



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

POE'S PUB, INC. D/B/A ESTELLE'S
782 TREMONT STREET
BOSTON, MA 02109
LICENSE#: 011600657
VIOLATION DATE: 10/16/2014
HEARD: 06/14/2016

Poe's Pub, Inc. d/b/a Estelle's ("Poe's Pub" or the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, June 14, 2016,¹ 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 above captioned occurred on various dates during 2013, according to Investigator Velez's report.

The following documents are in evidence:

1. Investigator Velez's Violation Report;
2. May 29, 2013, Wilcox Invoice, check request form, and check
3. November 21, 2013, Wilcox invoice, check

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

¹ The Licensee (through its attorney) requested the aforementioned hearing be rescheduled and continued to four different hearing dates. This matter was originally scheduled for the first hearing date to be held on November 3, 2015; at which time the licensee requested a continuance to the second hearing date of December 16, 2015 to await the Craft Beer Guild decision (issued 2/11/16); the licensee then requested a third hearing date of February 23, 2016; at which time the licensee then requested a fourth continuance to a hearing date of May 3, 2016. Each of the licensee's (requested through its attorney) four continuance requests were allowed by the Commission. The matter was rescheduled to its final June 14, 2016 hearing date by request of Commission Investigators.

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

FINDINGS OF FACT

In its hearing memorandum and at the hearing, the Licensee stipulated to the facts set forth in Investigator Nick Velez's Investigative Report:

1. Poe's Pub, Inc., d/b/a Estelle's ("Poe's Pub" or "Licensee") is a § 12 all alcohol licensee with a place of business at 782 Tremont Street, Boston, Massachusetts. (Exhibit 1, Commission File)
2. Wilcox Hospitality Group, Inc. ("Wilcox") is the purported management company for eight § 12 licensees, with five of them being², ³:
 - a. Poe's Pub, Inc., d/b/a Estelle's, with Gordon Wilcox as the president, treasurer, secretary, and sole director;
 - b. Dot Boy, Inc., d/b/a The Lower Depths, with president and director Gordon Wilcox, treasurer and director Peter Cuplo, and secretary and director Suzanne Samowski;
 - c. Montanus, Inc., d/b/a Bukowski Tavern, with president and director Gordon Wilcox, and secretary and director Suzanne Samowski;
 - d. Tip Tap Room, Inc., d/b/a Tip Tap Room, with Gordon Wilcox as the president, treasurer, secretary, and director; and directors Joseph Priscella and Gary McDonough; and
 - e. Rattlesnake Bar & Grille, Inc., d/b/a Rattlesnake Bar & Grille, with Gordon Wilcox as president, treasurer, secretary, and director; and directors Joseph Priscella and Gary McDonough. (Exhibit 1, Commission File)
3. Secretary of the Commonwealth records indicate that Gordon Wilcox is the president, treasurer, secretary, and director of Wilcox. (Exhibit 1)
4. 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)
5. They met with Dan Paquette and his wife, Martha Paquette, owners of Pretty Things Beer and Ale Project, Inc. Dan and Martha Paquette 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)
6. The following day, Investigator Velez along with Investigator Caroline Wilichoski spoke with Craft sales manager Craig Corthell and officer manager Bethany DiCristofaro. (Exhibit 1, Testimony)

² The Investigative Report only provides details for five of the eight establishments. (Exhibit 1)

³ There is nothing in the Commission files approving these relationships. (Commission Files)

