

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

Steven Grossman
Treasurer and Receiver General

Kim J. Gainstoro, Esq.
Chairman

DECISION

WHALEBACK RESTAURANT, INC. DBA WHALEBACK RESTAURANT
1052 SANDWICH ROAD SAGAMORE
BOURNE, MA 02561
LICENSE#: 011800022
VIOLATION DATE: 0/2013
HEARD: 11/26/2013

Whaleback Restaurant, Inc. dba Whaleback Restaurant (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, November 26, 2013, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 138 §23- Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22A. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Velez's Report.

The following documents are in evidence:

1. Licensee's Stipulation of Facts; and
2. Investigator Velez's Investigative Report dated August 18, 2013.

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

FACTS

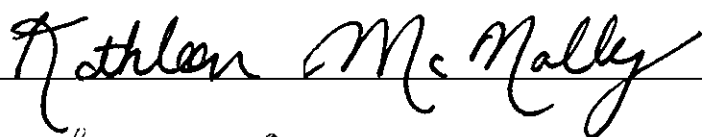
1. On Monday, August 18, 2013, at approximately 2:20 p.m., Investigators Kenny and Velez conducted an investigation of the business operation Whaleback Restaurant, Inc. dba Whaleback Restaurant.
2. Investigators identified themselves to the bartender on duty, Paula McGuire. Investigators asked for and were granted permission to inspect the licensed premises.
3. Behind the bar area, investigators observed multiple bottles of alcohol each with sticky glue-like substance in the shape of a retail price sticker on the exterior of the bottles. Investigators also observed that a few bottles had price stickers on them.
4. Based on their training and experience, investigators concluded that the bottles with sticky glue-like substance were alcoholic beverages which had been purchased from a \$15 retail package store.
5. Investigators removed these bottles from the bar area and took them as evidence. The bottles were:
 - o 1 liter Bacardi Superior Original Premium rum;

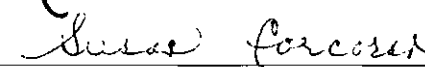
- o 1 liter Captain Morgan spiced rum;
 - o 750 ml Malibu Caribbean rum;
 - o 1.75 liter Absolut vodka;
 - o 1.75 liter Gordon's vodka;
 - o 1.75 liter Sailor Jerry spiced rum; and
 - o 1.75 liter Tanqueray gin.
6. When investigators asked Ms. McGuire where she bought the bottle, Ms. McGuire stated that she did not know.
 7. During their conversation with Ms. McGuire, investigators observed a male individual enter the licensed premises carrying an 18-pack of Heineken beer and an 18-pack of Corona beer.
 8. Investigators spoke to the male individual who identified himself as Robert Lacey, the owner. Investigators asked Mr. Lacey if he had purchased this alcohol from a \$15 retail package store.
 9. Mr. Lacey stated, "If I am low on items, I swing into a package store and buy them."
 10. Investigators took the 18-pack of Heineken beer and the 18-pack of Corona beer as evidence.
 11. Investigators informed Mr. Lacey of the violation and that a report would be submitted to the Chief Investigator for review.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated of 204 CMR 2.05 (2) Permitting an Illegality on the licensed premises, to wit: M.G.L. c. 138 §23- Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22A. As the licensee has been in business for ten (10) years and has had no previous violations, the Commission issues a **WARNING**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner 

Susan Corcoran, Commissioner 

Dated: November 26, 2013

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.

cc: Local Licensing Board
 Frederick G. Mahony, Chief Investigator
 Nicholas Velez, Investigator
 Mark Kenny, Investigator
 Administration
 File