

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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF REVOCATION

March 6, 2023

HEMISPHERES LLC
140 AKER DRIVE
COBLESKILL, NY 12043
LICENSE#: COC-LIC-029397.
VIOLATION DATE: Various from 4/4/2019 to 7/3/2019
HEARD: 9/23/2021

After a hearing on September 23, 2021, the Commission finds Hemispheres LLC violated:

- 1) M.G.L. Ch. 138 § 2 No person shall manufacture, with intent to sell, sell or expose or keep for sale, store, transport, or import or export alcoholic beverages or alcohol, except as authorized by this chapter;
- 2) M.G.L. Ch. 138, § 18 In order to ensure the necessary control of traffic in alcoholic beverages for the preservation of the public peace and order, the shipment of such beverages into the Commonwealth, except as provided in this section and section 19F, is hereby prohibited.

The Commission **REVOKES the Certificate of Compliance of HEMISPHERES LLC EFFECTIVE FORTHWITH.**

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

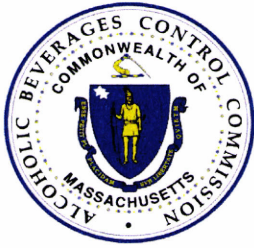
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
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Dokiman sa a enpòtan epi li ta dwe tradwi touswit
‘Đây là tài liệu quan trọng và cần được dịch ngay’
ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2020-024023-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Christopher Temple, Investigator
Nicholas Velez, Investigator
Mark Dickison, Esq.
Administration, File



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**HEMISPHERES LLC
140 AKER DRIVE
COBLESKILL, NY 12043
LICENSE#: COC-LIC-029397.
VIOLATION DATE: Various from 4/4/2019 to 7/3/2019
HEARD: 9/23/2021**

Hemispheres LLC ("Hemispheres" or the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §§ 18B. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Thursday, September 23, 2021, regarding alleged violations of:

- 1) M.G.L. Ch. 138 § 2 No person shall manufacture, with intent to sell, sell or expose or keep for sale, store, transport, or import or export alcoholic beverages or alcohol, except as authorized by this chapter;
- 2) M.G.L. Ch. 138, § 18 In order to ensure the necessary control of traffic in alcoholic beverages for the preservation of the public peace and order, the shipment of such beverages into the Commonwealth, except as provided in this section and section 19F, is hereby prohibited.¹

Prior to the commencement of the hearing, the Licensee signed a Stipulation of Facts as to the two charges listed above, against COC-LIC-029397 as alleged in Investigator Temple's Report.

The following documents are in evidence:

1. Investigator Temple's Report;
2. OSJL Spirits, LLC's ("Ocean") Massachusetts Secretary of the Commonwealth's filing and ABCC (Accela) license printout;

¹ Prior to the commencement of the hearing, the Commission was informed the Enforcement Division would not be moving forward with charges initially brought against Hemispheres' § 19F direct wine shipper license no. DS-LIC-001507. In addition, as to the Licensee's §18B Certificate of Compliance license no. COC-LIC-029397, the Enforcement Division withdrew the charge of a violation of M.G.L. Ch. 138 § 2, to wit: M.G.L. Ch. 138, § 18.

3. Drinks Licensing LLC's ("Drinks") 19F Application and License;
4. Drink Licensing LLC's filing with Secretary of State, California;
5. Hemispheres' ABCC (Accela) License Printout and Certificate of Compliance File Documents;
6. Drinks Holdings, Inc. Secretary of State California Filing;
7. Specialty Marketing Group, Inc. Beneficial Interest Report;
8. Bullpen Distribution Inc's Secretary of State California Filing;
9. 3SIX5 Logistics LLC's Secretary of State Illinois Filing;
10. Photos of Ocean (Falmouth) Alcoholic Beverages Kept, Displayed and Stored for Sale;
11. Photo of Bill of Lading Found at Ocean (Falmouth);
12. Photo of Purchase Order Found at Ocean;
13. Documents Provided by Specialty;
14. Documents Provided by Specialty;
15. Documents Provided by Specialty;
16. Documents Provided by Ocean;
17. Documents Provided by Ocean;
18. Documents Provided by Ocean;
19. Documents Provided by Ocean;
20. Documents Provided by Ocean;
21. Documents Provided by Ocean;
22. ABCC Enforcement Demand for Documents;
23. Response to ABCC Demand for Documents;
24. ABCC Enforcement Division Demand for Further Documents;
25. Response to Second Demand;
26. Licensee's Stipulation of Facts.

