

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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

February 3, 2025

OSJL SPIRITS, LLC D/B/A OCEAN STATE JOB LOT
50 TEATICKET HIGHWAY
FALMOUTH, MA 02536
LICENSE NO.: 00213-PK-0390
HEARD: 5/10/2022

After a hearing on May 10, 2022, the Commission finds OSJL Spirits, LLC d/b/a Ocean State Job Lot ("Ocean" or the "Licensee") violated M.G.L. Ch. 138, § 2 No person shall sell, expose or keep for sale, store, transport, or import alcoholic beverages or alcohol, except as authorized by this chapter.

The Commission **SUSPENDS the license for a period of thirty (30) days of which fifteen (15) days will be served and fifteen (15) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission regulations are found by this Commission.**

The suspension shall commence on Monday, March 24, 2025, and terminate on Monday, April 7, 2025. The license will be delivered to the Local Licensing Board or its designee on Monday, March 24, 2025, at 9:00 A.M. It will be returned to the licensee on April 8, 2025.

You are advised that pursuant to the provisions of M.G.L. c. 138 § 23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

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
Chairman

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‘Đây là tài liệu quan trọng và cần được dịch ngay’
ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2020-024024-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Katherine McCormick, Esq., Associate General Counsel
Christopher Temple, Investigator
Nicholas Velez, Investigator
Elizabeth Blank, Esq. Corporate Counsel OSJL
Administration, File



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

DECISION

OSJL Spirits, LLC d/b/a Ocean State Job Lot
11 Berdon Way, Fairhaven, MA 02719
License No.: 89301-PK-0384

OSJL Spirits, LLC d/b/a Ocean State Job Lot
50 Teaticket Highway, Falmouth, MA 02536
License No.: 00213-PK-0390

OSJL Spirits, LLC d/b/a Ocean State Job Lot
18 Water Tower Place, Leominster, MA 01453
License No.: 00114-PK-0608

OSJL Spirits, LLC d/b/a Ocean State Job Lot
30 Commercial Street, Medford, MA 02155
License No.: 00077-PK-0680

OSJL Spirits, LLC d/b/a Ocean State Job Lot
100 Mazzeo Drive, Randolph, MA 02368
License No. 00069-PK-1008

OSJL Spirits, LLC d/b/a Ocean State Job Lot
178 Main Street, Sturbridge, MA 01566
License No.: 00083-PK-1248

OSJL Spirits, LLC d/b/a Ocean State Job Lot
180 Milk Street, Westborough, MA 01581
License No.: 00065-PK-1438

VIOLATION DATE: Various dates from June 9, 2019, through July 29, 2019.
HEARD May 10, 2022

OSJL Spirits, LLC d/b/a Ocean State Job Lot ("Ocean" or the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, May 10, 2022, regarding alleged violations of:

- 1) M.G.L. Ch. 138, § 23 Unlawful sale of alcoholic beverages – not purchased from a § 18 or § 19 licensee or from the holder of a special permit under §22A;
- 2) M.G.L. Ch. 138, § 2 No person shall sell, expose or keep for sale, store, transport, or import alcoholic beverages or alcohol, except as authorized by this chapter;
- 3) M.G.L. Ch. 138, § 2 To Wit; 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 sections 19 F and 19G, is hereby prohibited.

The following documents are in evidence:

1. Investigator Temple's Report;
2. OSJL Spirits, LLC's Secretary of the Commonwealth's Annual Report (Massachusetts), 7/21/2021;
3. OSJL Spirits, LLC's ABCC Accela Licensing Summary;
4. Ocean State Jobbers Inc.'s Secretary of the State's UCC Financing Statement (Rhode Island), 8/3/2001;
5. Ocean State Jobbers Inc. check to Specialty Marketing Group, 7/23/2019;
6. Hemispheres LLC's ABCC Accela Licensing Summary;
7. Drinks Licensing, LLC's 19F Application and License;
8. Specialty Marketing Group, Inc.'s ABCC Beneficial Interests Printout;
9. Bullpen Distribution Inc.'s Secretary of State's Articles of Incorporation (California), 4/12/2021;
10. Photographs (2) of Ocean State (Falmouth) of Alcoholic Beverages Exposed for Sale;
11. Photograph of Ocean State (Falmouth) of Alcoholic Beverages Kept for Sale;
12. Photograph of Ocean State (Falmouth) of Alcoholic Beverages Stored for Sale;
13. Photograph of Bill of Lading received from Ocean State (Falmouth);
14. Photograph of Purchase Order received from Ocean State (Falmouth);
15. Records provided by Specialty Marketing Group Inc.;
16. Records provided by OSJL Spirits LLC;
17. Form 43, (6) New License Approval for Sturbridge, Medford, Westborough, Leominster, Randolph, Falmouth and Accela Summary, New License Approval for Fairhaven.

