

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

In the Matter of:)
)
City Beverage – Markham, LLC)
d/b/a City Beverage Markham)
2064 W. 167th St.)
Markham, IL 60428)

In the Matter of:)
)
City Beverage – Markham, LLC)
d/b/a City Beverage – Arlington Heights)
1401 E. Algonquin Rd.)
Arlington Heights, IL 60005)

Case No. 12-CCH-01

(Consolidated Case Nos. 12 C 100216,
100217, 100218, 100219, 100220, 100221,
100222, and 100223)

In the Matter of:)
)
Chicago Distributing LLC)
d/b/a City Beverage – Chicago)
4841 S. California Ave.)
Chicago, IL 60632)

In the Matter of:)
)
City Beverage LLC)
d/b/a City Beverage)
1105 E. Lafayette Ave.)
Bloomington, IL 61701)

**ILLINOIS LIQUOR CONTROL COMMISSION
FINAL ORDER AFTER CONTESTED HEARING**

RECITALS

Whereas, this matter came before the Illinois Liquor Control Commission (“Commission”) pursuant to four separate Citations and Notices of Hearing that were issued by the Commission on June 7, 2012 against: 1) City Beverage - Markham, LLC d/b/a City Beverage Markham, Case Nos. 12 C 100220 and 12 C 100221, 2) City Beverage - Markham, LLC d/b/a City Beverage – Arlington Heights, Case Nos. 12 C 100222 and 12 C 100223, 3) Chicago Distributing, LLC d/b/a City Beverage – Chicago, Case Nos. 12 C 100218 and 12 C 100219, and 4) City Beverage, LLC d/b/a

City Beverage, Case Nos. 12 C 100216 and 12 C 100217.. (City Beverage - Markham, LLC, Chicago Distributing, LLC, and City Beverage, LLC, will be referred to hereinafter as the “City Beverage Entities”);

Whereas, the four Citations were consolidated in the form of an Amended Citation and Notice of Hearing that was filed under the caption above by the Illinois Liquor Control Commission Legal Division (“Legal Division”) on July 18, 2012 (“Amended Citation”), and as ordered by the Commission in its August 8, 2012 Meeting Order;

Whereas, in its June 27, 2012 Scheduling Order, the Commission set a hearing date on the Amended Citation for October 1 and 2, 2012. In its Scheduling Order, the Commission identified the “Parties” to the Amended Citation proceedings as the Illinois Liquor Control Commission, as represented by the Legal Division, on the one hand, and the City Beverage Entities and Wholesaler Equity Development Corporation (“WEDCO”), on the other. (The City Beverage Entities and WEDCO may be referred to collectively in this Order as the “Respondents”);

Whereas, the Parties filed numerous pre-hearing motions, which were ruled on or taken under advisement by the Commission as set forth in its August 8, 2012 Meeting Order. (In addition to its June 27, 2012 Scheduling Order, and its August 8, 2012 Meeting Order, the Commission entered a September 12, 2012 Order regarding Respondents’ Requests for Admission);

Whereas, pursuant to the June 27, 2012 Scheduling Order, in advance of the Hearing the Parties presented pre-hearing memoranda, and responses to each other’s pre-hearing memoranda. In addition, the Commission received memoranda from certain interested non-parties, including the Associated Beer Distributors of Illinois (whose memorandum was adopted by the Illinois Licensed Beverage Association and the Beverage Retailers Alliance of Illinois), Wine and Spirits Distributors of Illinois, and Burke Beverage, Inc. et al.; and

Whereas, on October 1, 2012, the Commission presided over a contested hearing, at which the Parties presented evidence, exhibits, arguments, and motions on the issues raised by the Amended Citation;

Now Therefore, having reviewed the materials submitted by the Parties and the interested non-parties, and having considered the evidence, exhibits, and arguments presented by the Parties at the October 1, 2012 Hearing, the Commission enters the following Order, along with Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Each of the City Beverage Entities currently holds an Illinois Distributor license and an Illinois Importing Distributor license issued by the Commission, for a total of four separate business locations in Illinois.

2. Each of the City Beverage Entities is a wholly owned subsidiary of City Beverage Illinois, LLC.

3. WEDCO owns a 30% membership interest in City Beverage Illinois, LLC. The remainder of City Beverage Illinois, LLC is owned by BDT Capital Partners.

4. WEDCO is a wholly owned subsidiary of Anheuser-Busch Companies, LLC.

5. Anheuser-Busch, LLC also is a wholly owned subsidiary of Anheuser-Busch Companies, LLC. Anheuser-Busch, LLC currently holds an Illinois Non-Resident Dealer license issued by the Commission. Anheuser-Busch, LLC is a brewer and manufacturer of beer.

