



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

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

**NO. 25E-1331  
RUBY WINES, INC.,  
Petitioner,**

**v.**

**TERLATO WINES &  
SANTA MARGHERITA USA, INC.,  
Respondents.  
HEARD: 5/15/2018**

**MEMORANDUM AND ORDER ON SANTA MARGHERITA'S  
MOTION FOR RECONSIDERATION OF OCTOBER 9, 2018 ORDER**

The Alcoholic Beverages Control Commission ("Commission") hereby issues this Memorandum and Order in response to Santa Margherita USA, Inc.'s ("SMUSA") Motion for Reconsideration of Order dated October 9, 2018 (the "Motion").

**PROCEDURAL BACKGROUND**

This case arises under M.G.L. c. 138, § 25E. Petitioner, Ruby Wines, Inc. ("Petitioner" or "Ruby") is a Massachusetts wholesaler aggrieved at the refusal of Terlato Wines ("Terlato")<sup>1</sup> and Santa Margherita USA, Inc. ("SMUSA") to make sales of Santa Margherita brand wines (the "Brand Items"). The Petitioner filed its petition with the Commission on April 19, 2016. On May 6, 2016, pursuant to the mandate in § 25E, the Commission issued an order to Terlato and SMUSA to make sales of the Brand Items to Ruby pending the Commission's determination of the petition on the merits. The Commission also authorized discovery to take place. The discovery deadline was extended several times and has since expired, except with regard to the issue that is the subject of this order.

On December 19, 2017, Ruby filed its Motion to Compel Further Discovery from Terlato and from SMUSA. In its motion, Ruby claimed that Terlato had failed to respond to Ruby's request for production of documents and interrogatories and that SMUSA's responses to the requests and interrogatories were incomplete.

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<sup>1</sup> The correct name of the entity is Paterno Imports, Ltd. d/b/a Terlato Wines International.

On January 5, 2018, Terlato<sup>2</sup> filed its Opposition to Ruby's Motion to Compel Further Discovery and a Cross-Motion for Protective Order. On January 9, 2018, Ruby served on SMUSA its Second Request for Production of Documents and Second Set of Interrogatories. On January 12, 2018, SMUSA filed its Opposition to Ruby's Motion to Compel Further Discovery, and then on February 5, 2018, SMUSA filed its Motion for a Protective Order against Ruby. In January and February 2018, Ruby filed its Reply to SMUSA's Opposition as well as Oppositions to the two Motions for Protective Orders. The Commission held a hearing on these motions on May 15, 2018. The day after the hearing, Petitioner filed a post-hearing letter to the Commission, and the following day, May 17, 2018, SMUSA filed a post-hearing supplemental memorandum of law.<sup>3</sup>

On October 9, 2018, the Commission issued a Memorandum and Order on Petitioner's Motion to Compel Discovery and Respondents' Cross-Motions for Protective Orders and Amended Scheduling Order (the "Order"). The Order determined the outcome of the discovery disputes and set upcoming deadlines.

### FACTUAL BACKGROUND

Santa Margherita, S.p.A. ("Santa Margherita") is a supplier of wine in Italy and for years sold its product to importer Terlato for distribution in the United States. Terlato would then sell the Brand Items to wholesaler Ruby. On June 27, 2011, Santa Margherita informed Terlato that effective December 31, 2015, their agreement would terminate. In 2014, Santa Margherita created a subsidiary, SMUSA, in the United States and appointed it as the exclusive importer/distributor of the Brand Items effective January 1, 2016. In April 2016, SMUSA informed Ruby that it would not voluntarily sell the Brand Items to it.

### DISCUSSION

In the October 9, 2018 Order, the Commission determined in part that SMUSA was obligated to produce certain documents and information of its parent, Santa Margherita.<sup>4</sup> The Order was

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<sup>2</sup> Attorney O'Neal filed a limited Notice of Appearance with regard to the Motion to Compel and Motion for Protective Order.

<sup>3</sup> None of the parties objected to either of the post-hearing filings.

