

November 25, 2014

Natalie Lutz Cardiello, Esquire

**RE: Disposition of Wine by Bankruptcy Trustee**

Dear Ms. Cardiello:

ISSUE: This office is in receipt of your e-mail dated October 6, 2014, in which you advise that you are the court-appointed bankruptcy trustee for La Cucina Flegrea, Inc., a restaurant licensee whose license is currently in safekeeping. In reviewing the assets of the bankruptcy estate, you have learned that there are eighty-four (84) bottles of unopened wine. You have also learned that some of this wine may be returned to the Pennsylvania Liquor Control Board's ("Board") store; however, "special order" wines (which are termed "special liquor order" or "SLO" products by the Board) are not returnable. You ask whether the bankruptcy court may sell the unreturnable bottles of wine.

Board records indicate that La Cucina Flegrea, Inc. holds Restaurant Liquor License No. R-14552 (LID 59599) for use by it at premises located at 100 5<sup>th</sup> Avenue, Suite 204, Pittsburgh, Pennsylvania. In July 2014, the license was placed into safekeeping and you are the named contact.

OPINION: Initially, regarding wine sales, please be advised that generally wine may only be sold in Pennsylvania for off-premises consumption by the Board, the holder of a limited winery license or the holder of a sacramental wine license. [47 P.S. § 4-406(e)]. There is a limited exception involving restaurant licensees and partially-consumed bottles of wine, but that is not applicable here. A bankruptcy court may not sell alcohol.

Often in cases of licensee bankruptcy, there is an attempt to transfer the subject license to another party, subject to Board approval. For wine that cannot be returned to a Board store, a licensee (or in your case, you as bankruptcy trustee) may sell that wine to a transferee under certain terms and conditions. Section 9.114 of the Board's Regulations provides as follows:

When a licensee sells his licensed business, and transfer of the license is approved, the Board may, in its discretion, repurchase the liquor in his possession at the time of the transfer of the license; or the licensee may, if he so desires, sell the liquor to the transferee of his license, provided the licensee, at the time the application for transfer of his license is filed, notifies the Board in writing of his intention to include the liquor, or a designated quantity thereof, in the sale of his licensed business, and provided further the licensee

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furnishes a sworn statement containing a description of the liquor, including brand name, size, and number of containers of each brand so sold to the transferee, when the transfer of the license is approved.

[40 Pa. Code § 9.114].

If the licensee cannot sell its inventory to a transferee or if time is of the essence, other options would be to sell the wine outside of the Commonwealth (if permitted by the receiving jurisdiction) or to return unopened beverages to the suppliers of the products, if that is acceptable to the suppliers.

For your general information, if non-SLO wine is unopened and purchased from a Pennsylvania wine and spirits store, it may be sold back to the Board, at the Board's discretion, pursuant to section 9.111(a) of the Board's Regulations, subject to a restocking fee of twelve and one-half percent (12.5%), pursuant to section 9.113(a) of the Board's Regulations. [40 Pa. Code §§ 9.111(a), 9.113(a)].

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement  
Jerry W. Waters, Director of Office of Regulatory Affairs  
Tisha Albert, Director, Bureau of Licensing  
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 14-604