



*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

DECISION

**STOCKBRIDGE WINE CELLAR INC. D/B/A NEJAIME'S WINE CELLAR
3 ELM STREET
STOCKBRIDGE, MA 01262
LICENSE#: 1240-00014
VIOLATION DATE: 4/20/2018
HEARD: 6/26/2018**

Stockbridge Wine Cellar Inc. d/b/a Nejaime's Wine Cellar ("Licensee" or "Nejaime's Wine Cellar") 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, June 26, 2018, regarding alleged violations of:

- 1) M.G.L. c. 138, § 2 Sale or delivery of an alcoholic beverage not authorized pursuant to Ch. 138, to wit: c. 138, § 18 Unlawful Export;
- 2) M.G.L. c. 138, § 15: Unlawful Sale.

Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Velez's Report.

The following documents are in evidence:

1. Investigator Velez's Investigative Report;
2. Screen Print of Shipping Info from Licensee's website;
3. Screen Print of Shopping Cart with Contents from Licensee's website;
4. Screen Print of Sign-in page from Licensee's website;
5. Screen Print of New Account page from Licensee's website;
6. Screen Print of Account Registration page from Licensee's website;
7. Screen Print of Billing Information page from Licensee's website;
8. Screen Print of Shipping Options page from Licensee's website;
9. Screen Print of Payment Information page from Licensee's website;
10. Screen Print of Confirmation of Order page from Licensee's website;
11. Screen Print of Completed Order page from Licensee's website;
12. Screen Print of Email Confirmation of Order;
13. Screen Print of Tracking Information page from FedEx;
14. Pictures of Package (outside and inside) with Contents of Package (bottles of wine); and
15. Licensee's Stipulation of Facts.

A. Licensee's Statement.

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. On Friday, February 20, 2018, Investigator Velez ("Investigator") conducted an investigation of the business operation of Stockbridge Wine Cellar Inc. d/b/a Nejaime's Wine Cellar ("Licensee" or "Nejaime's Wine Cellar") to determine the manner in which its business was being conducted and to investigate a complaint filed with this Commission. (Testimony, Exhibit 1)
2. Nejaime's Wine Cellar holds a § 15 all alcoholic beverages retail package store license which was approved by the Commission in December of 1963. (Commission records)
3. By application approved by the Commission on May 31, 1991, Joseph N. Nejaime is President, Treasurer, Secretary, and Director, of the corporation and manager of record. (Commission records)
4. Investigator Velez reviewed the website of Nejaime's Wine Cellar (www.nejaimeswine.com) which states, "Many states restrict the shipment of alcoholic beverages. Please accept our apologies if we are unable to ship to your area. We cannot ship to the following states: Alaska, Hawaii." (Exhibit 2)
5. On Wednesday, April 4, 2018, Investigator Velez created an email account in his name in order to conduct this investigation. (Testimony, Exhibit 1)
6. On April 16, 2018, Velez went to the Nejaime's website where he selected and purchased bottles of alcoholic beverages: Clayhouse Cabernet Sauvignon, 750 milliliters; and Colombia Crest Grand Estates Cabernet Sauvignon, 750 milliliters. The subtotal of his purchase came to \$22.98. Velez then entered a zip code – 06611 which is Trumbull, Connecticut – for the website to calculate the shipping costs, which were \$13.93. The total amount of Investigator Velez's order was \$36.91. (Testimony, Exhibit 3)
7. When Investigator Velez hit the checkout button, the website prompted him to enter an email address. After he did so, the website identified him as a new customer with no account or password. The website then prompted Velez to register for an account with Nejaime's Wine Cellars in order to complete his purchase. (Testimony, Exhibits 4, 5)
8. Velez entered his name and email address, with his zip code as 06611. The website indicated his account was created and prompted him to enter his billing information with shipping address. He re-entered his name, a Trumbull, Connecticut address, his agency issued mobile phone number, and clicked continue. The website directed him to the payment information page, where Velez entered a credit card information and selected a shipping method (FedEx Ground Home Delivery) to the Trumbull, Connecticut address. (Testimony, Exhibits 6, 7, 8, 9)

9. On the confirmation page, Velez clicked "Place Order" where the website then directed him to an order completed page with an order confirmation number. (Testimony, Exhibits 10, 11)
10. Investigator Velez received a separate email confirmation of his order and the debit card used for this purchase was charged on April 19, 2018. The debit card account statement identified the seller as "POS Purchase MA STOCKBRIDGE NEJAIME'S WINE." (Testimony, Exhibit 12)
11. On Friday, April 20, 2018, Investigator Velez traveled to the address in Trumbull, Connecticut which he had used for his shipping address for this purchase. At approximately 9:30 a.m., Velez observed a FEDEX vehicle arrive at the address, where he accepted delivery and signed for the package. (Testimony, Exhibit 13)
12. Investigator Velez opened the package and observed one bottle of Clayhouse Cabernet Sauvignon, 750 milliliters; and one bottle of Colombia Crest Grand Estates Cabernet Sauvignon, 750 milliliters. (Testimony, Exhibit 14)
13. On Friday, April 27, 2018, Investigators Kujawski and Velez ("Investigators") entered the licensed premises of Nejaime's Wine Cellar in Stockbridge to see the way its business was being conducted. (Testimony, Exhibit 1)
14. Investigators spoke to the owner, Joseph Nejaime. Nejaime stated to Investigators that his business has been shipping alcohol out for state for over 10 years. He stated that merchandise is shipped from both his Lenox and Stockbridge locations. (Testimony, Exhibit 1)
15. Nejaime stated that he ships alcohol to Florida, Connecticut, and Illinois approximately one to three times per month. Most out of state orders are placed through the store's website or by telephone. Nejaime stated the monthly out of state sales amount to approximately \$400 to \$500 dollars. (Testimony, Exhibit 1)
16. Mr. Nejaime informed Investigators that he has a FEDEX account and when an order needs to be delivered he will contact Vinny, the FEDEX driver, to come to the store and pick up the package. (Testimony, Exhibit 1)
17. Investigators informed Mr. Nejaime of the violation and that a report would be filed with the Chief Investigator for further review. (Testimony, Exhibit 1)

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. 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). 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).

