

STATE OF VERMONT
LIQUOR CONTROL BOARD

IN RE:

**Elizabeth A. O'Brien
(O'Brien's Irish Pub)
348 Main Street
Winooski, Vermont**

DECISION

The Liquor Control Board (LCB) held proceedings in Montpelier, Vermont, on February 20, 2013, to consider the first class cabaret license application of Elizabeth A. O'Brien. The applicant Elizabeth A. O'Brien was present, but was not represented by an attorney. The Department of Liquor Control (DLC) was represented by Assistant Attorney General Jacob A. Humbert.

A 2012 first class cabaret license application was submitted by Elizabeth A. O'Brien captioned as stated above, seeking to operate O'Brien's Irish Pub at 348 Main Street, Winooski, Vermont, as an individual. Said license application was dated September 6, 2012. The license application was approved by the Control Commissioners of the City of Winooski by all members on October 15, 2012.

The 2012 first class cabaret license would enable Elizabeth A. O'Brien at 348 Main Street, Winooski, Vermont, to serve alcoholic beverages on premises.

FINDINGS OF FACT

1. The DLC caused a routine applicant investigation to occur and it was done by Sergeant Martin Prevost, DLC Investigator in charge of license investigations. The license application was received by Prevost on or about October 17, 2012 and during the ensuing time he has conducted a standard investigation.

2. Elizabeth O'Brien has owned the building at 348 Main Street for 15 to 20 years. The licensed establishment was run first by John O'Brien, the former husband of the applicant

Elizabeth and then, presumably because of his continuing problems with the DLC, eventually the operation of the business was taken over by the son of John and Elizabeth, Jay O'Brien, in 2002.

3. Jay however also had difficulty with the DLC culminating with the liquor license for the premises being revoked by the LCB in July of 2012.

4. There is no indication from the record that Elizabeth O'Brien participated in the management of the licensed establishment nor was she employed there, except in the very beginning in a position of no consequence to this inquiry.

5. As a result of the difficulties that the DLC has had with John O'Brien and with Jay O'Brien in the running of this establishment, it is the recommendation of the DLC that a liquor license as requested be issued to Elizabeth A. O'Brien only with the condition that neither John O'Brien nor Jay O'Brien have an ownership interest in, nor be the managers of, or be employed on the licensed premises either legally or factually.

6. Prevost identified State's Exhibit 1 as a copy of the enforcement history for the licensed premises from the beginning until the present time. The liquor violations against the premises are listed thereon in summary form. The exhibit was shown to Elizabeth O'Brien without comment. State's 1 was admitted without objection. (Taken from the testimony of Martin Prevost).

7. The applicant Elizabeth A. O'Brien testified. She had no cross-examination for Martin Prevost because she thought the statements made by him were fair and accurate.

8. It is her intention to operate the business at 348 Main Street either under the original name "O'Brien's Irish Pub" or preferably another name so as to give the place a clean start. She intends to run and overall manage the pub herself with carefully chosen employees who are not former employees.

9. She will hire a reliable employee to manage the premises during the busy evening hours, although she intends to be there every day to do bookwork during the morning and early afternoon hours.

10. She does not live on the premises and, as an aside, she intends in April, 2013, when the liquor license which she hopes she will be granted based upon her present application, will be renewed, to incorporate at that time. (Taken from the testimony of Elizabeth O'Brien).

11. At this point, both the State and applicant rested.

CONCLUSIONS

1. The Board has before it for adjudication a first class cabaret license for the year 2012 which will end March 31, 2013. The application for a first class cabaret license has been approved by all of the Control Commissioners of the City of Winooski.

2. It appears from the record that Elizabeth O'Brien was not involved in the management or running of the O'Brien's Irish Pub at 348 Main Street when it was operated by her former husband John O'Brien and then by her son Jay O'Brien. There is therefore no reason based upon the adverse record of the pub not to issue a first class cabaret license to Elizabeth A. O'Brien as requested.

3. It is clear however from the enforcement history for O'Brien's Irish Pub at 348 Main Street in Winooski that it has had a poor record with respect to maintaining the laws of the State of Vermont and the Regulations of this Board with respect to the sale and distribution of alcohol. Ultimately, the license was revoked by this Board in July of 2012 while the business was in the hands of Elizabeth's son, John O'Brien.

4. This Board takes judicial notice of its own Decision "In Re Rockie-Jon Incorporated, d/b/a O'Brien's Old Irish Pub, 348 Main Street, Winooski, Vermont, dated June 22, 2012, which revoked the pub's liquor licenses. That revocation was based upon violations of Board Regulations 16, 17, 17(a), 36 and 49(a), some occurring on two separate dates.

5. In that LCB decision, the acting bartender Jay O'Brien was found to be drinking alcoholic beverages while employed as a bartender. This is absolutely prohibited and is a public safety issue because an alcohol induced employee of a liquor license establishment is not likely to enforce the laws and regulations of this State and of the Board with the alertness and vigor that an employee not so impaired is capable of.

6. General Regulation No. 17 deals with allowing persons displaying signs of intoxication from remaining on the licensed premises, drinking on the licensed premises and consuming alcohol on the licensed premises.

7. General Regulation No. 17(a) speaks against over service of alcoholic beverages to a patron in such an amount so that it would be reasonable to expect that patron to be under the influence as a result of the amount served. The violation of General Regulation Nos. 17 and 17(a) create serious public safety concerns. People who are allowed to drink to that level are a danger to themselves and to others that they may encounter.

8. General Regulation No. 36 requires a licensee to control the conduct of their patrons at all times and not to allow, in part, illegal activity to take place on the licensed premises. This Regulation was violated when a patron was openly allowed to smoke marijuana in the smoking area while the conduct was very noticeable.

9. Based upon the stated good intentions of Applicant O'Brien to restart this business at 348 Main Street on a new untroubled basis and her agreement that she can and will operate the business without employing in any way her former husband John O'Brien or her son Jay O'Brien on the premises, it is clear that not only the DLC but that she the applicant herself will be helped by the license being issued to her conditioned upon John O'Brien and Jay O'Brien having no ownership interest in the licensed premises, or the business, nor being employed there either as paid employees or as voluntary in fact employees, or by a prohibition against them engaging in any management of the licensed premises.

DECISION

The 2012 first class cabaret liquor license application of Elizabeth A. O'Brien signed by her on September 6, 2012 is granted subject to the absolute condition that neither John O'Brien her former husband nor Jay O'Brien her son become owners or co-owners of either the business premises at 348 Main Street or the owners of the licensed business if separated from the ownership of the real estate nor that either of them engage in any management function over the

licensed premises and/or the license, nor that they be employed on the licensed premises as legally hired employees nor as de facto employees volunteering without pay.

Dated at So. Burlington, Vermont, this 22nd day of February, 2013.

VERMONT LIQUOR CONTROL BOARD

By: Stephanie O'Brien
Stephanie M. O'Brien, Chair