A. Licensee Hemispheres, LLC's Hearing Memorandum.

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

FINDINGS OF FACT

1. Drinks Licensing LLC ("Drinks Licensing") was organized in Delaware on September 9, 2014, with Zac Brandenburg as LLC Manager. The California Secretary of State's website indicates that as of October 3, 2016, Bernice Z. Kleine is LLC manager. Ms. Kleine is Mr. Brandenburg's mother. (Testimony, Exhibit 4)
2. Drinks Licensing LLC changed its corporate name to Hemispheres LLC in March of 2017.
Id.

3. Hemispheres LLC ("Hemispheres") located at 140 Aker Driver, Cobleskill, NY holds a Certificate of Compliance license issued pursuant to Ch. 138, § 18B on November 8, 2018. (Testimony, Exhibit 5)
4. Drinks Holdings, Inc. ("Drinks") is a California corporation organized on January 19, 2017, with Zac Brandenburg listed as CEO. (Testimony, Exhibit 6)
5. Specialty Marketing Group Inc. ("Specialty") is a Massachusetts corporation organized on January 11, 2007. Anthony Yebba is President and Director, and Nicholas Yebba is Treasurer, Secretary, and Director. Specialty holds a wholesaler's license issued pursuant to M.G.L. Ch. 138, § 18 on May 30, 2007. (Testimony, Exhibit 7)
6. Bullpen Distribution Inc. ("Bullpen") is a California corporation registered in California on April 12, 2011, with Jon Brill as Officer and Director, and Michael Brill as Director. Bullpen's principal place of business is 2443 Fillmore Avenue, San Francisco, California. (Testimony, Exhibit 8)
7. 3Six5 Logistics LLC ("3Six5") is an Illinois corporation. (Testimony, Exhibit 9)
8. OSJL Spirits LLC d/b/a Ocean State Job Lot ("Ocean" or "OSJL") was organized and incorporated in Massachusetts on July 1, 2013. Ocean currently holds seven Ch. 138, § 15 retail package store licenses in the Commonwealth of Massachusetts. (Testimony, Exhibit 2)
9. On Thursday, July 25, 2019, ABCC Investigators investigated the business operations of several Ocean State Job Lot's § 15 retail package store locations. (Testimony, Exhibit 1)
10. On Thursday, July 25, 2019, Investigators Velez and Temple ("Investigators") entered the Ocean premises located at 50 Teaticket Highway, Falmouth and observed several boxes of EORA wine displayed for sale, at a cost of \$2.50 per bottle. Investigators also observed several pallets of EORA wine in the storage area of the licensed premises. Id.
11. Investigators interviewed the manager and requested documentation regarding the delivery and sale of alcoholic beverages, specifically the EORA wine, received within the previous month. Id.
12. The manager provided Investigators with a Bill of Lading for the EORA wine, which indicated the wine was delivered to Ocean on June 28, 2019, by 3Six5. The customer listed on the Bill of Lading was Hemispheres LLC, 1125 E. Broadway, Glendale, California. (Testimony, Exhibits 1, 11)
13. The first stop or pick-up location identified on the Bill of Landing was 140 Aker Drive, Cobleskill, New York. The Cobleskill location is the address on record for Hemisphere's § 18B Certificate of Compliance. Id.
14. The second stop or first delivery location listed on the Bill of Lading was Specialty Marketing Group, Inc., a licensed Massachusetts wholesaler. The third, fourth, and fifth stops were Ocean locations in Medford, Fairhaven, and East Falmouth. Id.

