



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

Steven Grossman

Treasurer and Receiver General

Kim J. Guinsboro, Esq.

Chairman

DECISION

AVIARCH, LLC DBA COLONIAL PARK LIQUORS
35 LOWELL ST
WILMINGTON, MA 01887
LICENSE#: 148200009
VIOLATION DATE: 02/27/2013
HEARD: 05/14/2013

Aviarch, LLC dba Colonial Park Liquors (the "Licensee") 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, May 14, 2013, regarding an alleged violation of M.G.L. c. 138 §23 – Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22a (23 counts). Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Kelleher's Report.

The following documents are in evidenee:

1. Licensee's Stipulation of Facts; and
2. Investigator Kelleher's Investigative Report dated February 27, 2013.

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

FACTS

1. On Wednesday, February 27, 2013, at approximately 3:15 p.m., Investigators Guarino and Kelleher investigated the business operation of Aviarch, LLC dba Colonial Park Liquors to determine the manner in which their business was being conducted, and to investigate a complaint filed with this Commission.
2. The complaint alleged that the licensee purchased cases of Corona and Corona Light beers at Salem Liquors in New Hampshire, and then sold and exposed for sale these alcoholic beverages.
3. Investigators entered the premises and proceeded to the rear cooler storage area to inspect the Corona and Corona Light beers for the "no deposit" stamp, indicative of alcohol purchased in New Hampshire.
4. Investigators did not observe any cases with this "no deposit" marking, and proceeded to the front of the store.
5. Investigators identified themselves to Paresht Patel, the manager of record, and asked him if he purchased any alcohol from Salem Liquors in New Hampshire.
6. Mr. Patel advised investigators that he purchased five cases of Natural Ice beer from this liquor store in New Hampshire.

7. Mr. Patel conducted investigators to the rear of the store where the five cases were located amongst a Natural Ice beer display.
8. Mr. Patel stated that he only purchased these few cases of Natural Ice beer to keep his stock level until he could purchase the beer from Massachusetts distributors.
9. Mr. Patel stated that in order to purchase Natural Ice beer from Massachusetts distributors, he must also purchase Natural Ice Light, and must buy the beer in lots of 50 cases.
10. Mr. Patel stated that he would then have too many cases of Natural Ice Light beer, and that they would pass their expiration date before he could sell them.
11. Investigators asked Mr. Patel if the Massachusetts distributors took notice of the beer cans from New Hampshire when he re-deposited his cans.
12. Mr. Patel stated, "They don't know, they never notice."
13. Investigators then asked if Mr. Patel has purchased any Corona or Corona Light beer at the New Hampshire store, which were located in his premises.
14. Mr. Patel stated, "I have not bought Corona in a while, since December."
15. Investigators asked if Mr. Patel has any other alcoholic beverages in his premises from the New Hampshire store.
16. Mr. Patel stated, "No, just the Natural Ice [beer], that is all."
17. Mr. Patel showed investigators several invoices for the Natural Ice beer, and he freely admitted they were from the New Hampshire liquor store.
18. On further questioning, Mr. Patel reconsidered his answer and led investigators to the walk-in beer cooler located at the rear of the store.
19. He pointed to eight cases of Bud Light beer, and stated, "Just those."
20. Investigators inspected the "born-on date" stamped on the cases and compared them to 10 other boxes located in the same area. They discovered the "born-on date" matched that found on the eight cases that Mr. Patel had identified.
21. Investigators asked if the other 10 cases were also purchased from the New Hampshire liquor store.
22. Mr. Patel stated, "No, just those eight."
23. Investigators advised Mr. Patel of M.G.L. c. 138, §62A, which states: Any person who hinders or delays any authorized investigator of the commission or any investigator, inspector or any other authorized agent of local licensing authorities in the performance of his duties, or who refuses to admit to or locks out any such investigator, inspector or agent from any place which such investigator, inspector or agent is authorized to inspect, or who refuses to give to such investigator, inspector or agent such information as may be required for the proper enforcement of this chapter, shall be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not more than two months, or both.
24. After being advised of this statute, Mr. Patel then admitted that the 10 cases in question, which had the same "born-on date", were also purchased in New Hampshire.
25. Mr. Patel stated that his friend owns the New Hampshire liquor store, and he only purchased alcoholic beverages from the store when he needed to "restock" prior to placing the "minimum" large orders with the Massachusetts distributors.
26. Mr. Patel stated that he did not intend to benefit financially. However, he admitted that he charged customers a redemption fee separate from the price of the alcohol.
27. Investigators took the five case of Natural Ice beer and the 18 cases of Bud Light beer as evidence.
28. Investigators informed Mr. Patel of the violation and that a report would be filed with the Chief Investigator for further action.

CONCLUSION

Based on the evidence, the Commission finds the licensee violated of M.G.L. c. 138 §23 – Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22a (23 counts). Therefore, the Commission **suspends the license for six (6) days of which six (6) days will 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

Susan Corcoran, Commissioner *Susan Corcoran*

Kathleen McNally, Commissioner *Kathleen McNally*

DATE: May 15, 2013

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.

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Tara Kelleher, Investigator
Caroline Guarino, Investigator
Wendy Y. Estrella, Esq. via Facsimile 978-683-5094
Administration
v File