IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
WHEATON, DU PAGE COUNTY, ILLINOIS

SHELTON BROTHERS, INC. Plaintiff/Counter-Defendant	))	
	)	
vs.	)	NO. 2014 L 557
	)	
RIVER NORTH SALES & SERVICE, LLC. Defendant/Counter-Plaintiff,	))	

MEMORANDUM OPINION

This matter came before the Court for a Bench Trial on October 28, 2019 and continued for a non-continuous period for almost 5 weeks. The evidence concluded and closing arguments were heard on January 30, 2020. The Court took the matter under advisement to review testimony, exhibits admitted into evidence, the arguments of counsel and the law. The Court will not state the facts in this Memorandum other than to the extent that the they are required for the parties to understand the bases of the Court's findings and decision.

This matter proceeded to trial on River North Sales & Service, LLC, (hereinafter River North) Counts III and VI of the Third-Amended Counterclaim filed on June 3, 2019. On February 14, 2020, this Court granted leave to River North to file a Fourth Amended Counterclaim to conform the proofs to the pleadings. Count III pleads that Shelton Brothers' failure to consent to a successor distributor was a violation of the Beer Industry Fair Dealing Act. 815 ILCS 720/1 et seq. Count VI states a cause of action against Shelton Brothers for breach of the Distributor Appointment and Indemnification Agreement. by Shelton Brothers refusal to pay the attorney fees, costs, expenses, and settlement incurred by River North in a lawsuit filed by Windy City in the 18th Judicial Circuit against both Shelton Brothers and River North. (2012 L 774)

COUNT VI

The Court finds in favor of River North and against Shelton Brothers on Count VI. River North proved by a preponderance of the evidence that Shelton Brothers breached the Distributor Appointment and Indemnification Agreement. (RN Ex. 73A) when it refused to indemnify River North for the attorney fees, costs and the settlement it incurred in defending 2012 L 774. That Agreement provided:

"4. **INDEMNIFICATION BY SUPPLIER** Shelton brothers shall defend, indemnify, and hold River North harmless from and against any and all losses, damages, settlements, judgments, and liability, including but not limited to reasonable attorney fees, costs and expenses, that River North may incur as a result of third-party claims by any other distributors claiming distribution rights to the Product, and any claims by third parties against River North relating to Shelton Brothers entering into this Agreement, making sales to River North or otherwise related to the relationship between Shelton Brothers and River North created by this Agreement or otherwise (including any tort action). In the event that River North is named in any action for which Shelton Brothers is obligated to indemnify, River North shall have the right to select its own counsel to defend any action (subject to indemnification of reasonable attorney fees as set forth above) and Shelton Brothers shall have the right to select its own counsel but at its own expense."

On July 6, 2012 Windy City Distribution Company filed suit in the 18th Judicial Circuit (2012 L 774) against Shelton Brothers and River North. The claims arose out of the termination of Windy City as the exclusive distributor for Shelton Brothers. Shelton Brothers entered into an exclusive distribution agreement with River North for the same territory and brands. In Count V of that Complaint, Windy City alleged that River North committed tortious interference with a contract and in Count VI, Windy City alleged that River North committed tortious interference with a prospective economic advantage. River North proceeded to defend itself, incurring costs and attorney fees. On January 7, 2016 the case against River North was dismissed pursuant to settlement. With the approval of Shelton Brothers, River North paid Windy City $20,000 in exchange for a release by Windy City of all claims against it.

River North sent notice in a letter to Shelton Brothers dated November 14, 2013. (RN Ex. 93) that it was seeking indemnification A "formal" notice of claim and demand for payment was sent March 3, 2014. (RN Ex. 94) Thereafter, a running tally of attorney fees was sent to Shelton Brothers. (RN Ex. 106). Shelton Brothers responded on March 17, 2014, through its attorney. Shelton Brothers stated that it was not honoring this obligation because River North had materially breached the agreement by selling its assets and ceasing to do business on December 31, 2013. (RN Ex. 95) Shelton Brothers now raises a different basis for denying the request for indemnification. It now states that the agreement to indemnify included an agreement that the indemnification would act only as a set-off to the amount River North was to pay to Shelton Brothers for the distribution rights. Shelton Brothers did not claim, at that time, that it was not honoring the obligation because River North and Shelton Brothers had a verbal understanding that indemnity would be paid only as a set off to River North paying Shelton Brothers for the exclusive rights to distribute Shelton Brothers' brands. The Distributor and Indemnification Agreement is

