



***Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358
Tel. (617) 727-3040
Fax: (617) 727-1510***

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

July 9, 2019

**ENO MASSACHUSETTS, INC.
200 TOSCA DRIVE
STOUGHTON, MA 02072
LICENSE#: WA-LIC-000210
VIOLATION DATE: 12/2017-6/2018
HEARD: 3/26/2019**

After a hearing on March 26, 2019, the Commission finds **Eno Massachusetts Inc.** violated:

- 1) M.G.L. c. 2 Unlawful importation of alcoholic beverages, to wit: c. 138, § 18 Importation of alcoholic beverages into the commonwealth other than from holders of certificates issued under section 18B;
- 2) 204 CMR 2.02 (2) nor shall there be inserted in any invoice given or accepted by any licensee any statement which makes the invoice a false record, wholly or in part, of the transaction represented therein; nor shall there be withheld from any invoice given or accepted by any licensee any statements which properly should be included therein, so that in the absence of such statements the invoice does not truly reflect the transaction involved.; and
- 3) M.G.L. c. 138, § 18 Failure to comply with the requirement that corporations be organized under the laws of the commonwealth whereof all the directors are citizens of the United States and a majority thereof residents of the commonwealth.

The Commission suspends the license for a total period of twelve (12) days to be served.

The suspension shall commence on Monday, August 26, 2019 and terminate on Friday, September 6, 2019. The license will be delivered to the Alcoholic Beverages Control Commission or its designee on August 26, 2019 at 9:00 A.M. It will be returned to the Licensee on Saturday, September 7, 2019.

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Jack Carey, Investigator
William A. Kelley, Esq.
Administration, File



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Chairman

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DECISION

ENO MASSACHUSETTS, INC.
200 TOSCA DRIVE
STOUGHTON, MA 02072
LICENSE#: WA-LIC-000210
VIOLATION DATES: 12/2017-6/2018
HEARD: 3/26/2019

Eno Massachusetts, Inc. (the "Licensee" or "Eno") holds a wholesaler alcohol license issued pursuant to M.G.L. c. 138, § 18. The Alcoholic Beverages Control Commission ("Commission" or "ABCC") held a hearing on Tuesday, March 26, 2019 regarding alleged violations of:

- 1) M.G.L. c. 2 Unlawful importation of alcoholic beverages, to wit: c. 138, § 18 Importation of alcoholic beverages into the commonwealth other than from holders of certificates issued under section 18B;
- 2) 204 CMR 2.02 (2) nor shall there be inserted in any invoice given or accepted by any licensee any statement which makes the invoice a false record, wholly or in part, of the transaction represented therein; nor shall there be withheld from any invoice given or accepted by any licensee any statements which properly should be included therein, so that in the absence of such statements the invoice does not truly reflect the transaction involved.; and
- 3) M.G.L. c. 138, § 18 Failure to comply with the requirement that corporations be organized under the laws of the commonwealth whereof all the directors are citizens of the United States and a majority thereof residents of the commonwealth.¹

Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Carey's Report relative to the three charges listed above.

¹ The Investigative Unit initially brought three additional charges against the Licensee but decided not to pursue them at the outset of the March 26, 2019 hearing. The Investigative Report asserts that the combined violations occurred from July 2017 through June 2018.

The following documents are in evidence:

1. Investigator Carey's Investigative Report;
2. Licensee's 2018 Wholesale License;
3. Licensee's 2017 Wholesale License;
4. Licensee's 2017 Annual Report to the Secretary of the Commonwealth, Corporations Division;
5. State of New York, Division of Corporations Statement of Vinifera Imports, Ltd.;
6. MHW Ltd.'s Certificates of Compliance valid through 12/31/2018;
7. State of New York, Division of Corporations Statement of MHW Ltd.;
8. 2001 Affidavit of Dominic Nocerino;
9. Eno's 2016 License Renewal;
10. Eno's 2017 License Renewal;
11. Eno's 2018 License Renewal;
12. Eno's 2018 Transportation & Delivery Permits;
13. Vinifera Imports Ltd. Invoices and Bills of Lading;
14. Vinifera Imports Ltd. Invoice, 12/5/2017;
15. Eno's Checks from 1/1/2018 to 6/30/2018;
16. Email Correspondence from MHW Ltd. to Investigator Carey, September 2018;
17. Email from Attorney Koslowe to Investigator Carey, 9/17/2018; and
18. Licensee's Stipulation of Facts.

