



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

**ONE HUNDRED AND SEVENTY-THREE MILK STREET, INC.
D/B/A COOGAN'S BLUFF
171-173 MILK STREET
BOSTON, MA 02109
LICENSE#: 011600551
VIOLATION DATE: Various in 2013 and 2014
HEARD: 06/14/2016**

One Hundred and Seventy-Three Milk Street, Inc. d/b/a Coogan's Bluff (the "Licensee" or "173 Milk St.") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, June 14, 2016, regarding an alleged violation of 204 CMR 2.08 No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages. The alleged violation occurred on various dates during 2013 and 2014, according to Investigator Velez's report.

The following documents are in evidence:

1. Investigator Velez's Violation Report;
 2. Glynn Invoice 5/9/2013;
 3. Glynn Invoice 10/24/2013; and
 4. Glynn Invoice 4/02/2014 with Check Request Form.
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- A. Affidavit of Luis A. Luna;
 - B. Atty. Kiley's Record Request 3/25/2016 to ABCC;
 - C. ABCC's Initial Response 3/29/2016 to Atty. Kiley's Record Request;
 - D. ABCC's Response to Record Request, part 1; and
 - E. ABCC's Response to Record Request, part 2.

There is one (1) audio recording of this hearing.

The Commission took administrative notice of the Licensee's Commission file.

FINDINGS OF FACT

1. One Hundred Seventy-Three Milk St., Inc., d/b/a Coogan's Bluff ("173 Milk Street") is a § 12 all alcohol licensee with a place of business at 171 Milk Street, Boston, Massachusetts. (Commission File, Exhibit 1)
2. According to the Secretary of State filings, Christine M. Freeman is the president of 173 Milk Street; Michael Glynn is the treasurer and a director; and Neil Glynn is the secretary and a director. (Exhibit 1, Testimony) However, Commission Files reflect that the approved officers and directors are: Christine Freeman, Michael Glynn, Brendan Glynn, Neil Glynn, Kelly Glynn, and Patrick Glynn.¹ (Commission Files)
3. Glynn Hospitality Group ("Glynn") is the management company for several § 12 licensees, including 173 Milk Street.² (Exhibit 1, Testimony)
4. Secretary of the Commonwealth records indicate the Glynn structure is as follows: Christine M. Freeman as president and director; Michael T. Glynn as treasurer; and Neil Glynn as secretary. (Exhibit 1)
5. On October 16, 2014, Chief Investigator Ted Mahony and Investigator Nick Velez began an investigation based on information they had received relative to brewers and/or wholesalers possibly providing unlawful inducements to retailers. (Exhibit 1, Testimony)
6. They met with Dan Paquette and his wife, Martha Paquette, owners of Pretty Things Beer and Ale Project, Inc., who provided documentation to the investigators that indicated that the Briar Group, LLC ("Briar"), another management company, was receiving payments from Craft Beer Guild, LLC ("Craft") in exchange for the placement of Craft products in Briar's § 12 establishments. (Exhibit 1, Testimony)
7. The following day, Investigator Velez along with Investigator Caroline Wilichoski spoke with Craft sales manager Craig Corthell and office manager Bethany DiCristofaro. (Exhibit 1, Testimony)
8. Investigator Wilichoski asked Corthell to explain the terms "brand allocation," "marketing support," and "menu programming," which were terms observed by investigators on an invoice for Briar supplied by the Paquettes. (Exhibit 1, Testimony)
9. Corthell explained that these terms were used to conceal "kickbacks" to Briar for carrying Craft brands in Briar's § 12 establishments. (Exhibit 1, Testimony)
10. On November 18, 2014, Chief Mahony, Investigator Wilichoski, and Investigator Velez interviewed Craft sales representative Pat McCoy. (Exhibit 1, Testimony)
11. Craft had an agreement with Glynn, whereby Craft paid Glynn up to \$20,000, or \$1,000, per draft line, in return for committed draft lines. (Exhibit 1, Testimony)
12. McCoy's contact at Glynn was Luis Luna, who was assigned to work with McCoy. (Exhibit 1, Testimony)

¹ The Commission refers the matter of a change of officers/directors without Commission approval to the Investigative Unit for further action forthwith.

² There is nothing in the Commission files approving this relationship. (Commission Files) The Commission refers the matter regarding the Licensee's failure to obtain Commission approval of the management relationship, to the Investigative Unit for further action forthwith.

13. Luna is an employee of Glynn and is also 173 Milk Street's beverage director. In that capacity, he "order[s] all of the alcoholic beverages" for 173 Milk Street. (Exhibit A)
14. Glynn, through Luna, provided McCoy with a template invoice which then Craft completed. McCoy would then deliver checks to Luna at another Glynn-managed § 12 restaurant. (Exhibit 1, Testimony)
15. On February 5, 2015, Chief Investigator Mahony and Investigator Velez interviewed Michael Glynn. (Exhibit 1, Testimony)
16. In 2013, Craft offered Glynn \$27,000 to place 22 Craft brands on Glynn-managed § 12 draft lines. (Exhibit 1, Testimony)
17. On at least three separate occasions Glynn received monetary payments from Craft for carrying Craft brands. (Exhibit 1, Testimony)
18. Glynn received a total of at least \$39,000.00 from Craft between 2013 and the first half of 2014 as detailed as follows. Those checks were deposited in Glynn's account. (Exhibits 1, A)

First Occurrence

19. On May 9, 2013, an invoice, approved by Luna, from Glynn was addressed to "Craft Brewers Guild Boston" for "menu support within[] timeframe of: january – june 2013" with "targeted locations: brownstone, clery's dillons, granary tavern, sterlings, blk rose, coogan's, hurricane's & jose mcintyre's." The invoice was for a total of \$13,500, for "1500 units" at \$9.00 per unit. (Exhibits 1, 2)

