

*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

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

**NO. 25E-1373**

**Ruby Wines, Inc.**  
Petitioner,

v.

**Citra and ColleMassari S.P.A. Societa Agricola**  
Respondents.

**HEARD: 6/21/2019**

**MEMORANDUM AND ORDER ON  
PETITIONER'S MOTION TO COMPEL AND TO ENLARGE TIME FOR DISCOVERY  
AND RESPONDENTS' MOTION TO DISMISS**

The Alcoholic Beverages Control Commission ("Commission") hereby issues this Memorandum and Order in response to Ruby Wines, Inc.'s ("Ruby" or the "Petitioner") Motion to Compel and to Enlarge Time for Discovery and Citra's and ColleMassari S.P.A. Societa Agricola's (the "Respondents") Motion to Dismiss.

**PROCEDURAL BACKGROUND**

The petition in this case, filed under M.G.L. c. 138, § 25E, asserts that the Petitioner had purchased alcoholic beverages bearing the names Citra, Colle Massari, and Grattamacco (the "Brand Items") from two different entities but that it received notice on September 17, 2018 from Leonardo LoCascio Selections ("LLS") that LLS had acquired the rights to sell the Brand Items and would not sell to the Petitioner. The Petitioner had originally filed a § 25E petition against LLS but learned thereafter that LLS did not hold a certificate of compliance ("COC"). On January 30, 2019, the Petitioner filed a Motion to Amend Petition in the matter against LLS, seeking to substitute LLS in that matter for the Respondents. In response, on February 5, 2019, the Commission denied the motion to amend, dismissed the petition against LLS, and accepted as a new petition the petition in the instant matter. On February 5, 2019, pursuant to the mandate in M.G.L. c. 138, § 25E, the Commission issued an order to Respondents to make sales of the Brand Items to Ruby pending the Commission's determination of the petition on the merits (the "Ship Order").

On April 25, 2019, the Petitioner filed a Motion to Compel discovery responses and to enlarge time for discovery. In response to Petitioner's Motion to Compel, the Respondents filed an Opposition on May 10, 2019 in which Respondents also sought to dismiss the case on the basis that each of the Respondents turned in its COC to the Commission on May 6, 2019.<sup>1</sup> The Commission held a hearing on June 21, 2019.

## DISCUSSION

### Motion to Dismiss

The Respondents argue that the Commission has no jurisdiction over them because they no longer have a COC in Massachusetts. The Commission agrees.

The Commission has jurisdiction to hear cases brought under § 25E, which involve manufacturers, winegrowers, farmer-brewers, importers, and/or wholesalers who are licensed in Massachusetts by the ABCC. See M.G.L. c. § 25E. Where the Respondents are no longer licensees of the ABCC, the Commission has no jurisdiction over them.

The relief that a petitioner seeks in a § 25E matter is a continuation of sales of the items that the manufacturer, importer, or wholesaler is now refusing to sell. Section 25E provides that, “[u]pon application by the wholesaler to the commission, the commission shall order the manufacturer, importer or wholesaler giving notice of refusal to sell to continue to make sales in the regular course to such wholesaler pending determination by the commission on the merits of said appeal.” M.G.L. c. 138, § 25E. Where a respondent in a § 25E matter is no longer licensed in Massachusetts to manufacture, import, or sell alcoholic beverages, it cannot provide the temporary relief ordered during the pendency of a § 25E case—sales to the petitioner of the brand items--, nor could it provide such relief were the petitioner ultimately to succeed on the merits of the case.

The Commission's decision is consistent with the definition of “party” to an “adjudicatory proceeding” under Massachusetts General Laws Chapter 30A. A “party” to an adjudicatory proceeding means:-- (a) the specifically names persons whose legal rights, duties or privileges are being determined in the proceeding. . .” M.G.L. c. 30A, § 1(3). Here, the Respondents' legal rights are not being determined in the proceeding because they are no longer COC holders in Massachusetts. Consequently, the Respondents cannot be parties to this matter.

The Petitioner argues that the Commission should leave the case open so that the Commission can conduct an inquiry into who the proper respondent should be. There is no authority for that. It is not the role of the Commission, nor is the Commission authorized, to conduct discovery on behalf of a party or to investigate, on behalf of a licensee, the proper identity of an entity which may have wronged the licensee.

The Respondents' Motion to Dismiss is ALLOWED.

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<sup>1</sup> Given the relief that the Respondents seek in their Opposition, the Commission is treating the Opposition as a Motion to Dismiss. The Informal Fair Hearing Rules generally provide for motions, i.e. “requests.” See 801 CMR 1.02(7)(c) (providing that “[a] party may request rulings or relief in writing at any time or orally during a hearing”).

Motion to Compel and Enlarge Time for Discovery

Given that the Motion to Dismiss is Allowed, it is not necessary for the Commission to address the Motion to Compel and to Enlarge Time.

CONCLUSION

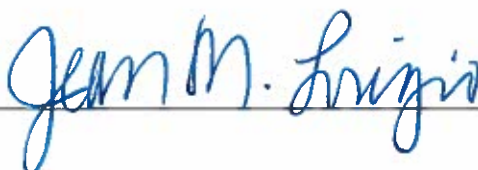
For the foregoing reasons, the Commission ALLOWS the Motion to Dismiss.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth Lashway, Commissioner



Jean M. Lorizio, Chairman



Dated: September 9, 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  
William A. Kelley, Jr., Esq. via email  
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