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

FINDINGS OF FACT

1. Eno Massachusetts, Inc. (the "Licensee" or "Eno") is a Massachusetts corporation located at 200 Tosco Drive in Stoughton, Massachusetts. Eno holds a M.G.L. c. 138, § 18 wholesale alcohol license. (Testimony; Exhibit 1)
2. Commission records indicate the most recently approved officers and directors are: Dominic Nocerino – President, Treasurer, Clerk and Director with zero percent ownership interest; Marc Bergeron, manager with zero percent ownership interest; and Vinifera Imports, Ltd. ("Vinifera") with 100% ownership interest. See id.
3. Massachusetts Secretary of the Commonwealth, Corporations Division lists Dominic Nocerino of Setauket and Bayshore, New York as the president, treasurer, secretary, and director of Eno. See id. (Exhibit 4)
4. Vinifera is an importer of Italian wines located in Ronkonkoma, New York. Its website states Vinifera has offices in sixteen states. Dominic Nocerino is the founder, owner, and chief executive officer of Vinifera. Vinifera is not licensed by the ABCC to do business in Massachusetts. (Testimony; Exhibits 1, 5)
5. MHW Ltd. ("MHW") holds a M.G.L. c. 138, § 18B Certificate of Compliance ("COC"). MHW is located in Manhasset, New York. Its website states that MHW is an importer of alcoholic beverages with a world-wide business. (Testimony; Exhibits 1, 6)

6. In 2001, as part of Eno's renewal application, Dominic Nocerino submitted an affidavit which stated that Eno received products from MHW. In Eno's 2016, 2017, and 2018 renewals, Eno identified MHW as its only supplier of alcoholic beverages. (Testimony; Exhibits 1, 8)
7. Eno's § 18 2018 license states, "[t]his license authorizes the holder to sell alcoholic beverages imported into this Commonwealth from holders of Certificates [of Compliance] issued under Section 18B of Chapter 138 of the General Laws, as amended. Sales of such beverages otherwise imported into the Commonwealth are prohibited. . . . This license is subject to suspension, cancellation or revocation for breach of any of its conditions or for violations of any law of the Commonwealth." (Testimony; Exhibits 1, 2)
8. Bills of lading from January 2018 through May 2018 indicate that Vinifera shipped alcoholic beverages from its Ronkonkoma, New York address to Eno in Stoughton, Massachusetts. (Testimony; Exhibits 1, 13)
9. Certain bills of lading from Vinifera indicate Vinifera delivered alcoholic beverages to MHW in Manhasset, New York. However, the bills were annotated "Ship to: Eno Massachusetts Inc. 200 Tosca Dr., Stoughton, MA 02072." This notation was circled with hand-drawn arrows pointing to it. See id.
10. Invoices from December 2017 through June 2018 represent that Vinifera sold alcoholic beverages to MHW but shipped the alcoholic beverages directly to Eno. See id.
11. On June 19, 2018, Investigator Carey requested from Eno "any and all cancelled checks or electronic records of payment between Eno Massachusetts, Inc. and MHW Ltd., and/or Vinifera Imports, Ltd. for the period beginning January 1, 2018 through June 14, 2018." (Testimony; Exhibit 1)
12. Through its attorney, Eno responded on September 17, 2018, "See attached checks – highlighted those checks issued by Licensee to Vinifera Imports, Ltd. There are no checks related to MHW, Ltd." (Exhibit 17)
13. Investigator Carey also requested, "any and all invoices, statements, credit memorandums, bills of lading, price lists, purchase orders and/or any and all other documentation between Eno Massachusetts, Inc. and MHW, Ltd. and/or Vinifera Imports, Ltd. for the period beginning January 1, 2018 through June 14, 2018." (Exhibits 1, 17)
14. In its September 17, 2018 email, Eno's attorney responded, "See attached documents reflecting invoices from Vinifera Imports, Ltd. to MHW, Ltd. during the period of January 1, 2018 and June 14, 2018. There are no corresponding documents from or to MHW Ltd. during the same period of time. In addition, there are also attached Bills of Lading involving Eno Massachusetts, Vinifera Imports, Ltd. and MWH Ltd., there are no confirmatory documents from MHW, Ltd. to this activity." See id.
15. Carey also requested any and all cancelled checks or electronic records of payment between Eno and any company with a Certificate of Compliance license during this same period as indicated above. Eno responded that there were no documents to supply with respect to

