



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

Kim S. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

August 30, 2016

ABACUS DISTRIBUTING LLC
60 MILL STREET
SOUTHBRIDGE, MA 01550
LICENSE#: WL-352
VIOLATION DATE: 02/12/2016
HEARD: 05/10/2016

After a hearing on May 10, 2016, the Commission finds Abacus Distributing LLC violated 204 CMR 2.05 (2) – Permitting an illegality on the licensed premise, to wit: solicitation for the sale of alcoholic beverages by a person or persons not licensed pursuant to M.G.L. C. 138 §18A or § 18B.

The Commission suspends the license for a period of six (6) days of which one (1) day will be served, and five (5) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.

The suspension shall commence on Wednesday, October 26, 2016 and terminate on Thursday, October 27, 2016. The license will be delivered to the Alcoholic Beverages Control Commission or its designee on Wednesday, October 26, 2016 at 9:00 A.M. It will be returned to the licensee Saturday, October 28, 2016.

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

Kim S. Gainsboro
Chairman

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这份文件是重要的，应立即进行翻译.

cc: Frederick G. Mahony, Chief Investigator
Nick Velez, Investigator
Neil Mooney, Esq. via facsimile 617-720-7877
Administration, File



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Abacus Distributing LLC (the "Licensee" or "Abacus") holds a wholesalers alcohol license issued pursuant to M.G.L. c. 138, §18. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, May 10, 2016, regarding an alleged violation of 204 CMR 2.05 (2) – Permitting an illegality on the licensed premise, to wit: solicitation for the sale of alcoholic beverages by a person or persons not licensed pursuant to M.G.L. C. 138 §18A or § 18B. 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. Park Street Imports LLC Schedule of Prices to Wholesalers;
3. Licensee's Purchase Order 2/2/2015 to Cuca Fresca Exports LLC;
4. Park Street Imports Invoice 5/12/2015;
5. Licensee's Email Correspondence with Investigator Velez;
6. Abacus Check no. 7918, 7/14/2015; and
7. Abacus Check no. 7945, 8/04/2015.

A. Licensee's Poster advertising Cuca Fresca.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

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

FINDINGS OF FACT

1. Abacus Distributing LLC (“Abacus” or “Licensee”) is a Massachusetts wholesaler of alcoholic beverages under M.G.L. c. 138, § 18, located at 60 Mill Street, Southbridge, Massachusetts. (Commission File, Exhibit 1)
2. Pasquale Morabito is the license manager of record. (Commission File, Testimony)
3. Thomas Slasinski¹ is the managing director of Cuca Fresca Exports LLC. He is not licensed as a broker under § 18A, nor is Cuca Fresca a certificate of compliance holder under § 18B. (Commission File)
4. Cuca Fresca Exports LLC’s products are sold in Massachusetts through Park Street Imports, LLC (“Park Street”), a certificate of compliance holder under § 18B. (Exhibit 1, Testimony)
5. During the week of February 10, 2015, Mr. Slasinski went to Abacus’s premises and met with Mr. Morabito. (Exhibit 1, Testimony)
6. During this visit, Mr. Slasinski offered Mr. Morabito a prior price offering of \$60 a case if Abacus would purchase a pallet (60 cases) of Cuca Fresca Caipirinha. (Exhibit 1, Testimony)
7. A sales staff incentive was also offered of \$10 per case sold of the product. (Exhibit 1, Testimony)
8. Mr. Slasinski also provided Mr. Morabito with posters for advertising Cuca Fresca spirits. (Exhibit A, Testimony)
9. Mr. Morabito explained to Mr. Slasinski that he could not place any orders because all offers had to be reviewed by Abacus’s partnership. (Testimony)
10. Mr. Morabito did not place any orders for any Cuca Fresca products with Mr. Slasinski at the time of his visit. (Exhibit 1, Testimony)
11. Mr. Morabito took no steps to verify whether or not Mr. Slasinski was legally licensed to solicit orders in Massachusetts. (Testimony)
12. Mr. Slasinski had been to Abacus approximately three times, once in 2011, once in 2014, and then again in February 2015. (Testimony)
13. On April 2, 2015, Abacus completed a purchase order for 60 cases of Cuca Fresca Caipirinha based on the offer made by Mr. Slasinski and faxed it to Park Street Imports. Park Street Imports did not accept the discounted pricing offered by Mr. Slasinski,

¹ While the Investigator’s Report (Exhibit 1) and the testimony all referred to Thomas’s last name as “Salinski,” the Commission file indicates his last name is actually Slasinski. Accordingly, he will be referred to as Mr. Slasinski.

prompting Abacus to file a complaint with the Enforcement Division of the Commission. (Exhibits 1, 3-7, Testimony)

14. It is standard practice in the industry, and the responsibility of the wholesalers to go through a vetting process to find legally licensed distributors. (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 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).

