



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

**AMENDED
DECISION**

SHAW'S SUPERMARKETS INC. D/B/A SHAW'S SUPERMARKET
255 EAST CENTRAL ST
FRANKLIN, MA 02038
LICENSE#: 043000033
VIOLATION DATE: 2/5/2016 TO 3/17/2016
HEARD: 10/11/2016

Shaw's Supermarkets Inc. d/b/a Shaw's Supermarket (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, October 11, 2016, regarding an alleged violation of 204 CMR 2.04 (1): "No holder of a license issued under M.G.L. c. 138, § 15 shall sell or offer to sell any alcoholic beverages at a price less than invoiced cost. Cost is defined as net cost appearing on the invoice for said alcoholic beverages." Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Bailey's report.

The following documents are in evidence:

1. Investigator Bailey's Investigative Report;
 2. Shaw's Circular for 3/11/2016 to 3/17/2016;
 3. Licensee's Invoices from Atlas Distributing Inc.;
 4. Licensee's Invoices from Quality Beverage L.P.;
 5. Spreadsheet of Licensee's Pricing;
 6. Email Correspondence from John R. Robinson to D. Wilcox;
 7. Licensee's Invoices from Quality Beverage L.P. covering 2/1/2016 to 3/10/2016;
 8. Licensee's Invoices from Atlas Distributing Inc. covering 2/1/2016 to 3/10/2016; and
 9. Licensee's Stipulation of Facts.
- A. Notice to Shaw's Customers re: error in price; and
B. Flyer with Prices of 30-packs of beer.

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

The Commission took Administrative Notice of the Licensee's record.

FINDINGS OF FACT

1. On Friday, March 18, 2016, Investigators Temple and Bailey (“Investigators”) investigated the business operation of Shaw’s Supermarkets Inc. d/b/a Shaw’s Supermarket to determine the manner in which their business was being conducted, and to respond to numerous complaints filed with this Commission.
2. Investigators met with Zulmira Comeau, the Licensee’s Store Director regarding the filed complaints.
3. Ms. Comeau provided Investigators with a copy of Shaw’s circular for the period March 11, 2016 thru March 17, 2016, which advertised 30-packs (of 12 ounce cans) for Budweiser, Bud Light, Miller Lite, and Coors Light beers for \$19.99. (Exhibit 2)
4. Ms. Comeau stated she thought the invoiced cost of the beers to be \$19.79, and that Dan Philcox, Sales Manager for Shaw’s, would have the invoices as well as more specific information. Ms. Comeau contacted Mr. Philcox about the complaints and the investigation.
5. Investigators asked Mr. Philcox to provide invoices from all wholesalers in which malt beverages had been purchased for a period covering January 2016 to the present. Investigators requested these invoices be submitted by March 29, 2016.
6. On April 1, 2016, Investigator Bailey contacted Ms. Comeau to say that no invoices had been received. Ms. Comeau said she would look into this matter immediately. Later that same day, Stephanie Zeller, the Ethics & Compliance Manager for Shaw’s, called Investigator Bailey to request additional time, until April 4th, to submit the requested documents. Investigator Bailey agreed to Ms. Zeller’s request.
7. Investigator Bailey reviewed the submitted documents: invoices (Exhibits 3, 4) as well as a breakdown of the Licensee’s retail pricing (Exhibit 5). Her review indicated that the Licensee did offer or sell the above referenced malt beverages below the invoiced cost during the period of February 5, 2016 to March 17, 2016.
8. The Licensee also provided email correspondence from John R. Robinson, Senior Key Account Manager / National Retail Sales for Anheuser-Busch InBev which stated, “the Bud Family 30pk pricing of \$19.79 for Massachusetts that I provided to you for the month of Jan., Feb. and March of 2016 were in error.” (Exhibit 6)
9. Investigator Bailey contacted both Quality Beverage L.P. and Atlas Distributing Inc. to request invoices for shipments made to the Licensee for the period February 1, 2016 through March 10, 2016 for the following malt beverages: Budweiser, Bud Light, Miller Lite, and Coors Light beers. (Exhibits 7, 8)
10. During the period of February 5th to March 17, 2016, the Licensee sold the following malt beverages (in 30 packs of 12 ounce cans) below the distributors invoiced cost which were:
 - Distributor’s invoiced cost for Bud Light was \$20.60 (Exhibit 4);
 - Distributor’s invoiced cost for Budweiser was \$20.60 (Exhibit 4);
 - Distributor’s invoiced cost for Coors Light beer was \$20.60 (Exhibit 8); and
 - Distributor’s invoiced cost for Miller Lite beer was \$20.60 (Exhibit 8).

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.04 (1): "No holder of a license issued under M.G.L. c. 138, § 15 shall sell or offer to sell any alcoholic beverages at a price less than invoiced cost. Cost is defined as net cost appearing on the invoice for said alcoholic beverages." As the Licensee has been in business since 2003 and has had no previous violations, the Commission issues a **WARNING**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: October 19, 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
Rose Bailey, Investigator
Christopher Temple, Investigator
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Administration, File