



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

Deborah B. Goldberg
Treasurer and Receiver General

Kim L. Gainsboro, Esq.
Chairman

DECISION

GAME ON FENWAY LLC D/B/A GAME ON! SPORTS CAFÉ
72-82 LANSDOWNE ST.
BOSTON, MA 02116
LICENSE#: 011600128
VIOLATION DATE: Various in 2013 and 2014
HEARD: 09/20/2016

Game On Fenway LLC d/b/a Game On! Sports Café (the "Licensee" or "Game On") 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, September 20, 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. Bank On It Invoice 6/10/2013 with Check Request Form and Check 6/20/2013;
 3. Bank On It Invoice 4/28/2014 with Check 5/01/2014; and
 4. Bank On It Invoice 7/03/2014 with Check Request Form and Check 7/10/2014.
- A. Affidavit of Stephen Coyle;
 - B. ABCC Rules and Regulations effective 1975; and
 - C. Commonwealth of Massachusetts, The Regulations Manual, May 2016.

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

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

FINDINGS OF FACT

1. Game On Fenway, LLC d/b/a Game On! Sports Cafe ("Game On") is a § 12 all alcohol licensee with a place of business at 72-82 Lansdowne Street, Boston, Massachusetts. (Commission File, Exhibit 1)
2. Edward Sparks and Patrick Lyons each have a fifty percent interest in Game On and are its LLC managers. (Exhibit 1; Commission Files)
3. Lyons Group, Ltd ("Lyons") is the management company for several § 12 licensees, including Game On.¹ (Exhibit 1)
4. Secretary of the Commonwealth records indicate the Lyons structure is as follows: Patrick T. Lyons as president and director; Edward J. Sparks as treasurer, secretary, and director. (Exhibit 1)
5. Bank on It, Inc. is the promotional/marketing company for Lyons. Secretary of Commonwealth records indicate that the Bank on It corporate structure is as follows: Patrick T. Lyons as president and director; Edward J. Sparks as treasurer, secretary, and director. (Exhibit 1)
6. 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)
7. 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, 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)
8. 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)
9. 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)
10. Corthell explained that these terms were used to conceal "kickbacks" to Briar for carrying Craft brands in Briar's § 12 establishments. (Exhibit 1)
11. On November 18, 2014, Chief Mahony, Investigator Wilichoski, and Investigator Velez interviewed Craft sales representative Pat McCoy. (Exhibit 1)
12. McCoy stated that Craft had an agreement with Lyons, whereby Craft paid \$1,000 per draft line at Lyons's restaurants. (Exhibit 1)

¹ 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. McCoy's contact at Lyons is Steven Coyle, Vice President of Operations. (Exhibit 1)
14. At the time of the investigation, Coyle was an employee of Lyons and was responsible for ordering alcoholic beverages for Game On. (Exhibit A)
15. On November 18, 2014, Investigators Wilichoski and Velez interviewed Sparks and Coyle.
16. Bank on It conducts promotion, advertising, marketing, and media buys for Lyons restaurants. Bank on It has no employees or payroll. (Exhibit 1)
17. Coyle or an administrative assistant from Lyons issued all the invoices from Bank On It to Craft. (Exhibit 1)
18. On January 7, 2015, Chief Investigator Mahony and Investigator Velez again interviewed Coyle of the Lyons Group. Coyle thought McCoy offered a \$20 rebate program per keg in exchange for Lyons placing Lagunitas, Smuttynose, Wachusett, Cisco, and Magic Hat (as a combination) in Lyons restaurants. McCoy advised Coyle to invoice Craft for menu development or menu placement. (Exhibit 1, Testimony)
19. Lyons has not been offered rebates by any other wholesaler. (Exhibit 1, Testimony)
20. Craft also entered into a separate agreement with Bank On It for Yuengling products. McCoy went to Coyle's office and met with him multiple times before Yuengling came into Massachusetts. McCoy told Coyle that he wanted Lyons to carry Yuengling and place Yuengling products in Lyons restaurants. Craft gave Lyons a rebate for selling Yuengling (Exhibit 1, Testimony)
21. On three separate occasions Bank On It, on behalf of Lyons, received payments from Craft for carrying Craft brands.