The Licensee is charged with a violation of 204 CMR 2.05(2), permitting an illegality on the licensed premises, to wit: solicitation of the sale of alcoholic beverages by a person/persons not licensed pursuant to M.G.L. c. 138, § 18A or § 18B.

The violation alleged is of 204 C.M.R. 2.05(2): “No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not.” Specifically, the Investigators contend that the Licensee permitted an illegality -- a violation of M.G.L. c. 138, § 18A -- on its premises. Section 18A makes it unlawful for an individual to solicit orders as an agent, broker, or solicitor without being licensed to do so.

The Licensee’s obligation under 204 C.M.R. 2.05(2) to maintain control over the premises and to comply with Chapter 138 and local regulations is well-settled. The responsibility of the Licensee is to “exercise sufficiently close supervision so that there is compliance with the law on the premises.” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985) (table). A Licensee who sells alcohol is “bound at his own peril to keep within the condition of his license.” Burlington Package Store, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (179); accord Commonwealth v. Gould, 158 Mass.

499, 507 (1893). “It is, thus, quite possible for a Licensee to offend the regulatory scheme without scienter.” Rico’s of the Berkshires, 19 Mass. App. Ct. at 1027.

It is undisputed that Mr. Slasinski is not a broker licensed under M.G.L. c. 138, § 18A, or certificate of compliance holder under § 18B, and therefore cannot solicit orders from Massachusetts wholesalers. The first issue before the Commission then is whether Mr. Slasinski’s conduct constituted solicitation. Chapter 138 does not define the conduct of solicitation, but it is well understood that soliciting is, by its plain meaning, “mak[ing] a petition to . . . [, or] approach[ing] with a request or plea.” Merriam-Webster Dictionary. See also, e.g., Alcoa Bldg. Products, Inc. v. Comm’r of Revenue, 440 Mass. 224, 227 (2003), quoting Wisconsin Dep’t of Revenue v. Wrigley, 505 U.S. 214, 228 (1992) (“ ‘solicitation of orders’” is ‘more than what is strictly *essential* to making requests for purchases’” (emphasis in original)). Thus, some activities conducted by salespeople might go beyond verbally or impliedly requesting a customer to make purchases”). Therefore, an individual solicits an order under Chapter 138 when he or she approaches a licensee with an offer or request of the licensee to purchase alcoholic beverages. An offer or request is not required to be accepted for it to be considered solicitation. Here, Mr. Slasinski made an offer to Mr. Morabito of \$60 a case for Cuca Fresca Caipirinha if the Licensee ordered a pallet of 60 cases. That is enough to find that Mr. Slasinski engaged in solicitation. Because Mr. Slasinski solicited an order without being licensed, he violated M.G.L. c. 138, § 18A.²

But that is not the end of the inquiry. The Licensee is charged with *permitting* Mr. Slasinski to make an unlawful solicitation. This raises the question of what efforts a licensee must undergo to ensure it is ordering products from an individual or entity lawfully permitted to take orders for alcoholic beverages. The Licensee contends that Chapter 138 is ambiguous as to what a wholesaler’s responsibility is for vetting or checking whether an individual has a broker’s license to solicit order. The Licensee in this matter admits that it did not take any steps to verify whether Mr. Slasinski was licensed as a broker. A licensee cannot do nothing and then plead ignorance when the law is violated. The Commission does not need to create a bright-line rule what exact steps a wholesaler must take to ensure it is working with a licensed broker, especially where, as here, the Licensee admits to taking no steps whatsoever. The Licensee could have, for example, simply asked Mr. Slasinski if he was licensed in Massachusetts to solicit orders. The Licensee also could have checked with the Commission to see if Mr. Slasinski was licensed. It is standard in the industry for wholesalers to go through a vetting process in finding distributors, and as part of that process, they can conduct their own due diligence as to whether they would be working with individuals who are lawfully permitted to engage in alcohol sales in the Commonwealth. Ultimately, it is the responsibility of each wholesaler to conduct their own due diligence when working with new distributors to ensure they are working with licensed distributors and licensed brokers. Failure of a licensee to do so is “at his own peril.” Burlington Package Store, 7 Mass. App. Ct. at 190.

² Because solicitation does not require the acceptance of an offer by a wholesaler or the placing of an order by a wholesaler, the solicitation occurred on the premises of the licensed establishment, regardless of when and where the offer was accepted by the Licensee or an order was placed by the wholesaler.

CONCLUSION

Based on the evidence, the Commission finds that the Licensee violated 204 CMR 2.05 (2) – Permitting an illegality on the licensed premise, to wit: solicitation for the sale of alcoholic beverages by a person or persons not licensed pursuant to M.G.L. C. 138 § 18A or § 18B. Therefore the Commission **suspends the license for a period of six (6) days of which one (1) day will be served, and five (5) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



DATE: August 30, 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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