- A. OSJL Spirits LLC d/b/a Ocean State Job Lot- Selected Emails Concerning Eora Transaction, June, 2019;
- B. Purchase Orders (7) for OSJL Spirits LLC locations: Falmouth, Westborough, Randolph, Medford, Leominster, Sturbridge, Fairhaven, Order Date 6/27/2019;
- C. Bill of Lading, 6/28/2019;
- D. Bill of Lading, 7/1/2019;
- E. (7) Invoices from Specialty Marketing Group to Ocean State Job Lot, dated 7/1/2019 - 7/3/2019;
- F. Checks and Payment Stubs from Ocean State Jobbers, Inc. & Affiliates to Specialty Marketing Group;
- G. Front and Back of Checks (3) from Ocean State Jobbers, Inc. & Affiliates to Specialty Marketing Group;
- H. Purchase Orders and Invoices, 2014-2019;
- I. Email with New Vender Form, 6/27/2019 forwarded to ABCC 8/22/2019.

There is one (1) audio recording of this hearing and two (2) witnesses testified.

FINDINGS OF FACT

1. OSJL Spirits, LLC d/b/a Ocean State Job Lot ("Ocean" or the "Licensee"), a limited liability company organized in Massachusetts, holds seven Ch. 138 §15 retail package store licenses within the Commonwealth in the following municipalities: Sturbridge, Medford, Westborough, Leominster, Randolph, Falmouth, and Fairhaven. (Testimony, Exhibits 2, 3, 17)
2. On or about 2019, Hemispheres LLC ("Hemispheres") held a Massachusetts Certificate of Compliance issued pursuant to Ch. 138, § 18B on November 7, 2018. (Testimony, Exhibit 6)
3. On or about 2019, Specialty Marketing Group, Inc. ("Specialty") held a Massachusetts Wholesaler's license issued pursuant to Ch. 138, § 18. Anthony Yebba is President, Nicholas Yebba is Vice President, and Colleen Sheahan is Manager. (Exhibit 8)
4. On or about 2019, Bullpen Distribution, Inc. ("Bullpen") was a California corporation registered in California on April 12, 2011, with Jon Brill ("Brill") as initial agent. Bullpen did not hold a Massachusetts license issued pursuant to Ch. 138, §18A and Jon Brill did not hold a Massachusetts license issued pursuant to Ch. 138, §18A and/or §19A. (Exhibits 1, 9)
5. On Thursday, July 25, 2019, ABCC Investigators Velez and Temple ("Investigators"), as part of an investigation into the business operations of Ocean and its several §15 retail package store locations, entered the Ocean premises located at 50 Teaticket Highway, East 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. (Testimony, Exhibits 1, 10, 11, 12)

6. Investigators interviewed the manager at the East Falmouth location regarding the delivery and sale of alcoholic beverages, specifically the EORA wine received within the previous month. Documentation of transactions was also requested. (Testimony, Exhibit 1)
7. The manager provided Investigators with a Bill of Lading for the EORA wine. The Bill of Lading showed that the wine was picked up by 3SIX5 Logistics LLC in Cobleskill, New York, delivered to Specialty in Wrentham, MA, and then delivered to three Ocean locations: Medford, Fairhaven and East Falmouth, on June 28, 2019¹. (Testimony, Exhibits 1, 13)
8. Ocean's purchase order for the EORA wine was attached to the Bill of Lading and identified Specialty as the Vendor and Jon Brill as the Sales Representative. Ocean State Jobbers, Inc. was listed as the "Bill To" entity. (Testimony, Exhibits 1, 14)
9. During subsequent investigation into the EORA transaction, Investigators interviewed Ocean's representative, Steve Aranow, ("Aranow") and were provided with requested documents including emails. (Testimony, Exhibits 1, 16)
10. Emails confirm that in early June 2019, Aranow, who handles alcohol purchases for Ocean, received an unsolicited offer from Brill regarding the purchase of EORA wine products. Aranow did not have an existing relationship with Brill and informed him he could only buy from a Massachusetts distributor. (Testimony, Exhibits 16, A)
11. Emails between Aranow and Brill confirm that Aranow informed Brill that the products must come from a Massachusetts distributor. Aranow understood the product must be shipped into Massachusetts using an appropriate distributor and recommended distributors to Brill. (Testimony, Exhibits 16, A, H)
12. Over the course of their communications, Brill assured Aranow he understood he needed a Massachusetts distributor and later confirmed a Massachusetts distributor was being used.²
³ (Testimony, Exhibits 16, A)
13. Aranow believed Ocean would be writing Purchase Orders to the Massachusetts distributor and referencing Jon Brill, as the sales representative. (Testimony, Exhibits 14, 16, A, I)

¹ Emails between Hemisphere and Specialty show deliveries of the EORA product scheduled for July 2, 2019, to four additional Ocean locations: Sturbridge, Leominster, Westborough, and Randolph. (Exhibit 15)

² In an email dated June 10, 2019, from Brill to Aranow, Brill states "...and based on our last conversation, I know that I will need to use a Distributor to get this to you". (Exhibits 16, A)

³ In an email dated June 24, 2019, from Brill to Aranow, Brill assures "...after a considerable amount of work to get this done, we are set on this end for delivery in MA. Your invoice will come from a MA wholesaler and I will help to coordinate deliveries from the warehouse to each of the 7 stores....Before you write the P.O.s I will have to give you the name of who you will be doing business with." (Id)

