

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

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

ALLSTAR LIQUOR, INC.
261 LINCOLN STREET
WORCESTER, MA 01605
LICENSE #: 150800285
HEARD: 04/05/2011

Allstar Liquor, Inc. (the "Licensee") holds an all alcohol license issued pursuant to M.G.L. c. 138, §15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, April 5, 2011, regarding an alleged violation of Ch. 138 §18 detailed in Investigator Rose Bailey's report.

The following documents are in evidence:

1. Investigator Rosemary Bailey's Report; and
2. Paper Bag.

There is one (1) tape of this hearing.

FACTS

1. On Saturday, December 18, 2010 at approximately 7:30 p.m., Investigators Keefe, Kujawski and Bailey were conducting a stationary surveillance outside Brook's Pub, relative to a filed complaint.
2. The investigators observed a male individual exit Brook's Pub.
3. The individual walked across the adjacent parking lot and entered Allstar Liquors, Inc.
4. They observed the male exit Allstar Liquors, Inc. with a brown paper bag and re-enter Brooks Pub in possession of the paper bag.
5. The contents being unknown to the investigators. Investigators were unable to conduct an investigation of the licensed premises at the time.
6. On Thursday, December 23, 2010, at approximately 7:40 p.m., Investigators entered Allstar Liquors, Inc. to conduct an investigation based upon observations from December 18, 2010.
7. The investigators entered the establishment and asked to speak with the owner.
8. The owner, Lakhvir Heer, was questioned about selling alcohol to retail licenses.
9. He told them that he did at times sell to the establishment next door, Brook's Pub but did not sell to any other retail licensees.
10. Investigators observed the same type of brown bag found at Brook's Pub containing an alcoholic beverage used by Allstar Liquors, Inc.
11. He did not admit to selling alcoholic beverages to Brook's Pub on the date in question.



DISCUSSION

The Investigators presented evidence of a paper bag that was seized from the Allstar Liquors, Inc. that was similar to a paper bag carried by an individual seen on December 18th, 2010 exiting Allstar Liquors, Inc. entering Brook's Pub. However, no nexus was ever drawn between the Investigators that the individual(s) purchasing the alcohol from Allstar Liquors, Inc. were purchasing it for the establishment. There was never any evidence that the clerk/owner knew that the owner of Brook's Pub was using the alcohol for the Brook's Pub (i.e. there was testimonial evidence that all the alcohol was purchased via cash purchases).

The investigators were unable to prove that there was any type of connection between the purchase of the alcohol at Allstar Liquors, Inc. and the sale at Brook's Pub. All that could be made is an inference that employees of Brook's Pub went in and purchased alcohol from the Allstar Liquors, Inc. and paid cash for it. Proof has to be made to hold the licensee accountable.

Furthermore, the licensee stated that he did not remember selling to the owner and in fact he did not recognize the owners, who had testified at a prior hearing, and only met the owner on a few occasions. The evidence presented is insufficient to hold the licensee accountable for another's wrongdoing.

CONCLUSION

Based on the foregoing evidence, the licensee cannot be held responsible and the Commission holds him not responsible and finds **NO VIOLATION**.

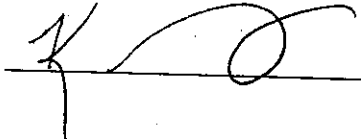
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kim S. Gainsboro, Chairman



Dated: February 14, 2012

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: File
Local Licensing Board
Frederick Mahoney, Chief Investigator
Rose Bailey, Investigator
Administration

