



*Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
*95 Fourth Street, Suite 3*  
*Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

AMENDED  
NOTICE OF SUSPENSION

March 27, 2023

**OLMSTEAD WINE COMPANY LLC**  
**47 SUMMER STREET**  
**WALPOLE, MA 02071**  
**LICENSE#: WM-LIC-000361**  
**VIOLATION DATE: Various dates between 2019 and 2020**  
**HEARD: 11/09/2021**

After a hearing on November 9, 2021, the Commission finds Olmstead Wine Company LLC violated M.G.L. c. 2 Unlawful importation of alcoholic beverages, to wit: M.G.L. c. 138, § 18 Importation of alcoholic beverages into the commonwealth other than from holders of certificates issued under section 18B.

The Commission **suspends the license for a period of 10 days to be served.**

**The suspension shall commence on Monday, May 1, 2023, and terminate on Wednesday, May 10, 2023.** The license will be delivered to the Alcoholic Beverages Control Commission or its designee on Monday, May 1, 2023, at 9:00 A.M. It will be returned to the Licensee on Thursday, May 11, 2023.

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**

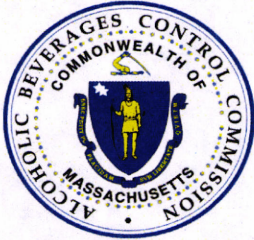
Jean M. Lorizio  
Chairman



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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Kyle E. Gill, Esq., Associate General Counsel  
Nicholas Velez, Investigator  
Adam Barnosky, Esq.  
Administration, File





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*Alcoholic Beverages Control Commission*  
*95 Fourth Street, Suite 3*  
*Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

*AMENDED*  
**DECISION**

**OLMSTEAD WINE COMPANY LLC**  
**47 SUMMER STREET**  
**WALPOLE, MA 02071**  
**LICENSE#: WM-LIC-000361**  
**VIOLATION DATE: Various dates between 2019 and 2020**  
**HEARD: 11/09/2021**

Olmstead Wine Company LLC (the "Licensee" or "Olmstead") holds a wholesaler alcohol license issued pursuant to M.G.L. c. 138, § 18. The Alcoholic Beverages Control Commission ("Commission" or "ABCC") held a remote hearing via Microsoft Teams on Tuesday, November 9, 2021, regarding an alleged violation of M.G.L. c. 138, § 2 Unlawful importation of alcoholic beverages, to wit: M.G.L. c. 138, § 18 Importation of alcoholic beverages into the commonwealth other than from holders of certificates issued under section 18B. 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 Report;
2. Olmstead's 2019, 2020, and 2021 M.G.L. Chapter 138 §18 Licenses;
3. Olmstead's ABCC License File;
4. Purchase Order #2520, 6/23/2020, from Olmstead to Zafa Wines, LLC ("Zafa") in the amount of \$4,770;
5. Zafa's Invoice #1232, 6/24/2020, to Mr. Oscar Hernandez in the amount of \$4,770;
6. Bank of America financial document with check image, 7/17/2020, in the amount of \$4,770 issued by Olmstead;
7. Purchase Order #2186, 5/9/2019, from Olmstead to Zafa, in the amount of \$1,080;
8. Zafa's Invoice #1419, 6/11/2019, to Oscar Hernandez in the amount of \$1,080;
9. Bank of America financial document with check image, 6/17/2019, in the amount of \$1,080 issued by Olmstead to Zafa;
10. Purchase Order #2637, 10/8/2020, from Olmstead to Zafa in the amount of \$7,140;
11. Invoice #10018, 10/15/2020, from CO Cellars to Olmstead in the amount of \$7,140;
12. Bank of America Financial Statement, 11/10/2020, to Zafa for \$7,140;
13. Licensee's Stipulation of Facts.



- A. Olmstead's Credit Memo #19921 to The Cheese Shop of Salem, 3/12/2021;
- B. Olmstead's Credit Memo #19939 to Streetcar, 3/16/2021;
- C. Olmstead's Credit Memo #19940 to Urban Grape, 3/16/2021;
- D. Olmstead's Credit Memo #19958 to Bartlett's Farm, 3/17/2021;
- E. Olmstead's Damaged/Unsaleable Wine Invoice #20889, 2/5/2021.

