

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

Jean M. Lorizio, Esq.
Chairman

NO. 25E-1379

BOSTON WINE CO. LTD.,
Petitioner,

v.

MERRYVALE VINEYARDS, LLC, &
PACIFIC HIGHWAY WINES & SPIRITS,
Respondents.

HEARD: August 12, 2020

MEMORANDUM AND ORDER ON RESPONDENT
MERRYVALE VINEYARDS, LLC'S MOTION TO DISMISS

The Alcoholic Beverages Control Commission ("Commission") hereby issues this Memorandum and Order in response to Merryvale Vineyards LLC's Motion to Dismiss.

PROCEDURAL & FACTUAL BACKGROUND

This case arises under M.G.L. c. 138, § 25E. Petitioner, Boston Wine Co. Ltd. ("Petitioner" or "Boston Wine") is a Massachusetts wholesaler aggrieved at the refusal of Merryvale Vineyards LLC ("Merryvale") and Pacific Highway Wines & Spirits ("Pacific") (collectively "Respondents") to make sales of certain alcoholic beverages ("Brand Items"). The Petitioner filed its petition with the Commission on June 10, 2019. On June 12, 2019, pursuant to the mandate in § 25E, the Commission issued an order to the Respondents to make sales of the Brand Items to Boston Wine pending the Commission's determination of the petition on the merits ("ship order"). The Commission also authorized discovery to take place.

On June 17, 2020, Merryvale filed Respondent Merryvale Vineyards, LLC's Motion to Dismiss Petitioner Boston Wine Co., Ltd.'s § 25E Petition. Boston Wine filed an opposition on July 17, 2020, and Merryvale filed a reply to Boston Wine's opposition on July 29, 2020. The Commission held a hearing on the motion August 12, 2020, and took the matter under advisement.

DISCUSSION

In its motion to dismiss, Merryvale argues that it was improperly named as a respondent and seeks its dismissal from Boston Wine's § 25E petition. Merryvale first contends that it is not a proper party because its "legal rights, duties or privileges" are not being determined under this petition. Second, it seeks dismissal because the relief Boston Wine is seeking cannot be granted by Merryvale because Merryvale does not hold a certificate of compliance, and therefore Merryvale cannot legally sell the Brand Items to Boston Wine.

The Commission regulates the "conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages" that occurs within Massachusetts. Chapter 10, § 71, of the General Laws, "which established the ABCC, was legislatively intended to 'give the commission comprehensive and exclusive jurisdiction over the conduct of liquor business in the commonwealth.'" Austin, Nichols & Co. v. Alcoholic Beverages Control Comm'n, 2005 WL 2476218 at *3 (Mass. Super. Aug. 26, 2005), quoting Universal Mach. Co. v. Alcoholic Beverages Control Comm'n, 301 Mass. 40 (1938); accord Miller Brewing Co. v. Alcoholic Beverages Control Comm'n, 56 Mass. App. Ct. 801, 810 n. 7 (2002); S&H Independent Premium Brands East, LLC et al v. Win-It-Too d/b/a Global Beer Network, et al, 25E-1382 (ABCC Decision August 21, 2021); Johnson Brothers of Massachusetts, Inc. (ABCC Decision Oct. 4, 2019).

The Commission operates under the Informal "Fair Hearing" Rules promulgated under 801 C.M.R. 1.02 in matters arising under M.G.L. c. 138, § 25E. Although not specified in the Informal Rules, parties may file motions pursuant to 801 C.M.R. 1.02(7)(c) governing "special requests" wherein a party "may request rulings or relief in writing at any time" This includes motions to dismiss. Because § 25E cases are complex, the Commission often looks to the Formal Rules under 801 C.M.R. 1.01(7)(g)(1) to promote regularity and efficiency with its procedures. Since the Formal Rules rely on the courts' interpretation of Mass. R. Civ. P. 12(b)(6), so too does the Commission.

- 1: Merryvale's legal rights, duties, and/or privileges will not be affected by the outcome of this § 25E petition.

Merryvale first argues that it was improperly named as a respondent because its legal rights, duties, and/or privileges are not being determined in this matter.

The Administrative Procedure Act, M.G.L. c. 30A, defines a party to an adjudicatory proceeding, in relevant part, as "the specifically named persons whose legal rights, duties or privileges are being determined in the proceeding" M.G.L. c. 30A, § 1(3)(a).¹

¹ While M.G.L. c. 30A, § 1(3) provides three paths for an entity to be a "party," subsections (b) and (c) are inapplicable to this petition as they apply to entities that seek to intervene as a party.

It is undisputed that Merryvale does not hold a certificate of compliance or other Massachusetts alcohol license.² Furthermore, Merryvale was replaced as the exclusive primary American source for the Brand Items by Pacific and no longer distributes the Brand Items. Merryvale has had no role with importing, marketing, or distributing the Brand Items since Pacific was appointed as the exclusive primary American source for the Brand Items.

It follows that if Boston Wine were to succeed on the merits of this petition, Merryvale would be unaffected. Should Boston Wine prevail on its petition, the Commission would be ordering Pacific – not Merryvale – to continue making sales to Boston Wine, because Pacific is the Brand Items' current distributor.

Accordingly, the Commission agrees that Merryvale's legal rights, duties, and/or privileges are not being determined in this proceeding. Consequently, Merryvale is not a proper party to this proceeding under c. 30A.

2. Because Merryvale is not a Massachusetts licensee or certificate of compliance holder it cannot make sales of the Brand Items pending adjudication or if Boston Wine prevails.