silent as to any obligation to pay Shelton Brothers for the exclusive distribution rights. Those rights were given to River North expressly in the Agreement without any requirement for payment. River North has not paid for those rights. Shelton Brothers has not made a demand that River North pay for those rights nor has it offered into evidence any email or written document requesting River North to pay for the exclusive distribution rights. One email from Mr. Birnbaum prior to signing the contract discussed a way to determine fair market value. However, no final calculation was ever agreed upon. That email did not state an agreed fair market value, a date for payment, or a set-off agreement. In fact, there is no written evidence of any agreement that the indemnification would only be paid as a set-off to the amount River North would pay for the exclusive distribution rights. As stated above, no hint of any agreement to pay for the exclusive distribution rights or discussion of an oral agreement for set-off was mentioned in the attorney's responding email. Once the Agreement was signed by both parties, there no oral agreement which changes the terms is enforceable. The Agreement is clear that all prior oral agreements have no effect and any post-verbal agreements are unenforceable. Any amendments must be in writing signed by the authorized representative.

Additionally, the claim by Shelton Brothers' attorney that River North materially breached the Agreement is without merit. Under sections 6 and 7 of BIFDA, a distributor has an absolute right to sell its assets and cease doing business. BIFDA provides for a method under which the substitute distributor is approved by the supplier. Therefore, as previously held by this Court, the sale of River North was not a breach of contract and not a defense to the indemnification provision.

As an affirmative defense, Shelton Brothers claims that River North waived its right to indemnification. Mr. Shelton testified that he had a phone conversation with Mr. Birnbaum of River North the day after the Agreement was signed and asked if he was going to hold Shelton Brothers to this provision. Mr. Shelton alleges that Mr. Birnbaum stated that River North would not hold Shelton Brothers to the indemnification provision. Mr. Birnbaum denied Mr. Shelton's statement and affirmatively testified that he did not tell Mr. Shelton that River North would not hold Shelton Brothers to the Agreement.

Parties to a contract have the power to waive provisions placed in the contract for their benefit and such a waiver may be established by conduct indicating that strict compliance with the contractual provisions will not be required. *Harrington v. Kay* (1st Dist.1985), 136 Ill.App.3d 561, 563–64. An implied waiver of a legal right may arise when conduct of the person against

whom waiver is asserted is inconsistent with any other intention than to waive it. 136 Ill.App.3d 561, 564. Waiver is either an express or implied voluntary and intentional relinquishment of a known and existing right. *National Tea Co. v. Commerce and Industry Insurance Co.* (1st Dist.1983), 119 Ill.App.3d 195, 204–05, *appeal denied,* 99 Ill.2d 530. The determination as to what facts are sufficient to constitute waiver is a question of law. *Kitsos v. Terry's Chrysler–Plymouth, Inc.* (1st Dist.1979), 70 Ill.App.3d 728. An analysis of whether there was in fact a waiver of contractual provisions focuses on the intent of the non-breaching party. If he has intentionally relinquished a known right, either expressly or by conduct inconsistent with an intent to enforce that right, he has waived it and may not thereafter seek judicial enforcement. *Saverslak v. Davis–Cleaver Produce Co.* (7th Cir.1979) 606 F.2d 208, 213, *cert. denied,* 444 U.S. 1078, 100 S.Ct. 1029. A party to a contract may not lull another into a false assurance that strict compliance with a contractual duty will not be required and then sue for noncompliance. While nonaction by both parties constitutes a waiver and mutual negation of that particular provision, the rest of the contract remains in force where the parties, by their acts and statements, show that they consider the agreement to retain its vitality. *Life Savings & Loan Assn. of American v. Bryant* (1st Dist.1984), 125 Ill.App.3d 1012. See *Whalen v. K-Mart Corp*., 166 Ill. App. 3d 339, 343–44 (1988).

