



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

DECISION

PARK STREET IMPORTS, LLC
1000 BRICKELL AVENUE, SUITE 1000
MIAMI, FLORIDA 33131
CERIFICATE HOLDER: #C24436
VIOLATION DATE: 02/12/2016
HEARD: 06/21/2016

Park Street Imports, LLC (the "Licensee" or "Park Street") holds a certificate of compliance issued pursuant to M.G.L. c. 138, §18B. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, June 21, 2016, regarding an alleged violation of M.G.L. c. 138, § 25B (d) No brand of alcoholic beverages shall be sold to any wholesaler except at the price then in effect unless written permission of the commission is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. The above captioned occurred on February 12, 2016 according to Investigator Velez's report.

The following documents are in evidence as exhibits:

1. Investigator Velez's Investigative Report dated 2/12/2016 (2 pages);
2. Park Street Imports LLC Schedule of Prices to Wholesalers (34 pages);
3. Abacus Distributing, LLC Purchase Order, dated 4/2/2015 to Cuca Fresca Exports LLC(1 page);
4. Park Street Imports, LLC Invoice, dated 5/12/2015 (1 page);
5. Email Correspondence between Investigator Velez, Park Street Imports, LLC, and Abacus Distributing, LLC, (11 pages);
6. Abacus Check no. 7918, dated 7/14/2015 (1 page); and
7. Abacus Check no. 7945, dated 8/04/2015 (1 page).

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

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

FINDINGS OF FACT

1. Park Street Imports, LLC ("Park Street") located at 1000 Brickell Avenue, Suite 1000, Miami, Florida is a certificate of compliance holder under M.G.L. c. 138, § 18B. (Commission File, Exhibit 1)
2. Park Street has been a certificate of compliance holder since 2010. (Commission File)
3. Chris Mehringer is the president of Park Street. (Commission File, Testimony)
4. Park Street is the distributor in Massachusetts of Cuca Fresca spirits, a company owned by Mr. Thomas Slasinski.¹ (Exhibit 1, Testimony)
5. Unbeknownst to Park Street, Mr. Slasinski, whose business is not licensed in Massachusetts, came into Massachusetts to drum up sales for Cuca Fresca in 2015, including a visit to the premises of Abacus Distributing, a Massachusetts wholesaler. (Exhibit 1, Testimony)
6. At Abacus, Mr. Slasinski offered Abacus a price of \$60.00 (sixty dollars) per case of Cuca Fresca Caipirinha, along with a sales incentive. (Exhibit 1, Testimony)
7. Park Street was unaware of Mr. Slasinski's offer to Abacus, and never approved it. (Testimony)
8. Park Street had posted the price for Cuca Fresca Caipirinha with the Commission for \$80.00 (eighty dollars) per case. (Testimony; Exhibit 2)
9. On April 2, 2015, Abacus submitted a purchase order to Park Street for sixty cases of Cuca Fresca Caipirinha, and included in the purchase order the price of \$60.00 (sixty dollars) per case with a \$10.00 (ten dollars) per case incentive also included. (Testimony; Exhibits 1, 3)
10. Park Street sent Abacus an invoice for the total amount of the posted price, for \$80.00 (eighty dollars) per case. Abacus did not pay the full balance, but instead paid the balance minus \$1800.00 (one thousand eight hundred dollars) the difference between the \$60.00 (sixty dollars) and \$80.00 (eighty dollars) per case, and the sales incentive. (Exhibits 1, 4, 6, 7; Testimony)
11. When Abacus did not pay the full balance, Park Street sent five (5) follow up emails in an attempt to collect the remainder of the balance. (Testimony; Exhibit 5)
12. Park Street finally stopped attempting to collect from Abacus because of the relatively small difference in the balance, and because of the "level of aggression" on Abacus's part. (Testimony; Exhibit 5)

¹ While the Investigator's Report (Exhibit 1) and the testimony all referred to Thomas's last name as "Salinski," the email correspondence indicate his last name is actually Slasinski. Accordingly, he will be referred to as Mr. Slasinski. (Exhibit 5)

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 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) (emphasis supplied). The Commission is given "comprehensive powers of supervision over licensees." Connolly, 334 Mass. at 617.

Every violation the Commission finds 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).

Park Street is charged with a single violation of M.G.L. c. 138, § 25B(d): "No brand of alcoholic beverages shall be sold to any wholesaler except at the price then in effect unless written permission of the commission is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter." The Commission has previously held that for a certificate of compliance holder to violate § 25B(d), the certificate of compliance holder must offer to a wholesaler a price on an alcoholic beverage other than the posted price. Branded New England Co. v. Joseph Phelps Vineyards (ABCC Decision February 2, 1995); Whitehall Company Ltd. v. Paterno Imports, Inc. (ABCC Decision July 20, 1994).

In this matter, it was not the certificate of compliance holder – Park Street Imports, LLC – that offered the price other than that which it had posted, but an unlicensed agent of the manufacturer, Cuca Fresca. This offer was made without the knowledge or consent of Park Street. Indeed, Park Street had no knowledge that Mr. Slasinski of Cuca Fresca made such an offer to Abacus until it received the purchase order from Abacus that indicated it was ordering based on Mr. Slasinski's offer. Park Street then still billed Abacus the full posted price for the alcoholic beverages Abacus purchased, and when Abacus only paid the offer price -- \$1800.00 (one thousand eight hundred dollars) less than the posted price – Park Street made several attempts to collect on the \$1800.00 (one thousand eight hundred dollars) difference. It was not until several attempts to collect failed, and faced with Abacus's "aggression" regarding the \$1800.00 (one thousand eight hundred dollars) that Park Street decided to chalk up the loss of \$1800.00 (one thousand eight hundred dollars) as a cost of doing business rather than suing Abacus to collect the difference. The Commission does not consider this decision by Park Street to not engage in litigation or otherwise further compel Abacus to pay the \$1800.00 (one thousand eight hundred dollars) difference to be in any way equivalent to offering or consenting to Abacus paying less than posted price. Since

Park Street did not offer or in any way consent to Abacus paying below posted price for Cuca Fresca Caipirinha, based on the specific facts of this case, the Commission finds that Park Street did not violate M.G.L. c. 138, § 25B(d).

CONCLUSION

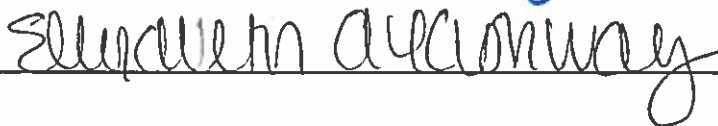
Based on the evidence, the Commission finds no violation of M.G.L. c. 138, §25B (d) No brand of alcoholic beverages shall be sold to any wholesaler except at the price then in effect unless written permission of the commission is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth Lashway, Commissioner



Dated: August 26, 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: Frederick G. Mahony, Chief Investigator
Nick Velez, Investigator
Louis Cassis, Esq. via facsimile 617-472-9028
Administration, File