

Mailing Date: JAN 30 2003

[Appeal](#)

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR
PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 02-0764
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W10-250721
	:	
v.	:	LID - 8569
	:	
SHERRY DISTRIBUTORS INC	:	
812 WATER STREET	:	
MEADVILLE PA 16335-3419	:	
	:	
	:	
	:	
CRAWFORD COUNTY	:	
LICENSE NO. ID-520	:	

BEFORE: JUDGE FRISK

APPEARANCES:

For Bureau of Enforcement
Nadia Vargo, Esquire

For Licensee
Francis X. O'Brien, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 25, 2002, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Sherry Distributors, Inc., License Number ID-520 (hereinafter Licensee).

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The citation charges Licensee with violation of Section 431(b) of the Liquor Code [47 P.S. §4-431(b)], in that on one hundred forty-nine dates between June 7, 2001 and March 28, 2002, Licensee, by its servants, agents or employees, sold and/or delivered malt or brewed beverages to licensees not located within the geographical area for which distributing rights have been given it by the manufacturer or their primary importing distributors.

In this case, the parties submitted stipulated Findings of Fact and briefs in lieu of a hearing that was scheduled for September 18, 2002. Licensee further stipulated that the Bureau complied with the notice provisions of Section 471 of the Liquor Code.

FINDINGS OF FACT:

The **Stipulations of Counsel** received on November 15, 2002, are adopted by this court and incorporated by reference as if they were completely set forth in this Adjudication.

DISCUSSION:

This case is being decided on stipulated Findings of Fact and briefs submitted by counsel. In an agreement dated July 13, 1998, Glenwood Beer Distributors, Inc., an importing distributor, granted certain rights to Licensee authorizing it to sell specified malt or brewed beverage products throughout Crawford County, Pennsylvania, excluding Oil Creek Township, and specific customers including Arlington Hotel and Nighthawk's Tavern. Similarly, Peter C. Stubler, Inc., an importing distributor, entered into an agreement with Licensee dated October 26, 2001, authorizing Licensee to sell and/or distribute specified malt or brewed beverage products through a list of retail licensees throughout Crawford County. Consequently, the facts which gave rise to the issuance of this citation resulted in Licensee selling and/or distributing the Glenwood malt or brewed beverage products to customers specifically excluded including Arlington Hotel and Nighthawk's Tavern. The Bureau further asserts that Licensee also breached its agreement with Stubler by engaging in the sale and/or distribution of specified malt or brewed beverage products to retail licensees in Crawford County but not listed in the agreement.

Nevertheless, Licensee was given the authority to sell and/or distribute malt or brewed beverage products by Glenwood and Stubler with certain limitations throughout Crawford County. It is further stipulated that Glenwood and Stubler were each authorized by the respective manufacturers to engage in the sale and/or distribution of their malt or brewed beverage products throughout Crawford County, Pennsylvania. The Bureau issued this citation based on the premise that Licensee had breached its respective territorial agreements with Glenwood and Stubler by engaging in the sale of malt or brewed beverage products to specific retail licensees not permitted by these agreements. Licensee argues that there is no breach of any territorial agreements with

either Glenwood or Stubler since there were no sales of malt or brewed beverage products outside Crawford County.

Section 431(b) of the Liquor Code provides, in relevant part as follows:

Each out of State manufacturer of malt or brewed beverages whose products are sold and delivered in this Commonwealth shall give distributing rights for such products in designated geographical areas to specific importing distributors, and such importing distributor shall not sell or deliver malt or brewed beverages manufactured by the out of State manufacturer to any person issued a license under the provisions of this act whose licensed premises are not located within the geographical area for which he has been given distributing rights by such manufacturer. Should a licensee accept delivery of such malt or brewed beverages in violation of this section, said licensee shall be subject to a suspension of his license for at least thirty days: Provided, That **the importing distributor holding such distributing rights for such product shall not sell or deliver the same to another importing distributor without first having entered into a written agreement with the said secondary importing distributor setting forth the terms and conditions under which such products are to be resold within the territory granted to the primary importing distributor by the manufacturer.** (Emphasis added).

The record is clear that as to the agreements in question, Glenwood and Stubler are primary importing distributors who have assigned portions of their sales and/or distribution rights to Licensee, a secondary importing distributor. See: *In Re: Genna*, 37 Pa. D. & C.3d 138 (1984). Agreements between primaries and secondaries are required because examination of such agreements permits the Commonwealth to observe and trace transactions within the beer distribution system. In *PLCB v. Starr*, 318 A.2d 763 (Pa. Cmwlth. 1974), the court upheld Section 431 of the Liquor Code to be within the broad police powers of the Commonwealth to regulate the liquor industry. The Commonwealth Court in *Starr* further held that the purpose of the restrictions on buying and selling malt or brewed beverages was to provide an easily traceable transaction readily susceptible to observation. *Id.* at 766, 767.

Counsel for Licensee argues in its brief that there is no violation of Section 431(b) of the Liquor Code as long as the secondary importing distributor, Licensee, is selling within the territory for which its primary importing distributors, Glenwood and Stubler, have been granted rights from their respective manufacturers. Licensee believes this to be the case whether or not the secondary importing distributor has sold products within or outside the area covered by the written agreement with the primary importing distributors.

The Bureau argues in its brief that the two agreements in question constitute territorial agreements since these agreements map out to which retail licensees sales can or cannot be made. The Bureau

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disagrees with Licensee's assertion that "county" be synonymous with the definition of territory, whereas the Bureau contends that sales territory can both include and exclude particular retail establishments within a county.

Upon thorough review of the stipulated Findings of Fact and the briefs submitted by counsel, this court concludes that Glenwood and Stubler's agreement with Licensee reference geographic territorial areas as set forth in Section 431(b) of the Liquor Code as these agreements carve out exceptions such as Oil Creek Township and certain retail customers, all within the Crawford County territory. This court rejects Licensee's argument that Licensee as a secondary importing distributor should enjoy all of the rights granted by the respective manufacturers to the primary importing distributors, Glenwood and Stubler.

CONCLUSION OF LAW:

On 149 dates between June 7, 2001 and March 28, 2002, Licensee, by its servants, agents or employees, sold and/or delivered malt or brewed beverages to licensees not located within the geographical area for which distributing rights have been given it by the manufacturer or their primary importing distributor, in violation of Section 431(b) of the Liquor Code.

PRIOR RECORD:

Licensee has been licensed since April 8, 1976, and has had one prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 01-0193. Fine \$75.00. Waiver of hearing.

1. Advertised alcoholic beverages in a publication published for an educational institution. October 5 and 12, 2000.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

In mitigation, this citation represents Licensee's first violation of the type herein enumerated.

For the foregoing reasons, a penalty shall be imposed in the amount of \$400.00.

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ORDER:

THEREFORE, it is hereby ordered that Sherry Distributors, Inc., License Number ID520, pay a fine of \$400.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked. Jurisdiction is retained to ensure compliance with this Order.

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

Dated this 23rd day of January, 2003.

Roderick Frisk, J. bas

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.