Second Occurrence

20. On October 24, 2013, an invoice, approved by Luna, from Glynn was addressed to "Craft Brewers Guild Boston" for "menu support within[] timeframe of: july – december 2013" with "targeted locations: brownstone, clery's, dillons, granary tavern, sterlings, blk rose, coogan's, hurricane's & jose mcintyre's." The invoice was for a total of \$12,000, for "1500 units" at \$8.00 per unit. (Exhibits 1, 3)

Third Occurrence

21. On April 2, 2014, an invoice, approved by Luna, from Glynn was addressed to "Craft Brewers Guild Boston" for "Dft Menu Support Within Timeframe of: 2014" with "Targeted Locations: Brownstone, Clery's, Dillon, Brownstone & Coogan's." The invoice was for a total of \$13,500, for "1500 units" at \$9.00 per unit. (Exhibits 1, 4)
22. A Craft "Check Request Form" was issued for "Menu Support 2014" at "Dillons, Clery's, Brownstone, Coogan's" for \$13,500. The payment was specified for \$4,500 for Lagunitas, \$3,000 for Oskar Blues, \$1,500 for Wachusett, \$1,500 for Cisco, \$1,500 for Brooklyn, and \$1,500 for Magic Hat. There were "Special Instructions" that "P. McCoy to hand deliver." (Exhibits 1, 4)

DISCUSSION

173 Milk Street does not dispute the facts introduced at the hearing and in the Investigator's Report (Exhibit 1), but argues that it did not violate 204 CMR 2.08. 173 Milk Street has asked that the legal arguments made on June 14, 2016, and September 20, 2016, by similarly situated licensees³, in addition to its own legal arguments, be considered by the Commission in its determination of whether 173 Milk Street violated 204 CMR 2.08. The Commission granted this request at 173 Milk Street's hearing, and now considers all the legal arguments, including those made by these other licensees, as having been made by 173 Milk Street in rendering the present decision. After a thorough review, the Commission finds that there is insufficient evidence that the Licensee violated 204 CMR 2.08.

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n., 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was "enacted . . . to serve the public need and . . . to protect the common good." M.G.L. c. 138, § 23. "[T]he purpose of discipline is not retribution, but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981) (emphasis supplied). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

Every violation the Commission finds must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n., 401 Mass. 526, 528 (1988). "Substantial evidence" is "such evidence as a reasonable mind might accept as adequate to support a conclusion." Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc., v. Comm'r of Ins., 420 Mass 707, 710 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

173 Milk Street is alleged to have violated 204 CMR 2.08, which states:

Inducements. No licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or contracting for the purchase of any particular brand or kind of alcoholic beverages.

³ These licensees are Poe's Pub, Inc. d/b/a Estelle's; Rebel Restaurants, Inc. d/b/a Remy's; Game On Fenway LLC d/b/a Game On!; and Northern Avenue Hospitality Inc. d/b/a Gather.

204 CMR 2.08 prohibits a Licensee from giving or permitting to be given money or something of substantial value in an effort to induce any person to: (1) persuade or influence any other person to purchase or contract for the purchase of any particular brand or kind of alcohol, or (2) persuade or influence any person to refrain from purchasing or contracting for the purchase of any particular brand or kind of alcohol. Craft Brewers Guild, LLC, Everett (Commission Decision, February 11, 2016).

An essential element of 204 CMR 2.08 is that a licensee gives or “permit[s] to be given,” in this case, money, as part of the inducement. However, while it is clear and apparently undisputed that Glynn received \$39,000.00 as a bribe for dedicated tap lines in Glynn-managed restaurants, there is nothing in the record that shows this specific Licensee was “permit[ted] to be given” money.

Unlike the Decision in Poe’s Pub, Inc. d/b/a Estelle’s, Boston (Commission Decision July 29, 2016), where there was no evidence linking that licensee to a similar Craft scheme, in the present case, there is evidence that as part of Glynn’s arrangement with Craft, that Glynn committed certain tap lines at 173 Milk Street to Craft products in exchange for Craft’s monetary payment to Glynn. Likewise, there is also evidence that Glynn and 173 Milk Street share some of the same officers and directors. However, this is inadequate to show that 173 Milk Street, as opposed to another one of Glynn’s other § 12 establishments, actually received any money from this agreement.

The record is devoid of any evidence that any of the \$39,000.00 paid by Craft to Glynn made its way from Glynn to 173 Milk Street. For example, the record contains no management agreement between 173 Milk Street and Glynn that could shed light on any payment agreements, or evidence that the checks from Craft to Glynn delivered by McCoy were dropped off at 173 Milk Street. Without any evidence that 173 Milk Street actually “permit[ted]” itself to be “given money,” or in other words received the bribe itself as part of the scheme, the Commission is constrained to find that there is only substantial evidence that Craft paid Glynn – who is not a licensee and not subject to Commission supervision or 204 CMR 2.08 – kickbacks for dedicated tap lines in § 12 establishments (and which establishments may or may not have ever received payouts from this Glynn-Craft agreement).

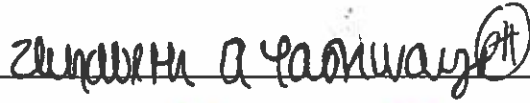
Because the Commission finds that there is insufficient evidence that the Licensee violated 204 CMR 2.08, the Commission need not reach the remaining legal arguments raised by the Licensee.

CONCLUSION

The Commission, after a hearing, finds that there was not sufficient evidence presented at the hearing that the Licensee committed a violation of 204 CMR 2.08.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: December 29, 2016

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 (30) days of receipt of this decision.

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicholas Velez, Investigator
Louis Cassis, Esq. via facsimile 617-472-9028
Administration, File