The evidence does not support a finding that River North expressly waiver of the indemnification provision. Mr. Shelton's testimony on this issue is not credible. Shelton Brothers did not offer an email or any other written communication confirming the telephone conversation. The email sent by Shelton Brothers dated March 17, 2014 as stated above made no mention of this alleged phone conversation or any oral agreement to not enforce the provision.

Additionally, it is not credible that sophisticated companies would sign an agreement with an indemnification provision if neither one expected Shelton Brothers to be bound by it. Both companies had lawyers representing them during the drafting of the Agreement. It is not a standard provision in a distributor contract. The terms of the indemnification provision were specifically negotiated. Both parties expected that Windy City would file a lawsuit if Windy City was not paid fair market value for its "distribution rights". River North was ready, willing, and able to pay Windy City fair market value which is the custom and practice in the industry. Shelton Brothers would not agree to allow River North to pay fair market value because Mr. Shelton held the opinion that Shelton Brothers should be paid for those rights. He maintained that upon termination for

cause, the contract would be terminated, and Windy City would not be entitled to fair market value from a subsequent distributor. Since Shelton Brothers would not allow River North to follow custom and practice, both knew that Windy City would sue both parties. It was Shelton Brothers fight. River North would enter into a distribution agreement only if Shelton Brothers agreed to the indemnification provision. It is incredulous that the day after signing the Agreement, River North would waive its right to enforce that provision. The only testimony or evidence in support of an express waiver is Mr. Shelton's testimony of the telephone conversation the day after the execution of the agreement. There is no email confirming this alleged waiver. In addition, the email notifying River North of Shelton's position denying indemnification, fails to mention waiver as a basis. (See its lawyer's email of March 17, 2014. RN Ex. 95)

Paragraph 9 of the Agreement (Ex. 73A) states:

"**ENTIRE AGREEMENT** This Agreement constitutes the entire Agreement between the parties, supersedes and terminates all prior oral and written agreements and understandings between the parties and is the specific Agreement between the parties. This Agreement is not incorporated into and made a part of any other agreement and shall be changed or modified only by subsequent written amendment executed by authorized representatives of the parties."

All prior oral discussions were superseded and merged into the written Agreement. Additionally, paragraph 9 of the contract states that the agreement can only be changed or modified by subsequent written amendment executed by authorized representative of the parties. A written amendment waiving or deleting the indemnification provision was not offered into evidence.

Waiver can be implied as a voluntary and intentional relinquishment of a known and existing right. (*Geier v. Hamer Enterprises, Inc.*, 226 Ill.App.3d 372 (1992). The Court finds no credible evidence of an express waiver. However, there may be an implied waiver. Parties to a contract may waive provisions placed in the contract for their benefit; such a waiver may be established by conduct indicating that strict compliance with contractual provisions will not be required. (*Whalen v. K–Mart Corp.*, 166 Ill.App.3d 339 (1988). An implied waiver may arise from either of two situations: (1) an unexpressed intention to waive can be clearly inferred from the circumstances; or (2) the conduct of one party has misled the other party into a reasonable belief that a waiver has occurred. (*LaVelle v. Dominick's Finer Foods, Inc.*, 227 Ill.App.3d 764 (1992). Whether sufficient facts have been presented to establish a waiver is a question of law. *Whalen,* 166 Ill.App.3d 339 (1988). See *Batterman v. Consumers Illinois Water Co.*, 261 Ill. App. 3d 319, 321(1994.)

The facts of the instant case do not establish either an expressed or implied intention to waive indemnification. The conduct of River North could not have misled Shelton Brothers. River North sent to Shelton Brothers a "formal" notice that it was relying on indemnification as well as the amount of the attorney fees as they were accruing during the litigation. (March 3, 2014) Invoices of the amount of attorney fees accruing were sent to Shelton Brothers on a regular basis. (Beginning 11/14/13) River North sought and received the approval of Shelton Brothers to settle with Windy City. These are not the actions of a party that misled the other party into assuming that it would not seek indemnification for the Windy City litigation. The Court does not find an implied waiver of the right to seek indemnification.

