

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

IN RE:

**M.P. Gouin & Co., Inc.
500 Guilford Street
Brattleboro, Vermont**

DECISION

The Liquor Control Board (LCB) held proceedings in Montpelier, Vermont, on October 31, 2012, at which time it considered the following request.

On or about August 23, 2012, Michael P. Gouin of Brattleboro, Vermont, addressed a letter to LCB counsel Ronald C. Schmucker, by which he enclosed a copy of a first and second class liquor and tobacco license application for calendar year 2011. Also included were notes of the Control Commissioners' proceedings relating to the application which took place on April 3, 2012 and April 17, 2012. The Control Commissioners, by a five to zero vote, denied the application.

Gouin requested in part that the LCB grant him a hearing seeking to overrule the local Selectboard decision, and/or to hear the applicant as though the Control Commissioners had granted the license.

On August 27, 2012, LCB counsel spoke to Michael Gouin by telephone and advised him that the LCB had no appellate authority over a decision by the local Control Commissioners and that if he were aggrieved by the decision of the local Control Commissioners, he should seek an attorney without further delay and follow that attorney's advice. Gouin was told in essence that the LCB does not sit in a supervisory authority over the actions of the local Control Commissioners.

By letter dated September 17, 2012, addressed to Director Goggins of the Department of Liquor Control (DLC), Gouin's attorney Mark L. Zwicker advised that he was led to believe that the LCB might act on Gouin's license application first before he appealed the adverse decision of the Brattleboro, Vermont Control Commissioners to the Civil Division of the Vermont Superior Court.

The Board has considered this question and renders the following Decision:

1. It is clear that the LCB is not an appellate body and has no jurisdiction to hear an appeal from an adverse decision of local Control Commissioners with respect to a liquor license application that has been denied.

2. When the local Control Commissioners have heard the applicant, considered local issues, and acted in conformity with Section 222 as it applies to them, the matter is administratively concluded if the license has been denied.

3. 7 V.S.A. § 222. The local Control Commissioners may grant a first class license as well as a second class license upon making satisfactory findings with respect to issues that Sections 222(1) and (2) set forth, with the ultimate approval of the Liquor Control Board.


4. What this means is that when the local Control Commissioners grant to the applicant a liquor license, they must submit the matter to the DLC for further proceedings. If the DLC and the LCB, upon concluding its own inquiry, determine that the applicant should in fact not be granted a liquor license, then the matter is concluded. The applicant can of course take an appeal to the Vermont Supreme Court.

5. The Board will not give an applicant a hearing as though the local Control Commissioners had granted the license, when in fact the local Control Commissioners have denied the license.

6. The request of M.P. Gouin & Co., Inc., for a hearing is denied.

Dated at So. Burlington, Vermont, on this 12th day of November, 2012.

LIQUOR CONTROL BOARD

By: 
Stephanie M. O'Brien, Chair