15. Investigators observed Specialty was the only location listed on the Bill of Lading that did not have any contact information or a date and time of pick up. In addition, there were handwritten markings next to each Ocean stop. There were not any handwritten markings next to Specialty. Id.
16. Investigators examined a second document which was attached to the Bill of Lading, a purchase order for the EORA wine. The purchase order listed Specialty as the vendor and identified Jon Brill as its sales representative. Mr. Brill's contact information was listed. (Testimony, Exhibits 1, 11, 12)
17. On multiple occasions, Investigators met with Specialty's owner, Nicholas Yebba who stated that he, Anthony Yebba, and Colleen Sheehan are the only people involved in Specialty. (Testimony, Exhibit 1)
18. Mr. Yebba informed Investigators that he had no knowledge of, and Specialty had no association with Jon Brill or Bullpen Food. Id.
19. The Investigators requested Mr. Yebba provide details of the development of the EORA wine transaction, along with the logistical details of the delivery and accounting procedures. Nicholas Yebba stated that he was contacted by Kelly Martin, who worked for Drinks or Hemispheres. Nicholas Yebba stated Ms. Martin informed him that Hemispheres had wine in New York, and they already had a buyer in Massachusetts. Nicholas Yebba stated he was advised by Ms. Martin that depending on what he would charge for being the listed Massachusetts wholesaler, they would determine if it was cheaper to sell the wine to their buyer or destroy the wine. Id.
20. Mr. Yebba informed Ms. Martin he would charge \$1.50 and 55¢ per gallon for taxes and Ms. Martin agreed to this price. Id.
21. Nicholas Yebba informed Investigators all other aspects of the EORA wine transaction were arranged by Ms. Martin. He stated he never spoke with any transportation companies relative to the delivery of the EORA wine and that Ms. Martin told him she would take care of the delivery logistics and would register the wine to him. Mr. Yebba further told Investigators that he never communicated with Ocean regarding the EORA wine transaction. Id.
22. Investigators asked Mr. Yebba about the purchase orders he received from Ocean. He stated that Martin was already in possession of the purchase orders and that she was the individual that forwarded the purchase orders to him. Id.
23. Investigators asked Nicholas Yebba if the EORA wine delivered to Ocean came to rest at his § 18 facility. Mr. Yebba stated that Ms. Martin arranged for the wine to be delivered to Ocean. Mr. Yebba clarified and confirmed the EORA wine never entered his facility. Id.
24. Mr. Yebba told Investigators that when Ms. Martin became aware the EORA wines transaction was under investigation by the ABCC, Ms. Martin advised him not to worry because they would hire the best attorneys for him. Mr. Yebba told Ms. Martin not to contact him again. Id.

25. Investigators asked Mr. Yebba to provide them with any email correspondence between Specialty and Ms. Martin pertaining to the EORA wine transactions. The correspondence produced by Mr. Yebba included the following:

*an email, dated 6/27/2019, from Louis Amoroso, COO of Drinks to Ms. Martin regarding the delivery of EORA wines to Ocean's retail package store premises in Massachusetts including store addresses and delivery instructions. Mr. Amoroso's email indicated the first seven delivery stops were to be Falmouth, Westborough, Randolph, Medford, Leominster, Sturbridge, and Fairhaven. Mr. Amoroso did not mention Specialty.

* an email, dated 6/28/2019, sent by Ms. Martin to Mr. Yebba at 8:05 p.m. states, "...[a]ttached please find the purchase orders and bill of ladings for today's shipments. Note, the quantities have been changed on the Medford purchase order. I've manually adjusted the quantities until we get the corrected PO from the store on Monday. Below is a summary of the wines and the pricing for today's shipment...Let me know how you would like to handle the bill of ladings. Please send me your signed copy of the bill of lading and copies of the invoices for our records. I will request copies of the store signed bill of ladings from the transportation company so that you have them for your records."

* an email, dated 7/2/2019, in which Ms. Martin, on behalf of Hemispheres, indicated she had obtained copies of bills of lading documenting the delivery directly from Hemispheres to Ocean and requested Specialty sign them. On August 2, 2019, Investigators interviewed Steve Aronow, an LLC member of Ocean. Mr. Aronow stated he was contacted by Jon Brill, a salesman with Bullpen Distribution Inc., regarding the EORA transaction. Mr. Brill informed Aronow that he had 7400 cases of EORA wine for sale. On June 10, 2019, Mr. Brill informed Mr. Aronow the price of the EORA wine would be \$9.00 a case. Mr. Aronow accepted the price and ordered 2400 - 2600 cases of EORA wine from Mr. Brill on June 11th or June 12th.