Merryvale also insists that it is not a proper respondent as it cannot make sales of the Brand Items to Boston Wine because it does not have a Massachusetts license or certificate or compliance.

At every step of a § 25E petition proceeding, a respondent must be able to lawfully make sales of alcohol to the aggrieved Massachusetts wholesaler.

First, the filing of a § 25E petition triggers the mandatory issuance of a ship order, requiring a respondent to “make sales [of the Brand Items] in the regular course to such wholesaler pending determination by the commission on the merits of said appeal.” M.G.L. c. 138, § 25E. A respondent cannot lawfully make these interim sales without a Massachusetts license or certificate of compliance.

Then, if a petitioner prevails on its § 25E petition, the respondent must be able to lawfully continue making sales of the Brand Items to the aggrieved Massachusetts wholesaler, which necessitates a certificate of compliance or other Massachusetts license. When a petitioner prevails on a § 25E petition, the Commission may “grant such relief as may be appropriate under the circumstances.” M.G.L. c. 138, § 25E. The only relief the Commission has ever found to be appropriate, and in fact the only appropriate and logical relief the Commission can provide, is ordering continuing sales of the Brand Items to the aggrieved wholesaler. Indeed, that is the purpose of § 25E: “to prevent unreasonable interruption of supply to wholesalers in good standing.” Heublein Inc. v. Capital Dist. Co., Inc., 434 Mass. 698, 702 n.8 (2001); accord Austin, Nichols & Co. v. Alcoholic Beverages Control Comm’n, 2005 WL 4927111 (Mass. Super. Aug. 23, 2005).

² Merryvale did hold a certificate of compliance, which expired on December 31, 2016, and never renewed it.

While the Commission does technically have broader authority than to only issue an order to continue making sales, such as modifying, suspending, revoking, or canceling a respondent's license(s) and/or permits, any such remedy would be illogical.³ A wholesaler files a § 25E petition because it is aggrieved by a respondent's termination of distribution rights, i.e., it wants the respondent to continue selling the Brand Items to it. But if the Commission suspends or revokes a respondent's license, the aggrieved wholesaler will get the opposite of what it is seeking because the respondent would no longer have a license to lawfully make continued sales; in other words, the petitioner would be in the same position as if it had not filed a § 25E petition, only after expending significant resources to advance the petition.

In any event, any of the available remedies necessarily requires the respondent to have a certificate of compliance or other Massachusetts license. Whatever remedy the Commission could fashion, the Commission can only enforce it as to licensees under its authority pursuant to M.G.L. c. 138 and M.G.L. c. 10, § 71. Where Merryvale no longer holds a certificate of compliance it cannot lawfully comply with the ship order, nor can it make continued sales if Boston Wine ultimately succeeds on the merits of the case.

In support of this conclusion are the Commission's decisions in Ruby Wines, Inc. v. Citra, et al, 25E-1373 (ABCC Decision, Sept. 9, 2019) and Atlantic Importing Co., Inc. v. The Sazerac Co., Inc. & Pernod Richard, 25E-1359 (ABCC Decision, Nov. 9, 2018). In each of those matters, a respondent moved to dismiss because it did not hold a certificate of compliance or any other alcohol license in Massachusetts. In both matters, the Commission dismissed the moving respondents because they were not proper parties as they did not hold certificates of compliance or other Massachusetts licenses such that the respondents would not lawfully be able to make sales to the petitioners.

3. Where Merryvale is not a proper party to the petition, it should not remain a respondent solely for Boston Wine's discovery purposes or c. 93A purposes.

Boston Wine maintains that the Commission should keep Merryvale as a respondent so that it can pursue discovery from Merryvale as a party opponent. That argument is unpersuasive. While Merryvale will no longer be a party to the petition, Boston Wine can still conduct discovery by issuing subpoenas that are enforceable under M.G.L. c. 30A, § 12(3) ("Any party to an adjudicatory proceeding shall be entitled as of right to the issue of subpoenas in the name of the agency conducting the proceeding").

Finally, Boston Wine appears to suggest that Merryvale should remain a respondent so that it may "establish[] the basis for an action for damages under G.L. c. 93A" (Opp'n at 5). It is not the role of the Commission, nor is the Commission authorized, to disregard c. 30A and c. 138 to use its awesome power over licensees to assist a party in conducting its own investigation to establish the basis of a private civil lawsuit.

³ It should also be noted that the Commission cannot sanction a respondent monetarily, such as awarding attorneys' fees. Bournewood Hospital, Inc. v. Massachusetts Comm'n Against Discrimination, 371 Mass. 303, 308-309 (1976).

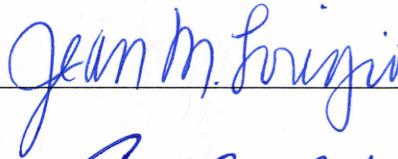
CONCLUSION

For the foregoing reasons, Merryvale's motion to dismiss is ALLOWED.

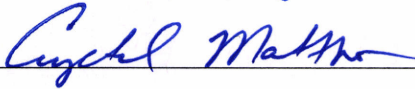
Given Merryvale is being dismissed as a respondent, Boston Wine Co.'s Motions to Compel Discovery from Merryvale, filed on 1/10/2020 and 7/22/2020, are DENIED.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

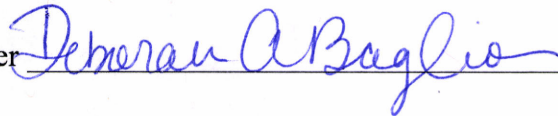
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: August 23, 2022

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: J. Mark Dickison, Esq. via email
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