6. WEDCO holds the right to appoint two of five board members of City Beverage Illinois, LLC. WEDCO also holds the right to approve three of four top management employees of City Beverage Illinois, LLC.

7. The Commission finds, based upon the explicit representation of Respondents' counsel at the October 1, 2012 Hearing, that, in the event the Commission does not require the

divestiture of WEDCO's interest in the City Beverage Entities, WEDCO and its Anheuser-Busch affiliates will not in the future make any efforts to, and will not, acquire any additional ownership interest in City Beverage Illinois, LLC or the City Beverage Entities.

8. In the Amended Citation, the Legal Division claimed that, because Anheuser-Busch, LLC is an Illinois Non-Resident Dealer, and because a Non-Resident Dealer is not authorized to hold distributor licenses under the Illinois Liquor Control Act, WEDCO, the commonly owned affiliate of Anheuser-Busch, LLC, is ineligible to own or manage the City Beverage Entities. In its Amended Citation, the Legal Division requested that the Commission revoke the licenses of the City Beverage Entities, but stay the revocation pending mandatory divestiture of WEDCO's ownership and management interests in the City Beverage Entities.

CONCLUSIONS OF LAW

9. The State of Illinois clearly regulates the production, importation, distribution and sale of alcoholic beverages through a three-tier licensing system, i.e. production, distribution/wholesale, and retail, as codified in the Illinois Liquor Control Act, 235 ILCS 5/1-1 et seq. ("Liquor Control Act"). Anheuser-Busch, Inc. v. Schnorf, 738 F. Supp. 793, 796 (N.D. Ill. 2010).

10. The Commission concludes that, while the Liquor Control Act adheres to the three tier system of regulation as it applies to licensing, the Liquor Control Act's adherence to a three tier system is less than clear as applied to ownership interests in entities involved in the various tiers. In particular, the Commission notes that the Liquor Control Act, which originally was passed in 1934, does not appear to address issues that arise from contemporary investment strategies in which an investor or investment fund might simultaneously hold minority but significant ownership interests in entities in each of or among the three tiers.

11. For example, the Commission finds that WEDCO's ownership interest in the City Beverage Entities enables the Anheuser-Busch affiliates to exercise significant influence over the financial and operational policies of the City Beverage Entities, and that such influence may violate the spirit of a three tier system of alcohol regulation. However, the Commission finds no explicit guidance in the Liquor Control Act, especially as it relates to Brewers, which sets forth the level or extent at which such influence or control constitutes a prohibited ownership interest.

12. The Commission recognizes that there is an explicit provision in the Liquor Control Act, section 6-4(a), which prohibits distillers, wine manufacturers, and their subsidiaries and affiliates, from owning more than 5% of a distributor or importing distributor, 235 ILCS 5/6-4(a), but the legislature has never seen fit to extend the ownership interest prohibitions in Section 6-4(a) to Non-Resident Dealers and Brewers.

13. The Commission also recognizes that, on June 1, 2011, Governor Quinn signed into law Senate Bill 754, sometimes referred to as the Craft Brewer Law, which, among other things, amended section 5-1 of the Liquor Control Act. Prior to the passage of the Craft Brewer Law, Section 5-1 allowed a Brewer to make sales to retailers provided the Brewer obtained a distributor or importing distributor license. The amendment of Section 5-1 eliminated a Brewer's right to sell to retailers as a distributor or importing distributor.

14. While the Commission believes that upon passing the Craft Brewer Law the legislature may have intended to prohibit a Brewer from owning a distributor, the Commission concludes that the actual language used in the Liquor Control Act and the Craft Brewer Law is not sufficiently clear to warrant the conclusion that WEDCO's 30% ownership interest in the City Beverage Entities is unlawful.

15. In addition, the Commission notes that when the legislature passed the Craft Brewer Law, it did not amend Section 6-4(a) of the Liquor Control Act to add Non-Resident Dealers and

Brewers to the list of entities that were prohibited from owning more than 5% of a distributor or importing distributor.

