

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Horizon

Gary L. Tiso, Permittee

Echo Nightlife, LLC, Backer

Liquor Permit #LIR.17470

Docket No. 2007-8

Case No. 2008-492

January 8, 2009

MEMORANDUM OF DECISION

This matter involves a new application for a restaurant liquor permit for Horizon, 11 Ives St., Danbury, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection on March 27, 2008 and continued on July 10, 2008, at which time Gary Tiso, permittee and sole member and manager of the backer limited liability company, appeared with counsel. The City of Danbury was granted intervenor status, and was represented by counsel. Remonstrants appeared and testified at the hearing. The record of the hearing was held open until December 1, 2008.

The hearing was held in accordance with Section 30-39(c), Connecticut General Statutes, as a result of a legally sufficient remonstrance questioning the suitability of the applicant and proposed place of business.

The following facts are found based upon the testimony and documents submitted at the hearing and made part of the record. The

premises was granted a provisional liquor permit on or about August 28, 2007 and Horizon opened for business on or about September 8, 2007. Horizon operates as a liquor establishment pursuant to the auspices of a restaurant liquor permit, issued pursuant to Sec. 30-22, Connecticut General Statutes. On or about June 14, 2007, the Danbury Enforcement Officer approved Horizon's "restaurant" liquor application; there is proper local zoning approval for a "restaurant" at this location. Had the applicant submitted a liquor application for a "café" pursuant to Sec. 30-22a, Connecticut General Statutes, he would not have received local zoning approval. There are differing requirements for an establishment to qualify as a "restaurant" or a "café" within the Liquor Control Act. The determination of whether a proposed premises qualifies for the type of liquor permit requested is made on a case-by-case basis by the Liquor Control Commission.

Section 30-22(e) provides the following definition of a "restaurant" for liquor permit purposes:

(e) "Restaurant" means space, in a suitable and permanent building, kept, used, maintained, advertised and *held out to the public to be a place where hot meals are regularly served*, but which has no sleeping accommodations for the public and which shall be provided with an adequate and sanitary kitchen and dining room and employs at all times an adequate number of employees. (Emphasis added.)

Liquor Control Agent Wilson visited the proposed premises and conducted an investigation of the remonstrance and of the new application. Initially, Mr. Tiso intended to be open for business at lunchtime; however, based upon lack of demand, he reduced his hours of operation for Horizon to Thursday, Friday and Saturday, beginning at 8:00 p.m. Patrons typically arrive at approximately 9:30 p.m. or later. Horizon charges a cover charge to its patrons, and utilizes a bracelet system to distinguish those over the age of 21 for purpose of service of alcohol. There is a kitchen on the premises, and a certified cook prepares two or three trays of food when it is open; such food is offered at approximately 9:15-9:30 p.m. to Horizon patrons buffet-style for self-service consumption, at no additional cost. Examples of the food available include pasta, chicken nuggets, eggplant parmigiana and French fries. There is a menu, however, food is rarely - if ever - ordered by patrons; if soup, for example, is ordered, it is "to go" and not delivered to the table. Horizon advertisements promote dancing, DJ entertainment and the service of alcohol, including "Bottle Service". Based upon the totality of the facts and circumstances, we find that Horizon operates like a cafe which is primarily engaged in the sale of alcoholic beverages.

The existence and availability of food alone does not render an establishment a "restaurant." Based upon the substantial evidence presented, we find that the operation of Horizon may be appropriate for

an establishment holding a café permit under Section 30-22a, Connecticut General Statutes, but does not meet the requirement of offering or serving “hot meals” or “complete repasts”. See Guillara v. Liquor Control Commission, 121 Conn. 441, 185 A. 398 (1936); Leograndis v. Liquor Control Commission, 149 Conn. 507, 182 A.2d 9 (1962); Kulungian v. Town of Enfield, 1998 WL 61882 (1998). Thus, we find that the food served by the premises is inadequate to meet the criteria for a restaurant, as set forth in Section 30-22, Connecticut General Statutes. The determination of factual matters with regard to the suitability a proposed permit premises is vested with the Liquor Control Commission. Crescimanni v. Department of Liquor Control, 41 Conn. App. 83, 674 A.2d 851 (1996).

Based upon the foregoing, we grant the remonstrance and hereby deny the final restaurant liquor application for Horizon. Since it currently holds a restaurant liquor permit, we must revoke that permit as well. In view of the repercussions of revocation of a liquor permit mandated by Section 30-40(b), Connecticut General Statutes, we will allow the applicant an opportunity to withdraw his application for this restaurant liquor permit and cancel the liquor permit, LIR.17470, no later one week from today, or January 15, 2009. If not, Horizon’s application will be denied and the restaurant liquor permit LIR.17470, will be revoked.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY**

Elisa A. Nahas, Esq.
Presiding Officer

Angelo Faenza, Commissioner

Stephen Somma, Commissioner

Parties:

Gary Tiso, Permittee, Horizon Restaurant, 11 Ives Street, Danbury, CT 06810

Gary Tiso c/o Jan Trendowski, Esq., Trendowski & Allen, 90 Main Street, Suite 201, Centerbrook, CT 06409

Andrea Gartner Jabara, Agent for Remonstrants, Manager, CityCenter Danbury, 185 Main Street, Danbury, CT 06810

Daniel E. Casagrande, Esq., Attorney for Intervenor, 300 Main Street, Suite 303, Danbury, CT 06810

Non-Parties:

John Suchy, Director, Liquor Control Division

Connecticut Beverage Journal

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