14. Purchase orders for the EORA wine products were sent from Ocean to Bullpen/Brill. The purchase orders specified the type and amount of wine to be delivered to each licensed premise. (Testimony, Exhibits 1, 14, 16, A, B, I)
15. Specialty, the Massachusetts distributor, sent invoices for the products on their letterhead to Ocean. Ocean paid Specialty's invoices directly to Specialty and those checks were endorsed by and deposited into Specialty's account. (Testimony, Exhibit E, F, G)

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. 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. M.G.L. c. 138 §§ 12, 15, 18, 18B, 19." Heublein, Inc. v. Capital Distributing Co., 434 Mass. 698, 699 (2002); see Miller Brewing Co., 56 Mass. App. Ct. at 808-809.

The Commission's findings 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. 77, 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 violation of:

- M.G.L. Ch. 138, §23 Unlawful sale of alcoholic beverages- not purchased from a §18 or §19 licensee or from the holder of a special permit under §22A;
- M.G.L. Ch. 138, §2 To Wit; 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 sections 19 F and 19G, is hereby prohibited;

- o M.G.L. Ch. 138, §2 No person shall sell, expose or keep for sale, store, transport, or import alcoholic beverages or alcohol, except as authorized by this chapter.

In this case, no evidence of a sale by OSJL was presented to the Commission. (Testimony, Exhibit 1) Evidence was presented illustrating Aranow at Ocean received an unsolicited call from Jon Brill of Bullpen Distribution regarding a closeout sale of EORA wine. (Testimony, Exhibits 16, 17) Aranow was interested in the transaction but informed Brill that a Massachusetts distributor must be utilized. (Id.) Aranow handles the purchase of alcohol for Ocean and historically Ocean has used different distributors. (Testimony, Exhibit H) At several points in their discussions, Aranow again indicated Ocean was interested in purchasing the EORA product but reiterated that a distributor must be used and Massachusetts regulations followed. (Testimony, Exhibits 16, A) Ocean was given the Massachusetts distributor information for purchase orders, received invoices from the distributor, and paid the Massachusetts distributor directly. (Testimony, Exhibits 16, A, E, F, G) No evidence was presented which indicated Ocean was aware of what took place between the Certificate of Compliance holder and Jon Brill. The Commission finds that Ocean did not violate M.G.L. Ch. 138, § 23.

The Commission finds the shipment of the EORA wine into the Commonwealth of Massachusetts was orchestrated by the § 18 Certificate of Compliance holder in concert with a Massachusetts distributor. Ocean specified which product and the amount to be shipped to each store. (Testimony, Exhibits 16, A) However, there is no evidence that Ocean was aware of the underlying details of the shipment other than what was represented by Brill. Ocean received an invoice from and made payment to a Massachusetts distributor for the product. (Testimony, Exhibits, 16, A, E, F, G) The Commission finds that Ocean did not violate M.G.L. Ch. 138, § 2 to wit: M.G.L. Ch. 138, § 18.

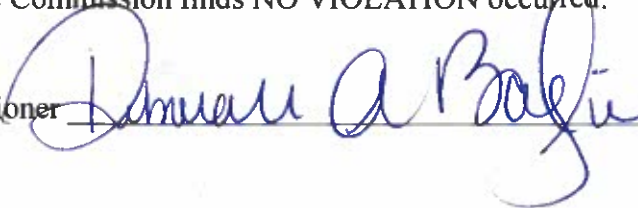
As to the charge of a violation of M.G. L. Ch. 138 § 2, the Licensee, a § 15 license holder, negotiated the purchase of the EORA wine with an unlicensed broker. Neither Bullpen Distribution nor Jon Brill, at any point, held a broker and/or salesperson license issued by the Commonwealth of Massachusetts. (Testimony, Exhibits 16, A) The Commission is persuaded by the evidence that Ocean violated M.G. L. Ch. 138 § 2.

CONCLUSION

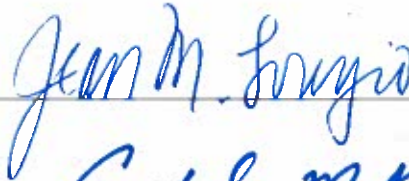
Based on the evidence, the Commission finds that OSJL Spirits, LLC violated M.G.L. Ch. 138, § 2 No person shall sell, expose or keep for sale, store, transport, or import alcoholic beverages or alcohol, except as authorized by this chapter. Therefore, the Commission **suspends the licenses for a period of thirty (30) days of which fifteen (15) days will be served and fifteen (15) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission regulations are found by this Commission.**

On the first charge, M.G.L. Ch. 138, § 23 Unlawful sale of alcoholic beverages, and the third charge, M.G.L. Ch. 138, § 2, To Wit: 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 sections 19 F and 19G, is hereby prohibited, the Commission finds NO VIOLATION occurred.

Deborah A. Baglio, Commissioner



Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: February 3, 2025

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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