First Occurrence

22. On April 28, 2013, Bank On It invoiced Craft for Yuengling products in the amount of \$12,000.00. Invoice number 391 indicates that the invoice was for Yuengling Support" with "Entertainment and Menu Support" for "Lansdowne Pub, Game On (Kenmore), Game On (Airport), Mass Ave. Tavern, Bleacher Bar, Kings, Back Bay Social Club, La Verdad (new location), Bill's Bar, Lucky's (Airport) and Lucky's (S. Boston)." The \$12,000 was paid as a rebate to have the Craft brand Yuengling placed in Lyons restaurants. Twelve Lyons restaurants carry Yuengling, for \$1,000 per draft. (Exhibits 1, 3)
23. Craft issued check # 013688 in the amount of \$12,000 to Bank On It on May 1, 2014. (Exhibits 1, 3)

Second Occurrence

24. Bank On It issued its first invoice relative to the \$20 per keg rebate on Lagunitas, Smuttynose, Wachusett, Cisco, and Magic Hat to Craft on June 10, 2013, for \$7,000. The invoice, number 436, indicated that it was for "Menu Development & Support" and further indicated that it was for Game On, Mass. Avenue Tavern, Sonsie, Towne Stove & Spirits, Back Bay Social Club, and Lansdowne Pub. (Exhibits 1, 2, Testimony)
25. A Check Request Form from Craft noted that a check should be issued to Bank On It for \$7,000. It indicated \$5,500 for "Magic Hat participation menu," \$1,000 for "Lagunitas participation menu," and \$500 for "Cisco participation menu." McCoy was to hand deliver the check. (Exhibits 1, 2)

26. Craft issued check # 210971 in the amount of \$7,000 to Bank On It on June 26, 2013. (Exhibits 1, 2) McCoy delivered the check to Coyle. (Exhibit 1)

Third Occurrence

27. A third invoice was dated July 3, 2014, for \$3,345. The invoice indicated that it was for January to June 2014, for "BBL Rebate Program – Menu Support." This invoice was for Craft paying Lyons a fee of \$15 per barrel of beer sold in Lyons restaurants. The brands placed included Lagunitas, Smuttynose, Wachusett, Cisco, and Magic Hat. Coyle would then bill Craft either quarterly or every six months. (Exhibits 1, 4)
28. A Check Request Form was produced by Craft, noting that a check should be issued to Bank On It for \$3,345, as well as an indication it was for "Brand Allocation is listed on attached document" and "Lagunitas Trade Spend . . . \$870," and had handwritten marking indicating "P. McCoy to hand deliver." (Exhibits 1, 4)
29. A spreadsheet produced by Craft indicated a total of 223 units of beer, each multiplied by \$15, for a total of \$3,345. (Exhibits 1, 4) The spreadsheet detailed:
- a. 55 Lagunitas to Lansdowne; 30 Lagunitas to Harvard Gardens; 16 Lagunitas to BBSC; and 15 Lagunitas to Game On, for a total of 116 Lagunitas, multiplied by 15, with a total of \$1,740.
 - b. 6 Smuttynose to Lansdowne, multiplied by 15, with a total of \$90.
 - c. 12 Wachusett to Harvard Gardens, multiplied by 15, with a total of \$180.
 - d. 19 Cisco to BBSC and 6 Cisco to Game On for a total of 25, multiplied by 15, with a total of \$375.
 - e. 39 Magic to Mass. Ave., 13 Magic to Sonsie and 12 Magic to Towne, for a total of 64, multiplied by 15, with a total of \$960.
30. Craft issued check # 014527 in the amount of \$3,345 to Bank On It on July 10, 2014. (Exhibits 1, 4)

DISCUSSION

Game On 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. Game On has asked that the legal arguments made on June 14, 2016 and September 20, 2016, by similarly situated licensees², in addition to its own legal arguments, be considered by the Commission in its determination of whether Game On violated 204 CMR 2.08. The Commission granted this request at Game On's hearing, and now considers all the legal arguments, including those made by these other licensees, as having been made by Game On 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

² These licensees are Poe's Pub, Inc. d/b/a Estelle's; Rebel Restaurants, Inc. d/b/a Remy's; One Hundred and Seventy Three Milk Street d/b/a Coogan's; and Northern Avenue Hospitality Inc. d/b/a Gather.

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).

Game On 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.

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 Bank on It and/or Lyons received \$22,345 as bribes for dedicated tap lines in Lyons-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 Lyons’s arrangement with Craft, that Lyons committed certain tap lines at Game On to Craft products in exchange for Craft’s monetary payment to Bank on It. Likewise, there is also evidence that Lyons and Game On have the same officers and directors. However, this is inadequate to show that Game On, as opposed to another one of Lyons’s other § 12 establishments (if any of them), actually received any money from this agreement.

The record is devoid of any evidence that any of the \$22,345 paid by Craft to Bank on It made its way from Bank on It to Game On. For example, the record contains no management agreement between Game On and Lyons or Bank on It that could shed light on any payment agreements, or evidence that the checks from Craft to Bank on It were dropped off at Game On. Without any evidence that Game On 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 Bank on It – 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 Bank on It/Lyons-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
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Administration, File