The last defense raised by Shelton Brothers to indemnification is that the Agreement terminated by operation of law when River North sold all its assets on December 31, 2013 and could no longer perform its obligations under the contract. It argues that there is no provision in the Agreement that specifically states that the Indemnification provision survives termination of the Agreement. Shelton Brothers offers no case law to support this argument. A right that has accrued under a contract remains enforceable after the termination of the contract. *Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 82. Since the right to indemnification is separate from the obligation to buy and sell the Shelton portfolio of craft beer and such right had already accrued by December 31, 2013, it survived the termination of the Agreement.

For all the above stated reasons, the Court finds in favor of River North and against Shelton Brothers on Count VI. It further finds that River North is entitled to a judgment on Count VI in the amount of $92,552.68 for attorney fees incurred in the Windy City litigation, plus $20,000 it paid in settlement, for a total of $112,558.62 plus costs for this litigation.

COUNT III

In Count III, River North claims that Shelton Brothers violated the Beer Industry Fair Dealing Act, 815 ILCS 720/1.1 et. seq. (hereinafter referred to as BIFDA) by failing to approve its successor distributor, Lakeshore Beverage. It further claims that Shelton Brothers did not act in good faith as custom and practice required it to name a preferred successor distributor or pay River North the fair market value of the exclusive distribution rights.

Under BIFDA, River North is defined as a wholesaler. It distributes beer to retailers who then sell to consumers. Shelton Brothers is defined as a master distributor which sells to wholesalers. Under paragraph 5 of section 1.1 of BIFDA, a "Master Distributor" means a person who, in addition to being a wholesaler, acts in the same or similar capacity as a brewer or outside seller of one or more brands of beer to other wholesalers on a regular basis in the normal course of business. Additionally, a master distributor is defined as a brewer under BIFDA. 815 ICS 720/1.1 BIFDA is incorporated into every agreement between a wholesaler and brewer. 815 ILCS 720/2

At the heart of this dispute is Section 6 which provides:

"§ 6. Transfer of business assets or stock. (1) No brewer shall unreasonably withhold or delay its approval of any assignment, sale or transfer of the stock of a wholesaler or all or any portion of a wholesaler's assets, wholesaler's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling wholesaler, including the wholesaler's rights and obligations under the terms of an agreement whenever the person or persons to be substituted meet reasonable standards. …." 815 ILCS 720/6

Two threshold issues are thus presented to the Court for decision. First, did Lakeshore Beverage meet reasonable standards? Second, if Lakeshore Beverage met reasonable standards, did Shelton Brothers unreasonably withhold its consent?

The parties have a difference of opinion as to the interpretation of this statute. River North is of the opinion that the term "reasonable standards" means that the successor wholesaler must meet reasonable standards in the industry for wholesalers in general. Shelton Brothers is of the opinion that the correct interpretation is that the successor must meet Shelton Brothers' unique reasonable standards for distribution of its portfolio of extremely high-end, expensive, esoteric craft and import beers. It argues that its portfolio requires knowledge, enthusiasm and focus so unique that only a small distributor with a specialized hand-sell technique will be able to successfully place its beer within the appropriate retail market. On the other hand, Shelton Brothers also argues that its brands sell themselves.

The first step in this analysis is to determine the definition of "reasonable standards" as used by the legislature in section 6. There are no cases that address this issue. Therefore, one would first look at section 1.1 to see if that term is defined. The closest definition listed states:

"(11) "Reasonable standards and qualifications" means those criteria applied by the brewer to similarly situated wholesalers during a period of 24 months before the proposed change in manager or successor manager of the wholesaler's business."815 Ill. Comp. Stat. Ann. 720/1.1