(Testimony, Exhibits 1, 13, 14, 15)

26. On June 24, 2019, Mr. Brill informed Mr. Aronow that the price for a case of EORA wine would now be \$10.00 per case and Mr. Aronow accepted the price change. (Testimony, Exhibit 1)
27. On August 23, 2019, in response to Investigators' inquiry, counsel for Ocean confirmed that purchase orders for the EORA wine were sent from Ocean to Mr. Brill at Bullpen Distributing Inc. Neither Bullpen nor Mr. Brill are licensed to sell alcoholic beverages in Massachusetts. Id.
28. Investigators requested Ocean provide them with email correspondence between Ocean and Mr. Brill pertaining to the EORA wine transaction. Id.
29. On June 24, 2019, Mr. Brill emailed Ocean and stated, "...the final cost, including delivery to each of the 7 stores on multiple trips (estimated at 3) will be \$10. per case delivered... We can do this in multiple P.O.'s before you write the P.O.s I will have to give you the name of who you will be doing business with. Is this agreeable?" (Testimony, Exhibit 17)

30. The emails provided by Ocean document negotiations and agreements between Mr. Brill and Ocean regarding the EORA wine transaction, and include price, delivery logistics, number of cases, pallets and flavor types. These matters were all discussed and negotiated before Mr. Brill informed Ocean of the identity of Specialty. (Testimony, Exhibits 1, 16, 17, 18, 19, 20, 21)
31. On June 26, 2019, in an email from Mr. Brill to Mr. Aronow, Mr. Brill stated, "Steve, we began making calls to the stores to determine the time necessary for each drop and we encountered this at every location; there is an empty trailer backed into the loading dock that will require someone to move the trailer, in order for our DSD to occur...". "DSD" is a term utilized in the retail distribution supply chain landscape which stands for Direct Store Delivery. Delivery of the product from the supplier is made directly to the retail store, thereby bypassing the retailer's distribution center. Id.
32. On June 27, 2019, Mr. Aronow emailed Mr. Brill and stated, "Jon – we can accommodate your trucks. We'll need a delivery date and appx Time of delivery for each store..." Id.
33. On June 28, 2019, Mr. Aronow emailed Mr. Brill requesting clarification from Mr. Brill as to the identity of Specialty and Hemispheres. Id.
34. In further emails from Mr. Brill to Mr. Aronow, Mr. Brill stated, "...We will bring 2 trucks from NY, bump the MA warehouse and then deliver to the 7 stores." Id.
35. On June 26, 2019, Louis Amoroso sent an email to Marko Kondik of 2Six5 regarding the transportation of the EORA wine from New York to Massachusetts. Mr. Amoroso stated, "Marko, I need to have roughly 8 trucks go from Cobleskill to Massachusetts. Process is going to be as follows...a. Truck 1 – Deliver to 4 locations b. Truck 2 – Deliver to 3 locations...Truck 1 to East Falmouth, MA Westborough, MA Randolph, MA Medford, MA Truck 2 Leominster, MA Sturbridge, MA Fairhaven, MA." The instructions provided by Mr. Amoroso did not include Specialty. Id.
36. On June 26, 2019, Mr. Brill stated in an email to Mr. Amoroso, "Louis, I won't release the P.O. to anyone but you..." Id.
37. On June 28, 2019, Mr. Amoroso sent an email to Ms. Martin, Chris Halaquist of 24 Seven Enterprises and Marko Kondic of 3Six5 Logistics stating that the liquidation of the EORA wine to the Massachusetts retailers will be transported by 3Six5. The email lists for Truck #1, Stop 1 would be Medford, Stop 2 Fairhaven and Stop 3 Falmouth, Mr. Amoroso stated, "Also, in this tab are instructions as to the bills of lading.

Bills of Lading 1 Hemispheres to Specialty 2 Specialty to #242 Medford 3 Specialty to #253 Fairhaven 4 Specialty to #205 Falmouth

Though the truck is not going to stop at Specialty we still need to have a bill of lading showing that it went from Hemispheres (Vin-go Facility) to Specialty to Stop 1 to Stop 2 to Stop 3."

(Testimony, Exhibits 1, 25)

38. Investigators asked Hemispheres to provide them with any communications between Hemispheres and Mr. Brill pertaining to the transportation or sale of the EORA wine. (Testimony, Exhibits 1, 22, 24)

39. In response to the above request, Hemispheres produced three (3) emails:

* On September 15, 2019, Mr. Brill emailed Natalia Romanowski of Hemispheres, and included an invoice for "consulting fees." Mr. Amoroso was copied on this email.

