensee's plea of no contest to the two (2) charges cited above. This acceptance was predicated on two (2) facts: a) the Troy Police Department gave its support to the proposed negotiated settlement; and b) there will be a suspension/revocation hearing held by Administrative Commissioners which will result, in all likelihood, in additional penalties for this Licensee.

The Commissioner hereby accepts the Violation Report of this case and attachments thereto as substantive evidence without objection. Further, the Commissioner hereby accepts a True Copy of this Licensee's record since being licensed by the MLCC at the above-named location under the current ownership.

Based upon the aforementioned plea by the Licensee, the Commissioner finds that the Licensee in Case No. 1-149838 did violate Section 801(2) of the Liquor Control Code, MCL 436.1801(2) and administrative rule R 436.1011(4) as cited in Charges Nos. 1 and 2, respectively, of the Complaint in this matter.

As penalty, the Commissioner Orders a fine of $450 for each of the two (2) charges to which pleas of no contest were entered. In addition, the Commissioner Orders that a suspension of forty-five (45) continuous days be imposed if the total fine of $900 is not paid with this suspension, if served, to be served consecutively and not concurrently with any other suspensions ordered by the MLCC for this Licensee. This fine will be due 45 days from the date of this Order.

In addition, the Commissioner Orders all licenses and permits issued by the MLCC to this Licensee at the above-named address be suspended for a period of five (5) continuous days.

Also, the Commissioner Orders the Licensee to pay $80.50 in witness fees for this hearing.

The Licensee agrees this Negotiated Settlement was a full and final disposition of this matter before the MLCC. The Licensee recognizes that, as to this Complaint, there is no further right of administrative or judicial appeal, either to the MLCC or a court of law. The Licensee also agrees that the plea in this case was entered voluntarily and with the full understanding of all consequences. Furthermore, all parties agree that there are no promises, stipulations, understandings or agreements other than those stated above as part of the official record. This document represents the final agreed settlement.

MICHIGAN LIQUOR CONTROL COMMISSION

Edward J. Gaffney, Commissioner

Dated: January 26, 2012

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EJG: 1-149838