<sup>4</sup> The Order provided in relevant part that:

The Commission orders relative to document request 17 that SMUSA produce any wind-up agreements between and/or among Santa Margherita, Terlato, and/or Santa Margherita between the time period of January 1, 2016 through January 1, 2017. Likewise, SMUSA shall produce any communications concerning any such wind-up agreements in that same time period. SMUSA's search shall include a search of the agreements/correspondence in the possession of its parent, Santa Margherita, under the terms set forth herein. . . . [T]he Commission hereby orders that in response to document requests numbered 5, 8, 10, and 11, all of which seek communications, SMUSA shall produce to Ruby the emails and other correspondence to/from the two people at each of SMUSA and Santa Margherita with the most knowledge of the "Transaction" to/from their two counterparts at Terlato on the issue of the

grounded in the Massachusetts Rules of Civil Procedure and Massachusetts case law. As stated in the Order,

[u]nder Mass. R. Civ. P. 34(a), a party can make a request for production of documents that are in the “responding party’s possession, custody, or control.” With regard to the issue of whether SMUSA has an obligation to produce its parent’s documents, this issue was determined in the case of Strom v. American Honda Motor Co., Inc., 423 Mass. 330 (1996). In Strom, the Supreme Judicial Court adopted a rule that “attributes sufficient control for purposes of requiring discovery whenever the claimant has met his burden of showing that the information sought is in the possession or custody of a wholly owning parent (or virtually wholly owning) or wholly owned (or virtually wholly owned) subsidiary corporation, or of a corporation affiliated through such a parent or subsidiary. We do not hold that such a relationship is necessary to a finding of control, only that it is sufficient.” Strom v. American Honda Motor Co., Inc., 423 Mass. 330, 342 (1996). The burden of proving control is on the party seeking discovery. However, “[t]he discovering party settles a right to the material merely by demonstrating the corporate relationship.” Hon. Hiller Zobel and James Smith, Esq., Massachusetts Practice: Rules Practice, § 34.1 (2d ed. 2016) (citing Strom, 423 Mass. at 344-345).

(Order, at 4) In its Motion, SMUSA does not dispute that Santa Margherita is its parent but argues in part that “Santa Margherita S.p.A. did not want to produce its emails for fear of violating a confidentiality agreement with Terlato, European Union privacy laws, and because Santa Margherita S.p.A. does not want to incur the cost and expense of an e-discovery collection.”

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“Transaction.” The date range shall be one year prior to January 1, 2016, the effective date of the Transaction, through one year following the effective date (namely January 1, 2015 through January 1, 2017). If necessary due to the number of resulting documents, the parties shall promptly agree on search terms so as to limit the results. After SMUSA has reviewed the resulting emails/correspondence for relevancy, SMUSA shall produce said documents on or before **November 5, 2018**. As indicated above, SMUSA’s search shall include a search of the emails/correspondence in the possession of its parent, Santa Margherita, under the terms set forth herein. . . . [T]he Commission hereby orders that with regard to interrogatory number 36, SMUSA shall limit its search of information/documents to one year before the Transaction through one year following the Transaction, ie from January 1, 2015 through January 1, 2017, and shall include in its search the documents of Santa Margherita.

(Order, at 5-7)


(Motion, at 4) SMUSA further asserts that it has no access to or control over Santa Margherita's documents. See id.

Motions for reconsideration "must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case." See 801 CMR 1.01(7)(l). Here, the Motion does not satisfy that requirement. There is no dispute that Santa Margherita is SMUSA's parent. That determination is sufficient for a finding of control over the documents. See Strom, 423 Mass. at 342. There was no error in the Order, and therefore the Motion is denied.

### CONCLUSION AND ORDER

For the foregoing reasons, the Motion is **DENIED**. The Commission grants SMUSA ninety (90) days from the date of this order to produce the subject documents.<sup>5</sup> The Commission will schedule a status conference to occur after the ninety-day period has expired.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth Lashway, Commissioner 

Kathleen McNally, Commissioner 

Dated: September 26, 2019

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

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cc: William Coyne, Esq. via email  
Mark Dickison, Esq. via email  
Mary O'Neal, Esq. via email  
File

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<sup>5</sup> See n. 4.