7. 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)
8. Corthell explained that these terms were interchangeable because their purpose was to conceal “kickbacks” to Briar for carrying Craft brands in Briar’s § 12 establishments. (Exhibit 1)
9. On November 12, 2014, Chief Mahony, Investigator Wilichoski, and Investigator Velez interviewed Gordon Wilcox, and on November 18, 2014, Chief Mahony, Investigator Wilichoski, and Investigator Velez, met with Craft employee Pat McCoy. Both meetings were to discuss two invoices the investigators had obtained that were from Wilcox to Craft. (Exhibit 1)
10. Investigators learned from these two meetings that two payments totaling \$20,000.00 were made to Wilcox by Craft based on an agreement that had been reached between McCoy and Mr. Wilcox after some negotiation. The negotiations began with McCoy offering Mr. Wilcox \$1,000.00 a line for up to 20 dedicated draft lines, but Craft wanted “all 20 to 35 lines to be committed for said agreement.” Mr. Wilcox refused because he wanted to control “his lines” and instead wanted 10% of all Craft sales at his establishments. (Exhibit 1)
11. McCoy eventually counter-offered by offering that Craft would pay Wilcox \$20,000.00 in 2013 in return for 20 committed draft lines at Wilcox’s § 12 establishments. (Exhibit 1, Testimony)
12. Mr. Wilcox asked McCoy how he would collect the \$20,000.00, and McCoy told him to invoice Craft for “marketing.” (Exhibit 1)
13. Two invoices were produced from Wilcox to Craft:
 - a. an invoice dated May 29, 2013, for \$10,000, indicating “Marketing Services” for the period of January 1 through March 31, 2013 and April 1 through June 30, 2013; and
 - b. an invoice dated November 21, 2013, for \$10,000.00, indicating “Marketing Services” for the periods of July 1 thru September 31, 2013, and October 1 thru December 31, 2013. (Exhibits 1, 2, 3)
14. McCoy delivered each of the \$10,000.00 checks to Chris Sheridan, a manager at the Rattlesnake Bar & Grille, a Wilcox-associated § 12 establishment. (Exhibit 1)

DISCUSSION

The Licensee has admitted to the facts introduced at the hearing and in the Investigator’s Report, Exhibit 1. However, it argues that 204 CMR 2.08 is an invalid regulation, but that even if it is a valid regulation, the Licensee did not violate it. The Commission has considered the allegation against the Licensee and each defense the Licensee raises. After a thorough review, the Commission finds that there is insufficient evidence that the Licensee violated 204 C.M.R. 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).

The Licensee is charged with a single violation of 204 CMR 2.08:

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 Wilcox received \$20,000.00 as a bribe for 20 dedicated tap lines in Wilcox-managed restaurants, there is nothing in the record that shows this specific Licensee was “permit[ted] to be given” money. When pressed by the Commission at the hearing what specifically tied Poe’s Pub to this agreement between Wilcox and Craft, the Investigators responded (1) that Wilcox and Poe’s Pub have the same officers and directors, namely Gordon Wilcox, and (2) the \$20,000.00 was for Craft brands to be carried on 20 draft lines in “Wilcox restaurants,” of which Poe’s Pub is one of eight. This is inadequate to show that Poe’s Pub, as opposed to another one of Wilcox’s eight § 12 establishment (if any of them) actually received any money from this agreement, or if Wilcox kept this money for its own purposes.

The record is devoid of any circumstantial evidence that any of the \$20,000.00 paid by Craft to Wilcox made its way from Wilcox to Poe’s Pub, such as a management agreement between Poe’s

Pub and Wilcox that could shed light on any payment agreements, invoices by Wilcox to Craft mentioning Poe's Pub in any way (as was observed with other management companies in the Craft decision), or even evidence that the checks from Craft to Wilcox delivered by McCoy were dropped off at Poe's Pub. Without any evidence that Poe's Pub actually "permit[ted]" itself to be "given money," or in other words received the bribe itself as part of the kickback scheme, the Commission is constrained to find that there is only substantial evidence that Craft paid Wilcox – who is not a licensee and not subject to Commission supervision or 204 CMR 2.08 – kickbacks for 20 dedicated tap lines in unnamed and unknown § 12 establishments (and which establishments may or may not have ever received payouts from this Wilcox-Craft agreement). Nothing links Poe's Pub specifically to this scheme.

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: July 29, 2016

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: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Nicholas Velez, Investigator
James Byrne, Esq. via facsimile 617-265-3627
Administration, File