



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

Jean M. Lorizio, Esq.
Chairman

CRAFT COLLECTIVE, INC.,
Petitioner,

v.

SEMB CF, LLC d/b/a EBBB BREWING CO. & FOUNTAIN BEVERAGE CO.,
Respondent.

MEMORANDUM AND ORDER OF DISMISSAL

The Alcoholic Beverages Control Commission ("Commission") has before it its second matter involving recently-enacted M.G.L. c. 138, § 25E ½, which addresses distributorship agreement terminations involving the sale of malt beverages. SEMB CF, LLC d/b/a EBBAS Brewing Co. and Fountain Beverage Co. ("SEMB"), the holder of a M.G.L. c. 138, § 18B, Certificate of Compliance, terminated its distributorship agreement with Craft Collective, Inc. ("Craft"), a M.G.L. c. § 18, wholesaler, regarding SEMB's EBBB brand beer and Fountain brand hard seltzer. As a result, Craft has filed a petition with the Commission pursuant to M.G.L. c. 138, § 25E, requesting that the Commission address this termination as a § 25E matter instead of a § 25E ½ matter and to issue a ship order pursuant to § 25E forthwith.

The Commission must consider a matter before it when "a controversy exists which *by law or Agency regulation* requires an Adjudicatory Proceeding" 801 C.M.R. 1.02(b) (emphasis added); see also 801 C.M.R. 1.02(c) ("A Person *entitled* to an Adjudicatory Proceeding . . . must request a hearing in writing" (emphasis added); M.G.L. c. 30A, § 10 ("[w]hen, *under a provision of any law*, a hearing is required" (emphasis added). Logically, and necessarily, this means that like any administrative agency the Commission must have statutory or regulatory authority to consider an adjudicatory proceeding filed with it.

In its petition to the Commission ("Petition"), Craft has raised the issue of whether the Commission has jurisdiction over this matter, stating that the Commission *does* have jurisdiction because, *inter alia*, SEMB did not inform Craft that it was terminating its distributorship agreement pursuant to

M.G.L. c. 138, § 25E ½ (Petition at ¶ 7).¹ Therefore, Craft argues, § 25E is the default means of relief and is therefore the sole procedure for relief and that SEMB has failed to comply with its well-established requirements (Petition at ¶¶ 7-8, 10-11).

Since the jurisdiction of an administrative agency is both bestowed and limited by statute, an administrative agency such as the Commission must dismiss a case if it lacks statutory authority to provide the relief sought by a petitioner. Globe Newspaper Company v. Beacon Hill Architectural Commission, 421 Mass. 570, 584 (1996); Saccone v. State Ethics Commission, 395 Mass. 326, 335 (1985); Nature Church v. Bd. of Assessors of Belchertown, 384 Mass. 811, 811 (1981). The Commission has “ ‘only the powers, duties and obligations expressly conferred upon it by . . . statute . . . or such as are reasonably necessary . . . [to carry out] the purpose for which it was established.’ ” Saccone v. State Ethics Comm’n, 395 Mass. 326, 335 (1985), quoting Hathaway Bakeries, Inc. v. Labor Relations Comm’n, 316 Mass. 136, 141 (1944). Therefore, the Commission must determine if it has jurisdiction over this matter.

As is here, when the Commission becomes aware of a potential question of whether the Commission has jurisdiction over a matter before it, it is obligated to resolve the issue regardless of whether the issue was raised or waived by either or both parties. Nature Church v. Bd. of Assessors of Belchertown, 384 Mass. 811, 811 (1981); see also, e.g., Everett v. 357 Corporation, 453 Mass. at 609; Blauvelt v. AFSCME Council 93, Local 1703, 74 Mass. App. Ct. 794, 801–802 (2009).²

The Commission has already addressed the question of whether it has jurisdiction over a “brewer” distributorship agreement termination in Night Shifting Distributing, LLC v. Loverboy Inc. (Commission Memorandum & Order, June 23, 2011) (“Night Shift Distributing Order”). In that decision, the Commission held that because the matter involved the termination of a distributorship agreement involving a “brewer” as defined by M.G.L. c. 138, § 25E ½ (a), the Commission had no jurisdiction over the matter. Indeed, it explained that “[i]t is important to note that § 25E ½ removes the Commission from having any role in these proceedings” Id. at 2. “If § 25E ½ does control, the Commission has no role to play and any disputes must be addressed in arbitration.” Id. at 3.

¹ The Commission is aware that Craft also is appearing to argue that neither § 25E nor § 25E ½ applies because the distributorship agreement between the parties, which includes a termination provision, controls. However, this would be a question of fact that would need to be analyzed by the Commission under the § 25E framework or for an arbitrator to consider under the § 25E ½ framework.

² Because the dispositive material facts are not in dispute, particularly when the Commission is considering Craft’s assertions in the light most favorable to it, neither a hearing nor further briefing is required for the Commission to address this issue. Kobrin v. Board of Registration in Medicine, 444 Mass. 837, 848 (2005) (no hearing required where there is no factual dispute between parties); Trust Ins. Co. v. Commissioner of Ins., 48 Mass. App. Ct. 628, 634 (2000) (due process does not require hearing where there is no factual dispute between parties); see also, generally, Gerald Donohue, Esq., *Massachusetts Practice: Administrative Law & Practice*, § 5:13 (updated June 2021).

Craft does not dispute that for the purposes of its petition SEMB is a “brewer” as defined in § 25E ½ (a) and that their distributorship agreement involves malt beverages (Petition at ¶¶ 3, 4, 7; Dec. 29, 2021, Letter from Craft to Commission). Indeed, Craft appears to acknowledge that § 25E ½ would apply had SEMB informed Craft that it was terminating their agreement pursuant to § 25E ½. However, § 25E ½ is not discretionary to the parties or something that must be invoked. Night Shift Distributing Order at 2-4. Section 25E ½ by its very terms is the mandatory procedure for brewery distributorship termination disputes, regardless of whether a party cites it as the legal basis for terminating its distributorship agreement.

Because the Legislature expressly removed this type of dispute from the Commission’s review, the Commission lacks subject matter jurisdiction to resolve this case and is constrained to dismiss it.

Since § 25E ½ removes all authority from the Commission to resolve this brewer distributorship termination dispute, the Commission cannot “order” the parties to submit to arbitration under § 25E ½. However, the Commission encourages the parties to review § 25E ½ and the procedure by which they may resolve any disputes arising from the termination of the parties’ distributorship agreement, including arbitration.

CONCLUSION

For the foregoing reasons, the Commission **DISMISSES WITH PREJUDICE** Craft’s petition pursuant to M.G.L. c. § 25E; and **DENIES** Craft’s request for a ship order.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

Jean M. Lorizio

Crystal Matthews, Commissioner

Crystal Matthews

Deborah Baglio, Commissioner

Deborah A. Baglio

Dated: February 22, 2022

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: J. Mark Dickison, Esq.
SEMB CF, LLC d/b/a/ EBBAS Brewing Co. and Fountain Beverage Co.
Administration, File