this request, between the Licensee and any Certificate of Compliance holder during this period. See id.

16. Carey also requested, “any and all invoices, statements, credit memorandums, bills of lading, price lists, purchase orders and/or any and all other documentation between Eno and any Certificate of Compliance holder for this same period.” Eno’s attorney responded there were no documents to supply. See id.
17. In a phone interview on July 30, 2018, with Matthew Sukman, accountant for Vinifera Imports, Investigator Carey asked Sukman how payments were made for product that is delivered to Eno Massachusetts. Sukman stated that he was sure that Eno paid Vinifera directly. Carey asked Sukman how could Vinifera deal directly with Eno when Vinifera had no Certificate of Compliance from the Massachusetts ABCC. Sukman stated they would have some way of getting around that. (Exhibit 1)
18. On August 2, 2018, Investigator Carey interviewed Seth Thomases, a sales manager for Eno. Thomases informed Carey that Eno was owned by Vinifera, and both companies were owned and operated by Dominic Nocerino. When Thomases ordered product, he does so by calling Vinifera in New York, and the product is shipped to Eno from there. Thomases stated that he was unaware of MHW. Thomases further stated that Vinifera handled the payment of invoices and the payroll for Eno. See id.
19. In an email on September 4, 2018, Scott Saul, MHW’s executive vice president, stated, “I wanted to follow-up with you in regards to your recent inquiry surrounding Eno of Massachusetts as it relates to Vinifera Imports in Ronkonkoma, NY. Our records indicate that MHW has not invoiced any Vinifera products to Eno in over a year.” (Exhibit 16)
20. Investigator Carey contacted Mr. Saul to determine the validity of the invoices provided by Eno. Mr. Saul responded on September 24, 2018, “We have reviewed the invoices you provided and I can confirm that we had not seen these invoices previously nor did we produce them. Additionally, we were not made aware of these transactions.” See id.

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.

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. G.L. c. 138, §§ 12, 15, 18, 18B, 19." Heublein, Inc. v. Capital Distributing Co., 434 Mass. 698, 699 (2001); see Miller Brewing Co., 56 Mass. App. Ct. at 808-809.

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 Unlawful importation of alcoholic beverages, to wit: c. 138, § 18 Importation of alcoholic beverages into the commonwealth other than from holders of certificates issued under section 18B

The Licensee is charged with a violation of M.G.L. c. 138, § 2 Unlawful importation of alcoholic beverages, to wit: c. 138, § 18 Importation of alcoholic beverages into the commonwealth other than from holders of certificates issued under section 18B. Section 2 provides that, "[n]o person shall . . . sell, . . . store, transport, import or export alcoholic beverages or alcohol, except as authorized by this chapter. . ." M.G.L. c. 138, § 2. Section 18 provides in relevant part 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. The Commission is persuaded by the evidence that a violation of M.G.L. c. 138, § 2 did occur. The Licensee, a licensed wholesaler, held itself out as purchasing alcoholic beverages from importer MHW, which has a § 18B COC, when in fact the Licensee was purchasing the products directly from Vinifera, its parent, which does not have a license to import alcoholic beverages into Massachusetts.² (Exhibits 1, 13, 17) Section 2 prohibits licensees from selling or importing alcoholic beverages, except as authorized under Chapter 138. Where Section 18 only allows wholesalers to sell alcoholic beverages that are either manufactured under Section 19 or import alcoholic beverages from COC holders for sale to other licensees, the Licensee here

² Note that the Licensee also falsely identified, on its 2018 license renewal, MHW as its only supplier of alcoholic beverages. (Testimony; Exhibits 1, 8)

violated Section 2, to wit: c. 138, § 18 by importing alcoholic beverages from an entity that does not have a COC.