* In an email of September 26, 2019, Mr. Brill requested from Ms. Romanowski a status update as to his payment.

* On September 27, 2019, in an email from Ms. Romanowski to Mr. Brill, on which Mr. Amoroso is copied, Ms. Romanowski stated that Mr. Brill's payment had been approved and was in process.

(Testimony, Exhibits 1, 23, 25)

40. Investigators contacted Jon Brill by telephone. Mr. Brill stated that his sole role in the transaction was that of a middleman between Ocean and another company which he refused to identify. (Testimony, Exhibit 1)

41. Andrea-Natalia Romanowski, Hemispheres' Director of Compliance, appeared at the Commission hearing and testified that Hemispheres sought to sell the EORA wine quickly because it was approaching expiration. She stated the Licensee at that point had to either find a buyer for the wine, or destroy the wine. Ms. Romanowski testified customers were not purchasing it on-line. As a result, Hemispheres utilized Bullpen as a liquidator. (Testimony)

DISCUSSION

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 Massachusetts General Laws, 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). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

The "[r]egulation of the liquor industry in Massachusetts is comprehensive and pervasive." Cellarmaster Wines of Mass., Inc. v. Alcoholic Beverages Control Comm'n, 27 Mass. App. Ct. 25, 27, 534 N.E.2d 21 (1989); see Miller Brewing Co. v. Alcoholic Beverages Control Comm'n, 56 Mass. App. Ct. 801, 808-809 (2002). "Massachusetts law requires that alcohol products sold in this State by manufacturers or suppliers be sold initially to licensed Massachusetts wholesalers.

Those wholesalers in turn sell to retailers who sell to consumers. G.L. c. 138, §§ 12, 15, 18, 18B, 19.” Heublein, Inc. v. Capital Distributing Co., 434 Mass. 698, 699 (2001); see Miller Brewing Co., 56 Mass. App. Ct. at 808-809.

The Commission’s finding of a violation 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).

Here the Licensee is charged with violations of M.G.L. Ch. 138 § 2 No person shall manufacture, with intent to sell, sell or expose or keep for sale, store, transport, or import or export alcoholic beverages or alcohol, except as authorized by this chapter and M.G.L. Ch. 138, § 18. In order to ensure the necessary control of traffic in alcoholic beverages for the preservation of the public peace and order, the shipment of such beverages into the Commonwealth, except as provided in this section and section 19F, is hereby prohibited.

The Licensee, a Certificate of Compliance holder, directly orchestrated a sale to Ocean, a retailer licensed under M.G.L. c. 138, § 15, using an unlicensed entity to broker the sale, and without *properly* utilizing a licensed Massachusetts wholesaler. The Licensee only worked with a wholesaler for appearances sake as the wholesaler had no dealings with Ocean and the product never entered the wholesaler’s facility.

By Hemispheres’ own admission, the sale was motivated by a “desire to hurriedly sell expiring product.” Hemispheres worked with Bullpen Distribution, a liquidation and close-out specialist, to assist with the sale. Both Hemispheres and Bullpen contacted Ocean directly and only engaged a wholesaler after the fact. (Exhibit A)

The Commission is persuaded by the evidence that violations of M.G.L. c. 138, § 2 and M.G.L. c. 138, § 18 did occur.

CONCLUSION

Based on the evidence, the Commission finds Hemispheres LLC violated:

- 1) M.G.L. Ch. 138 § 2 No person shall manufacture, with intent to sell, sell or expose or keep for sale, store, transport, or import or export alcoholic beverages or alcohol, except as authorized by this chapter;
- 2) M.G.L. Ch. 138, § 18 In order to ensure the necessary control of traffic in alcoholic beverages for the preservation of the public peace and order, the shipment of such beverages into the Commonwealth, except as provided in this section and section 19F, is hereby prohibited.

Therefore, the Commission **REVOKES** the Certificate of Compliance of Hemispheres LLC.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

Jean M. Lorizio

Crystal Matthews, Commissioner

Crystal Matthews

Deborah Baglio, Commissioner

Deborah A Baglio

Dated: March 6, 2023

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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