

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

AGENDA
Tuesday, March 22, 2016
1:30 pm

1. APPROVAL OF THE FEBRUARY COMMISSION MEETING MINUTES

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.

**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.

**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)

**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:

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

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

Applicant: Metropolitan Wine, Inc.³

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.

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.

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

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

Applicant: 4 Friends, LLC

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)

**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

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.

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

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)

**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 75-100k 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

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

⁹ Zipcode: 37659

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

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

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

4. FARM WINERY MATTERS - none

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
- d. zoning letter
- e. amended federal basic permit

**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

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

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.

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 #
- e. federal basic permit
- f. license Fee

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.

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

Applicant: Cunningham Spirits, LLC

Member(s): Matthew Cunningham, 100%

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.

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.

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 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

**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

7. PRIVATE CLUBS –none

8. RETAIL FOOD STORES

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

Stepherston 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

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 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.

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

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.

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)

End of Agenda

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

**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.

**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.

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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)

SECRETARY OF STATE

DOCKET NO. 33.01 -130154J

PETITION FOR APPEAL OF INITIAL ORDER

To the Honorable Mary McDaniel, Chairperson, John Jones, Commission Member and Brian Kaegi, Commission Member.

Respondent, Southern Fun, Inc., Silky O'Sullivan's Restaurant respectfully petitions the Tennessee Alcoholic Beverage Commission (TABC) for an Appeal of the Initial Order, dated September 2, 2015, in accordance with T.C.A. §4-5-315 (2015), Rules of Tennessee Department of State A.P.D., Chapter 1360-01-01-18; and Rules of TABC, Chapter 0100-04-.01, .02, .03, and in support of said Petition would show the following:

- (1) An administrative hearing was held on June 9, 2015, in Nashville, Tennessee, at the TABC, with Administrative Judge Kim Summers presiding.
- (2) Testimony was admitted in evidence by several witnesses, including Commission Assistant Director Ginna Winfree, who testified that the "internal" policy of the TABC when two violations by a licensee of T.C.A. §57-4-203 (b)(1)(B)-sale of

alcohol to minors occur within a ninety (90) day period, said policy proposes that the licensee's license to sell alcoholic beverages be suspended for twenty (20) days.

- (3) Assistant Director Winfree in addition testified that the "internal" policy stated above was the result of verbal communication(s) between her and Mr. E. Keith Bell, Director of the TABC, sometime after Mr. Bell was appointed as the Director.
- (4) Assistant Director Winfree also testified that prior to Mr. Bell's appointment and for several years, while she was employed by the TABC, the policy was a potential fine only (emphasis added) for such violations referred to above.
- (5) According to the testimony of Ms. Winfree, there are some four thousand licensees in the State of Tennessee that the TABC oversees.
- (6) Judge Kim Summers recalled Assistant Director Winfree as a witness, without objection of the parties, to ask her if the "internal" policy ever became a written policy by the Commission, to which Ms. Winfree answered, "No."
- (7) Respondent agrees with and adopts by reference as if stated verbatim herein Judge Summers' Analysis and Conclusions of Law contained in the Initial Order, pages 4 and 5, paragraphs 5, 6, 7, 8, 9, and 12.
- (8) Respondent has been in the restaurant business for 43 years in Memphis, Tennessee, and has enjoyed a good name and reputation during that time.
- (9) For many years the custom, policy and practice of the TABC, prior to Director Bell being appointed, was to impose a fine only for a licensee's violation of sale of alcohol to a minor occurred, apparently even if there were two (2) such violations within a ninety (90)-day period.
- (10) Respondent, as well as the other licensees in Tennessee, have always relied on the

TABC's prior policy of potentially being fined only (emphasis added) when violations of sale of alcohol to a minor occurred.

- (11) Respondent has never received from the TABC any written notice that there was such dramatic a change in its policy as stated above; and Respondent has not found any evidence stating such a change and approved by the TABC in it's minutes of Commission meetings since Mr. Bell became Director.
- (12) Respondent states as grounds for this Appeal of Initial Order that the TABC has never adopted a written policy as to impose a twenty (20) day suspension, or any length of suspension by a licensee who has been cited for two violations within a ninety (90) day period. According to testimony and exhibits presented at the hearing referred to above, except, perhaps, when the licensee had agreed to such a suspension. That would probably have occurred without the licensee requesting a hearing, as is the case with Respondent herein.
- (13) Respondent asserts that the "internal" policy made as a result of conversation(s) by the Director and Assistant Director was arbitrary, capricious, punitive and without approval or authority by the TABC.
- (14) Respondent asserts that in order to carry out the proper notice provisions when a State Agency imposes a severe penalty on entities and/or individuals, that Agency should put those subject to the potential penalty on notice, so that any remedial purpose of compliance be achieved.
- (15) Respondent would show that any imposition of a suspension by the TABC of Respondent's license without proper notice would be a violation of the Tennessee Constitution-specifically Section 8-Deprivation of life, liberty or property under law;

due process; Section 11--Ex post facto laws; Section 16--Excessive bail or fines; cruel and unusual punishment; and Section 20-Retrospective laws; impairment of contracts. All of which sections are stated in the Tennessee Constitution's Declaration of Rights. In addition, such suspension is in violation of Amendments V, VI, VIII and XIV to the United States Constitution.

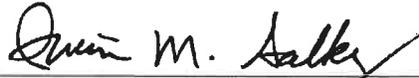
- (16) Respondent's attorney, as further grounds for this Appeal, would show that he has requested a transcript of Ms. Winfree's testimony from the Court Reporter Helen K. Stephens, who appeared at the hearing on June 9, 2015, to be provided in an expeditious manner in order to provide a copy of same to the TABC and its Staff Attorney, Mr. Joshua Stepp, for their review. Ms. Stephens notified Respondent's attorney yesterday, September 15, 2015, that the transcript requested could be provided within two (2) to three (3) weeks from the date she receives payment of the estimated cost of the transcript of Ms. Winfree's testimony. Respondent's attorney is sending this payment today, September 16, 2015.

WHEREFORE, based on the foregoing points and authorities, Respondent requests that the TABC grant this Petition for Appeal of Initial Order, until it can receive and review the transcript of the testimony of Assistant Director Ginna Winfree that Respondent, in great part, is relying on as grounds for overturning and vacating the seven (7) day suspension imposed by the Initial Order herein.

In addition, Respondent requests that the TABC conduct a hearing at an appropriate date and time to allow Respondent and other witnesses to be called for the purpose of the Commission itself consider whether it's authority to promulgate and approve its own rules, regulations and policies appertains, as opposed to having them usurped by the TABC Director and Assistant Director.

Respondent requests any additional relief that the TABC finds appropriate.

Respectfully submitted this the 16th day of September, 2015, by



IRVIN M. SALKY BPR#008869

Attorney for Respondent 240

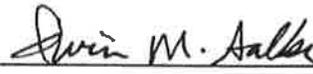
Hawthorne Street

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Certificate of Service

I certify that a true and correct copy of Respondent's Petition for Appeal of Initial Order has been sent to Joshua Stepp, Staff Attorney, TABC, by Fax (615)741-0847 and by depositing same with FedEx this 16th day of September, 2015.



IRVIN M. SALKY