16. The Commission is mindful that it previously made certain pronouncements on issues relating to WEDCO's ownership interest in the City Beverage Entities in its March 2, 2010 Declaratory Ruling and its Findings from its December 7, 2011 Meeting. However, unlike in the present case, those proceedings were not initiated by an Amended Citation which specifically sought the revocation of licenses and mandatory divestiture of ownership interests, and were not the product of a contested hearing conducted pursuant to the procedures set forth in the Liquor Control Act, its Regulations, and the Illinois Administrative Procedures Act, 5 ILCS 100/1-1 et seq. In any event, this Order, and its Findings of Fact and Conclusions of Law, represents the Final Order of the Commission as currently constituted on the specific issue raised by the Amended Citation and, unlike the Commission's prior pronouncements, is subject to judicial review under the Illinois Administrative Review Law, 735 ILCS 5/3-101 et seq.;

Now Therefore, notwithstanding any prior pronouncements, and based on the Findings of Fact and Conclusions of Law set forth above, **It Is Hereby Ordered** that:

A. The Legal Division has not sustained its burden of proving that a revocation of the City Beverage Entities' distributor and importing distributor licenses is required; and

B. The relief requested by the Legal Division in its Amended Citation is denied and the Amended Citation is dismissed.


C. In addition, however, the Commission respectfully requests that the Illinois General Assembly consider the issue of whether to amend the Liquor Control Act to clearly redefine the historic three tier system of alcohol regulation in Illinois as it applies to allowable ownership interests so as to prevent cross-ownership among tiers; and


D. The Commission respectfully requests that the Illinois General Assembly consider the issue of whether to amend Section 6-4(a) of the Liquor Control Act to include Non-Resident Dealers and Brewers to the list of entities prohibited from holding more than 5% ownership interests in a distributor and importing distributor such that all entities in the first tier are treated similarly with regard to allowable ownership interests in distributors.

E. This Order is subject to the Respondents' representations to the Commission that, in light of this Order, WEDCO and its affiliated Anheuser-Busch entities will not make any effort to, and will not, acquire any ownership interest in the City Beverage Entities beyond WEDCO's current 30% ownership interest, and will not make any effort to acquire an ownership interest in any other alcohol distributor or importing distributor in Illinois.

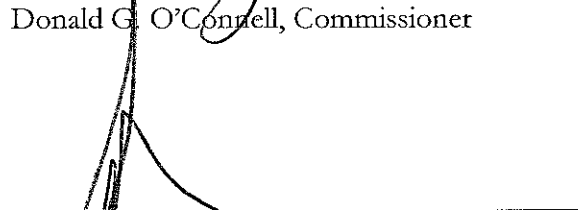
ENTERED by the Illinois Liquor Control Commission at Chicago, Illinois, on
October 31, 2012.

A T T E S T:


Allyson Reboyras, Secretary


Stephen B. Schnorf, Acting Chairman


Donald G. O'Connell, Commissioner



James Pandolfi, Commissioner


Cynthia Cronin Cahill, Commissioner

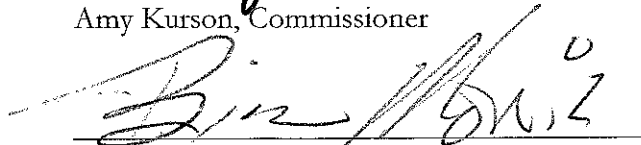
DISSENT

In its Findings from the December 27, 2011 Meeting Regarding the Anheuser Busch Ownership Interest in City Beverage LLC, the Commission unanimously concluded that “[i]t was the intent of the Illinois General Assembly in 2011 to deny AB [Anheuser Busch] the right to own a distributorship. We [the Commissioners] believe this even though the General Assembly chose not to do so by amending Section 5/6-4(a) to include brewers as parties specifically prohibited from owning distributorships.”

We believe that the Illinois Liquor Control Commission should execute its power to license in accordance with the intent of the Illinois General Assembly. We believe that the intent of the Illinois General Assembly is that the Illinois Liquor Control Act (235 ILCS 5/5-1 et seq.) should be interpreted as starting from a point of prohibition, as explained in People v. Select Specialties, Ltd., 317 Ill. App. 3d 538, 544 (4th Dist. Ill. 2000). Because there is no provision in the Liquor Control Act which allows the ownership interest at issue in this case, that ownership interest is prohibited under the Liquor Control Act. In addition, inasmuch as the Illinois General Assembly has endeavored to prohibit Anheuser Busch from participating in more than one tier of the three-tier system, we would not approve a distributor license for the City Beverage Entities if Anheuser Busch or one of its affiliates remained an owner or owned a controlling interest. Furthermore, we believe that the intent of the Illinois General Assembly to prohibit the ownership interest at issue in this case is confirmed by the legislative history, as cited in the Record, relating to passage of the Craft Brewer Law (Senate Bill 754).



Amy Kurson, Commissioner



Bill Morris, Commissioner