I. Violation of M.G.L. c. 138, § 2 Sale or delivery of an alcoholic beverage not authorized pursuant to Ch. 138, to wit: c. 138, § 18 Unlawful Export

The Licensee is charged with a violation of M.G.L. c. 138, § 2 Sale or delivery of an alcoholic beverage not authorized pursuant to Ch. 138, to wit: c. 138, § 18 Unlawful Export. Section 2 provides that, “[n]o person shall . . . sell, . . . store, transport, . . . alcoholic beverages or alcohol, except as authorized by this chapter. . .” M.G.L. c. 138, § 2. Section 18 provides that,

[t]he commission may issue . . . to corporations organized under the laws of the commonwealth . . . to hold a license pursuant to this section and sections 15, 18A, 19, 19B and 19C, licenses as *wholesalers* and importers (1) *to sell for resale to other licensees under this chapter alcoholic beverages* manufactured by any manufacturer licensed under the provisions of section nineteen and to import alcoholic beverages into the commonwealth from holders of certificates issued under section eighteen B whose licensed premises are located in other states and foreign countries for sale to such licensees, or (2) *to sell for resale wines and malt beverages so manufactured to such licensees and to import as aforesaid wines and malt beverages for sale to such licensees.*

M.G.L. c. 138, § 18 (emphasis added). The Commission is persuaded by the evidence that a violation of M.G.L. c. 138, § 2 Sale or delivery of an alcoholic beverage not authorized pursuant to Ch. 138, to wit: c. 138, § 18 Unlawful Export did not occur. M.G.L. c. 138, § 18 authorizes the sale of alcoholic beverages by a licensee wholesaler/distributor to other *licensees*. In this matter, the Commission finds that the evidence demonstrates that this licensee, Nejaime’s Wine Cellar, was not acting as a wholesaler, and did not sell alcoholic beverages to another licensee, but rather sold alcoholic beverages to an individual (non-licensee). Therefore, based on the evidence, the Commission finds that Nejaime’s Wine Cellar did not commit this violation.

II. Violation of M.G.L. c. 138, § 15: Unlawful Sale

The Licensee is also charged with a violation of M.G.L. c. 138, § 15: Unlawful Sale. The Licensee is licensed under § 15 to sell alcoholic beverages “not to be drunk on the premises.” A holder of a § 15 retail package store license is authorized to sell alcoholic beverages at retail to members of the public. M.G.L. c. 138, § 15.

MGL ch. 138 § 2 states that “No person shall manufacture, with intent to sell, sell or expose or keep for sale, store, transport, import or *export* alcoholic beverages or alcohol, *except as authorized by this chapter.*” M.G.L. c 138, § 2 (emphasis added).

The Massachusetts Supreme Judicial Court strictly upheld this statute in the case of CellarMaster Wines of Massachusetts, Inc. v. Alcoholic Beverages Control Comm’n, which holds that, “Regulation of the liquor industry in Massachusetts is comprehensive and pervasive. See G.L. c.138. “The powers of the Sates in dealing with the regulation of the sale of intoxicating liquors are very broad. What they may wholly prohibit, they may permit only on terms and conditions prescribed by the Legislature.” Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass 613, 619 (1956).” CellarMaster Wines of Massachusetts, Inc. v. Alcoholic Beverages Control Commission, 27 Mass. App. Ct. 25, 27 (1989).

The Court in CellarMaster further held that a holder of a §15 package store retail license could lawfully conduct business only in the manner authorized by G.L. c. 138, §15. CellarMaster at 27 – 28. The Court also found that there is a “sweep to GL c 138, § 2 which prohibits a variety of activities involving alcoholic beverages, ... “except as authorized by this chapter.”” CellarMaster at 28.

There is no language in GL c. 138, § 15 which expressly authorizes or allows the holder of a G.L. c. 138, § 15 retail package store license to sell or to export alcoholic beverages outside of the Commonwealth of Massachusetts. The Commission finds that as Section 15 does not expressly allow the holder of this type of license to export alcoholic beverages outside Massachusetts the Licensee, Nejaime’s Wine Cellar, has committed an unlawful sale in violation of MGL c 138, §15.

CONCLUSION

Based on the evidence, the Commission finds **NO VIOLATION** of M.G.L. c. 138, § 2 Sale or delivery of an alcoholic beverage not authorized pursuant to Ch. 138, to wit: c. 138, § 18 Unlawful Export occurred.

Based on the evidence, the Commission finds the Licensee violated M.G.L. c. 138, § 15 – Unlawful Sale by exporting alcoholic beverages outside of the Commonwealth of Massachusetts. As the Licensee has been in business for over 35 years with no prior violations, the Commission issues a **WARNING**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

Jean M. Lorizio

Elizabeth A. Lashway, Commissioner

Elizabeth A. Lashway

Kathleen McNally, Commissioner

Kathleen McNally

Dated: August 20, 2018

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
Nicholas Velez, Investigator
Jamie Binienda, Investigator

Administration, File