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JOHN MOREY, d/b/a Celeste

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BEFORE THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

IN THE MATTER OF:)
)
JOHN MOREY, d/b/a Celeste) **DOCKET NO. 33.01-094348J**
)
)

INITIAL ORDER

This matter was heard on February 28, 2007, in Nashville, Tennessee, before Marion P. Wall, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Carolyn Smith, Staff Attorney for the Alcoholic Beverage Commission, represented the Commission. Mr. Morey represented himself.

The subject of this hearing was the denial of a license to sell liquor by the drink on premise to Mr. Morey. After consideration of the proof adduced at the hearing, the pleadings and arguments of the parties, and the entire record herein, it is determined that the Petitioner, John Morey, does not meet the statutory requirements for issuance of an on premises liquor by the drink license, and that therefore this license must be DENIED. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Morey seeks an on premise liquor by the drink license for his establishment, known as Celeste. On November 9, 2006, he applied for a license to sell alcoholic beverages on premise. In his application, he stated that the serving of meals was not the principal business conducted, listing that instead as dance instruction, food, drinks, and dancing. He did, however, estimate that 50% of the revenues would be derived from food sales. He noted that the food for the establishment was catered. He stated that one meal a day was served, five days a week.

2. At the hearing, Mr. Morey stated that Celeste was not a restaurant, but primarily a place to go dance and receive dance instruction, with the means to drink and eat. He is open three nights a week. He has no food servers; his bartender(s) serves the food, which is catered. He also testified that he could seat about 80 people.

3. The Executive Director of the Alcoholic Beverage Commission, Ms. Sherri Danielle Elks, also testified. She reviewed Mr. Morey's application for a permit. She stated that he did not meet the regulatory requirements for a permit because Celeste is not primarily a restaurant, but rather a place for dancing and dance instruction. She stated that it did not have 75 seats, and that the menu seems to mostly be appetizers, as opposed to meals.

4. The proof establishes that Mr. Morey's establishment likely meets the seating requirements, as he testified that he could seat eighty people. The issue of whether the menu is one of "meals," a term undefined in the statute, as opposed to

appetizers, need not be addressed. The simple fact is that “Celeste is used as a dance club and as a dance studio. It is not a restaurant.” (Quotation from Mr. Morey’s business plan).

CONCLUSIONS OF LAW

1. The Petitioner, Mr. Morey, bears the burden of proof, by a preponderance, that he meets the regulatory requirements for issuance of a permit.

2. TCA §57-4-102(27) provides that in order to qualify for an on-premise liquor by the drink permit, the permitted establishment must be a place which is “kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served....” It further provides that “the serving of such meals shall be the principal business conducted.” Mr. Morey has been quite forthright in stating that Celeste is not principally a restaurant. Therefore, he does not meet the regulatory criteria for issuance of a permit.

3. It is, therefore, ORDERED that the requested permit be DENIED.

This Initial Order entered and effective this 29th day of May 2007.

Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 29th day of May 2007.

Charles C. Sullivan, II, Director
Administrative Procedures Division