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Chairman

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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DECISION

**E.R. ENTERPRISES LLC
D/B/A SAVVOR RESTAURANT & LOUNGE
174-80 LINCOLN ST.
BOSTON, MA 02116
LICENSE#: 0116-01435
VIOLATION DATE: 2/16/2018
HEARD: 6/12/2018**

E.R. Enterprises LLC d/b/a Savor Restaurant & Lounge (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, June 12, 2018, regarding an alleged violation of M.G.L. c. 138, § 23- Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22A (12 counts) which occurred on February 16, 2018, according to Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report.
 - A. Letter from Boston Globe;
 - B. Letter from Phantom Gourmet; and
 - C. Invoices from Wholesalers.

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

The Commission took Administrative Notice of the Licensee's record.

FINDINGS OF FACT

1. On Friday, February 16, 2018, at approximately 6:45 p.m., Investigator Kenny and Teehan ("Investigators") conducted an investigation of the business operation of E.R. Enterprises LLC d/b/a Savor Restaurant & Lounge to determine the manner in which its business was being conducted. (Exhibit 1; Testimony)
2. Investigators entered the licensed premises and identified themselves to owner, Francois ("Eddie") Firmin, who is also the manager of record. (Exhibit 1; Testimony; Commission File)

3. Investigators went behind the bar area and observed 12 bottles of alcohol with package store labels that had been wholly or partially torn off. Each of the bottles taken into evidence had glue affixed to it. The bottles were:
 - Aperol Aperitivo Liqueur (1 bottle);
 - Bulleit Bourbon Whiskey (1 bottle);
 - DeKuyper Blue Curacao Liqueur (1 bottle);
 - Grand Marnier Cognac (1 bottle);
 - Hennessy Cognac (2 bottles);
 - Jack Daniels Whiskey (4 bottles);
 - Makers Mark Bourbon Whiskey (1 bottle); and
 - Tortilla Silver Margarita Tequila (1 bottle).

(Exhibit 1)

4. Investigators informed Mr. Firmin of the violations and that a report would be filed with the Chief Investigator for further action. (Exhibit 1)
5. At the Commission hearing, Mr. Firmin admitted that his bar manager purchased some bottles of liquor – he was not sure how many-- from a § 15 retail package store to be used for sale of alcoholic beverages on the licensed premises. (Testimony)
6. At the Commission hearing, Investigator Kenny testified that the subject package store liquor bottles found behind the bar were open. (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 Licensee is charged with a violation of M.G.L. c. 138, § 23 – Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22A (12 counts).

No license issued under section twelve, fourteen or fifteen, and no certificate of fitness issued under section thirty shall authorize the sale of any alcoholic beverages other than those purchased from a licensee under section eighteen, nineteen or 19F or nineteen C or from a holder of a special permit to sell issued under section twenty-two A; provided, that the holder of a license under section twelve or fifteen may sell alcoholic beverages acquired as the result of the purchase of a warehouse

receipt for such beverages if the said receipt was purchased from the holder of a license under section eighteen, nineteen, 19F or nineteen C or from a broker registered under chapter one hundred and ten A who is authorized thereunder to deal in warehouse receipts for alcoholic beverages; and provided, further, that nothing contained in this section shall be construed to authorize a licensee under section twelve or fifteen to import alcoholic beverages into the commonwealth except through the holder of a license issued under section eighteen or 19F.

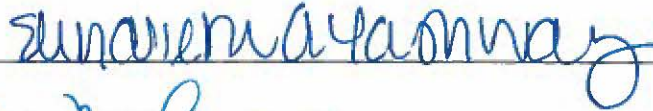
M.G.L. c. 138, § 23. Mr. Firmin testified that indeed his bar manager purchased some bottles of liquor from a package store for sale of the alcoholic beverages on the licensed premises. (Testimony) The subject bottles the investigators found were open, behind the bar, and had package store labels partially or wholly removed with glue from the labels remaining on the bottles. (Exhibit 1; Testimony) The Commission is persuaded by the evidence that a violation of M.G.L. c. 138, § 23- Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22A, did occur.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated M.G.L. c. 138, § 23- Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22A. As the Licensee has had no prior violation, the Commission issues a **WARNING**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Elizabeth A. Lashway, Commissioner



Jean M. Lorizio, Chairman



Dated: June 18, 2018

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Michael Teehan, Investigator
Mark Kenny, Investigator
Administration, File