In this matter, the Commission finds that the evidence demonstrates that the Licensee violated M.G.L. c. 138, § 2, to wit: c. 138, § 18.

II. Violation of 204 CMR 2.02 (2)

The above violation is worsened by the fact that the Licensee deliberately tried to conceal its efforts to avoid using a licensed importer. In addition to the above, the Licensee is charged with a violation of 204 CMR 2.02 (2), which provides that there shall not “be inserted in any invoice given or accepted by any licensee any statement which makes the invoice a false record, wholly or in part, of the transaction represented therein; nor shall there be withheld from any invoice given or accepted by any licensee any statements which properly should be included therein, so that in the absence of such statements the invoice does not truly reflect the transaction involved.” Here, invoices from December 2017 through June 2018 represent that Vinifera sold alcoholic beverages to MHW but shipped the alcoholic beverages directly to the Licensee. To the contrary, the substantial evidence shows that, in actuality, MHW was not involved in the transaction at all. (Exhibits 1, 16, 17) There is no documentation from MHW to support the suggestion that MHW acted as the COC holder in the transaction, and MHW’s executive vice president, Scott Saul, stated that MHW’s “records indicate that MHW has not invoiced any Vinifera products to Eno in over a year.” (Exhibit 16) Mr. Saul also provided that MHW had never seen the invoices that suggested that MHW was involved in the transaction and that MHW was not made aware of those transactions. See id. The Commission is persuaded that the Licensee violated 204 CMR 2.02 (2) by accepting invoices that were falsified with the representation that MHW served as the COC holder in the transactions between Vinifera and the Licensee.

III. Violation of M.G.L. c. 138, § 18

The Licensee is also charged with a violation of M.G.L. c. 138, § 18, Failure to comply with the requirement that corporations be organized under the laws of the commonwealth whereof all the directors are citizens of the United States and a majority thereof residents of the commonwealth. Here, the Massachusetts Secretary of the Commonwealth, Corporations Division records reflect that Dominic Nocerino of Setauket and Bayshore, New York is listed as the sole director of the Licensee. (Exhibits 1, 4) Given that the sole director of the Licensee is not a resident of Massachusetts, the Commission finds that the Licensee violated the requirements of M.G.L. c. 138, § 18.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

- 1) M.G.L. c. 2 Unlawful importation of alcoholic beverages, to wit: c. 138, § 18 Importation of alcoholic beverages into the commonwealth other than from holders of certificates issued under section 18B;
- 2) 204 CMR 2.02 (2) nor shall there be inserted in any invoice given or accepted by any licensee any statement which makes the invoice a false record, wholly or in part, of the transaction represented therein; nor shall there be withheld from any invoice given or

accepted by any licensee any statements which properly should be included therein, so that in the absence of such statements the invoice does not truly reflect the transaction involved.; and

- 3) M.G.L. c. 138, § 18 Failure to comply with the requirement that corporations be organized under the laws of the commonwealth whereof all the directors are citizens of the United States and a majority thereof residents of the commonwealth.

On the first violation M.G.L. c. 2 Unlawful importation of alcoholic beverages, to wit: c. 138, § 18, the Commission **suspends the license for a period of twelve (12) days to be served. This suspension shall run concurrently with the suspensions for the second and third violations.**

On the second violation 204 CMR 2.02 (2), the Commission **suspends the license for a period of twelve (12) days to be served. This suspension shall run concurrently with the suspensions for the first and third violations.**

On the third violation M.G.L. c. 138, § 18, the Commission **suspends the license for a period of twelve (12) days to be served. This suspension shall run concurrently with the suspensions for the first and second violations.**

Therefore, the Licensee will serve a total of twelve (12) days.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner 

Kathleen McNally, Commissioner 

Jean M. Lorizio, Chairman 

Dated: July 9, 2019

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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