

*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150*

**Jean M. Lorizio, Esq.**  
*Chairman*

**No. 25E-1374**

**United Liquors, LLC,  
Petitioners,**

**v.**

**Park Street Imports, LLC d/b/a Branca USA,  
Respondent.**

**HEARD: 8/19/2020**

**MEMORANDUM AND ORDER ON THE PETITIONER'S  
MOTION TO SUBPOENA BRANCA USA, INC.**

The Alcoholic Beverages Control Commission ("Commission") issues this Memorandum and Order in response to the Petitioner United Liquors, LLC's Motion to Subpoena Branca USA, Inc.

**PROCEDURAL HISTORY**

This case arises under M.G.L. c. 138, § 25E. United Liquors LLC ("Petitioner" or "United") is a Massachusetts wholesaler aggrieved at the refusal of Park Street Imports LLC d/b/a Branca USA ("Park Street") to make sales of certain brand items. The Petitioner filed its petition with the Commission on April 5, 2019. On April 8, 2019, pursuant to the mandate in § 25E, the Commission issued an order to Park Street to make sales of the Brand Items to United pending the Commission's determination of the petition on the merits. The Commission also authorized discovery to take place, with the provision that "[d]iscovery by each party may include not more than forty-five (45) written interrogatories, not more than thirty (30) requests for the production of documents and not more than two (2) depositions." The initial discovery deadline was August 8, 2019.

United and Park Street filed several stipulations to enlarge time for discovery, each of which the Commission allowed. During the discovery period, the parties engaged in written discovery.

On April 28, 2020, United served on Park Street the instant Motion for subpoena for deposition to Branca USA, Inc. with Exhibits A and B listing particular documents requested. Prior to the motion for subpoena for deposition, the discovery deadline was April 3, 2020.<sup>1</sup>

On May 12, 2020, Park Street filed its Opposition to the Motion for subpoena for deposition and Request for documents. United submitted a Reply Brief to Park Street's Opposition on June 8, 2020. The Commission held a hearing on August 19, 2020.

### DISCUSSION

United has moved the Commission to issue a subpoena to Branca USA, Inc. ("Branca") to compel its attendance at depositions in this matter. Park Street argues that the Commission has no authority to issue a subpoena to Branca because Branca is a non-party non-resident corporation and not a Commission licensee, and therefore falls outside the Commission's subpoena power. It further argues that the Commission's subpoena power is limited to hearings, and not depositions.

The Commission has authority to issue subpoenas under two statutes: M.G.L. c. 30A, § 12, and M.G.L. c. 233, § 8. The parties do not appear to dispute that M.G.L. c. 233, § 8, does not apply to United's request, and therefore the Commission only considers United's request for subpoenas pursuant to M.G.L. c. 30A, § 12.

The power of the Commission to issue subpoenas under c. 30A applies to "adjudicatory proceedings" before the Commission:

In conducting adjudicatory proceedings, agencies shall issue, vacate, modify and enforce subpoenas in accordance with the following provisions:—

- (1) Agencies shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding.

M.G.L. c. 30A, § 12 & 12(1) (emphasis added). An "adjudicatory proceeding" is defined as:

a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing.

M.G.L. c. 30A, § 1(1) (emphasis added).

Section 12 of c. 30A specifies that a party may request a subpoena for an "adjudicatory proceeding." It does not state "adjudicatory hearing." The Commission follows the plain language of the statute. See Commissioner of Rev. v. Cargill, Inc., 429 Mass. 79, 82 (1999), quoting White v. Boston, 428 Mass. 250, 253 (1998) ("[W]e are constrained to follow' the plain language of a

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<sup>1</sup> The Parties have continued to enlarge time for discovery. The most recent deadline was February 6, 2021.

statute when its 'language is plain and unambiguous,' and its application would not lead to an 'absurd result,' or contravene the Legislature's clear intent").

Indeed, "[a]n adjudicatory proceeding is one in which a statutory or constitutional direction dictates an agency hearing." Lab. Rels. Comm'n v. Fall River Educators' Ass'n, 382 Mass. 465, 470 (1981). "[A]n adjudicatory proceeding is the overall process in which the responsibilities of specifically named persons are determined by an agency under the law, while an adjudicatory hearing is simply a potential part of that process." In the Matter of Rocky Mountain Spring Water Company, 2001 WL 825996, at \*3 (Mass. Dept. Env. Prot., June 5, 2001); accord Matter of: John Deloury, 1994 WL 762637, at \*1 (Mass. Dept. Env. Prot., Dec. 30, 1994).

Generally, to commence an adjudicatory proceeding with the Commission, "[a] Person entitled to an Adjudicatory Proceeding . . . must request a hearing in writing." 801 C.M.R. 1.02(6)(c). Specifically, an adjudicatory proceeding under M.G.L. c. 138, § 25E, commences when an aggrieved wholesaler files a petition for relief with the Commission pursuant to § 25E ("Either party may appeal to the commission for a hearing on the notice of discontinuance and the commission shall make a determination after hearing on the issue of good cause for discontinuance").

At the commencement of this adjudicatory proceeding the Commission authorized both parties to take two depositions. The Commission undoubtedly has authority to enforce its own lawful orders, including compelling a person by subpoena to attend an authorized deposition. An "administrative agency has no discretion to exercise when a party to an adjudicatory proceeding makes written application upon it for the issuance of a subpoena. . . . [The] issuance of a subpoena under these circumstances is made a purely ministerial, non-discretionary act . . . ." Gerald A. McDonough, Esq., *Administrative Law and Practice* § 4:13 (June 2021 update).

Because an adjudicatory proceeding has commenced in this matter, the Commission "shall forthwith issue the subpoenas requested." M.G.L. c. 30A, § 12(3). The issue of whether United can enforce the subpoena against a non-party non-resident corporation that is not a Commission licensee is a matter for the courts if and when United seeks to enforce the Commission's subpoena.

### CONCLUSION

For the foregoing reasons, United's Motion to Subpoena Branca USA, Inc. is ALLOWED.

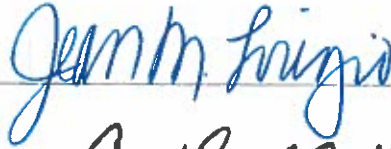
### AMENDED SCHEDULING ORDER

The Commission hereby amends its scheduling order as follows:

- a. Any and all Motions for Summary Decision shall be due by **December 21, 2021**, and any oppositions or responses are due by **February 21, 2022**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: September 21, 2021

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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cc: Mark Dickison, Esq. via email  
Peter Grupp, Esq. via email  
Michael Rossi, Esq. via email  
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