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

#### FINDINGS OF FACT

1. Olmstead Wine Company LLC ("Licensee" or "Olmstead") is a Massachusetts corporation located at 47 Summer Street in Walpole, Massachusetts. Olmstead holds a M.G.L. c. 138, § 18 wholesale alcohol license approved by this Commission on January 1, 2011. Oscar Hernandez is the Licensee and manager of Olmstead.
2. Zafa Wines LLC ("Zafa") is a winery located at 266 Pine Street in Burlington, Vermont. Zafa is not licensed to do business in Massachusetts.
3. CO Cellars LLC ("CO Cellars") is a winery located at 266 Pine Street in Burlington, Vermont. CO Cellars is not licensed to do business in Massachusetts.
4. On Thursday, December 3, 2020, Investigator Velez spoke to Oscar Hernandez via telephone and requested that Mr. Hernandez provide any and all purchase orders, invoices, and records of payment between Olmstead and Zafa and/or CO Cellars for the period covering January 1 through December 1, 2020.
5. Mr. Hernandez provided Investigator Velez with the following documents:
  - Olmstead purchase order # 2520 to Zafa for Zafa wines Lust Life 2019 and Poetic Justice 2019; CO Cellars wines Electric Mayhem and Leon.
    - Zafa Wines invoice #1232 dated 6/24/2020 billed to Olmstead \$4,770.00 for Zafa Wines: Lust Life 2019, Poetic Justice 2019, CO Cellars wine Electric Mayhem and CO Cellars wine Leon;
    - A copy of Olmstead's cancelled check payable to Zafa in the amount of \$4,770.00.
  - Olmstead purchase order #2186 dated 5/9/2019 to Zafa for Zafa Before Sunrise 2018 for a total price of \$1,080.00.
    - The Zafa invoice #1419 dated 6/11/2019 billed to Oscar Hernandez for the wine Zafa Before Sunrise 2018 at \$1,080.00;
    - A copy of Olmstead's cancelled check payable to Zafa in the amount of \$1,080.00.
  - Olmstead purchase order # 2637 dated 10/8/2020 to Zafa for: CO Cellars Melon Drop and CO Cellars Pretty in Pink for a total price of \$7,140.00
    - CO Cellars invoice #10018 dated 10/15/2020 for the ordered alcoholic beverages at \$7,140.00;



- A copy of Olmstead's check payment detail to Zafa in the amount of \$7,140.00.
6. Investigator Velez reviewed these documents provided and concluded that Olmstead, a wholesaler licensed pursuant to Ch. 138, § 18, purchased and imported various alcoholic beverages from Zafa Wines and CO Cellars. Neither Zafa nor CO Cellars are licensed by this Commission to do business in Massachusetts.
  7. Mr. Hernandez appeared at the Commission hearing. He testified that immediately upon learning Zafa and CO Cellars were not properly licensed to do business in Massachusetts, he ceased doing business with them. He reached out to customers to inquire if they still had product; if so, he asked them to stop selling the products and offered to issue credit for whatever remained. The vast majority of product had already been sold but he did issue credit to customers that had any remaining. (Exhibits A, B, C and D) He also removed any product remaining in his own inventory. (Exhibit E) He has appointed a compliance officer who initially reached out to any suppliers who had not already provided documents evidencing the proper licensing and now ensures records are kept up to date as to suppliers' licensing. (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 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).

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 and the Licensee stipulated to the fact that a violation of M.G.L. c. 138, § 2 did occur. The Licensee, a licensed wholesaler, purchased alcoholic beverages from Zafa Wines, Inc., an entity located in Vermont which is not licensed in Massachusetts. (Exhibits 4 – 12) 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 imported from Certificate of Compliance holders, the Licensee here violated Section 2, to wit: c. 138, § 18 by importing alcoholic beverages from an entity that does not hold a Certificate of Compliance.

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

#### CONCLUSION

Based on the evidence, the Commission finds the Licensee violated M.G.L. c. 138, § 2 Unlawful importation of alcoholic beverages, to wit: M.G.L. c. 138, § 18 Importation of alcoholic beverages into the commonwealth other than from holders of certificates issued under section 18B. Therefore, the Commission **suspends the license for a period of fifteen (15) days, of which ten (10) days 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 are found by this Commission.**



ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

*Jean M. Lorizio*

Crystal Matthews, Commissioner

*Crystal Matthews*

Deborah A. Baglio, Commissioner

*Deborah A. Baglio*

Dated: March 27, 2023

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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2021-000081-ad-enf

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