This definition does not apply directly to section 6, but it does give some guidance to the Court as to how the legislature viewed this term. The cardinal rule of statutory construction is to ascertain the intent of the legislature. *Murray v. Chicago Youth Center,* 224 Ill.2d 213, 235 (2007). Legislative intent is best gleaned from the words of the statute itself, and where the statutory language is clear and unambiguous, it is to be given effect. *General Motors Corp. v. State of Illinois Motor Vehicle Review Board,* 224 Ill.2d 1,13, (2007). One of the fundamental principles of statutory construction is that words and phrases should not be viewed in isolation but should be interpreted so that terms are not rendered superfluous. *Land v. Board of Education of the City of Chicago,* 202 Ill.2d 414, 422 (2002) *Grant Importing & Distrib. Co. v. Amtec Int'l of N.Y. Corp.,* 384 Ill. App. 3d 68, 72, 892 N.E.2d 1134, 1137 (2008)

While the above definition of reasonable standards and qualifications refers to a successor manager, it does act as a guide to this Court that neither the proposed definition of River North nor Shelton Brothers is correct. This Court finds that "reasonable standards" as used in section 6 must be defined by not only those utilized in the industry in general, but also within the context of those applied by the brewer. The legislature chose to use the term "substitute" when referring to the new wholesaler. Thus, it appears to this Court that the meaning of the section is that the successor wholesaler is considered under the lens of being a substitute for the out-going wholesaler. When considering whether to approve or not approve the assignment of the Agreement, this is not the time for the brewer to adopt new standards for its wholesaler. The assignee wholesaler is indeed a substitute for the outgoing wholesaler. The standards applied by a brewer in selecting a distributor must be consistent, not only with the industry standards, but may also be defined by any unique needs of the brewer. However, those standards must have been utilized by the brewer in at least the last 24 months in selecting its distributors. In analyzing whether the substitute wholesaler meets the brewer's reasonable standards, the Court must determine whether the brewer is consistent when it applies its definition of reasonable standards to the new distributor. Were those standards the same as utilized in the preceding 24 months and were those claimed standards consistent within the industry reasonable standards? When considering the substitute wholesaler, this is not the time to find the "best fit" or decide to change standards. If the supplier wishes to go in a new direction,

the supplier has the option of naming an alternate wholesaler which will then pay the out-going distributor fair market value for the distribution rights. Naming an alternate distributor demonstrates the suppliers' good faith.

The evidence demonstrates that there is an industry method of determining whether the assignee wholesaler meets reasonable standards. There are generally five criteria that a brewer will consider when determining whether the assignee wholesaler meets reasonable standards. Those criteria include ownership of the distributor (does it have the capital to fund the business), management team, (does it have a track record of success), organization (whether it has sufficient organization and staffing to reach retail markets), selling system (does it have a compensation package that ensures the goals are achieved) facilities and equipment, (does it have trucks, warehouse and refrigeration space).

Dan Shelton testified that his reasonable standards for selecting distributors for the Shelton Brothers portfolio are limited to knowledge, enthusiasm, and focus. He requires a wholesaler to have knowledge about his portfolio so that the sales team can educate the retailer about his brands. He also looks for enthusiasm in selling and drinking esoteric, elegant, and high-end craft and import brands. His dream wholesaler is totally focused on selling the Shelton Brothers portfolio. This Court is not tasked with deciding which is the best type of wholesaler for Shelton Brothers. Nor is this Court required to determine what type of wholesaler would make a "good fit" for Shelton Brothers. Additionally, the Court is not required to choose between the parties' description of reasonable standards. The definition of "reasonable standards" as used in section 6 would include knowledge, enthusiasm, and focus. These are aspirational traits subsumed within the River North industry standards. As shown by Shelton Brothers' experience with Premier Beverage, La Resistance and MSV as distributors, the above stated qualities are not enough to successfully sell beer. A wholesaler cannot be successful without these qualities, but a business still needs capital, experience, management, and infrastructure. The Court finds that the "reasonable standards" as meant by the legislature is defined by the merger of the five criteria and Shelton Brothers' requirements of knowledge, enthusiasm, and focus.

Once we accept that both the industry standards and Shelton Brothers' standards are not mutually exclusive, we can determine whether Lakeshore Beverage met those standards. The evidence is clear that Lakeshore Beverage meets both industry reasonable standards and the standards of Shelton Brothers, i.e., knowledge, enthusiasm, and focus. Lakeshore was formed from

the acquisition of River North and City Beverage by CBT, an investment firm, and the Hand Family Companies. CBT had the capital and Hand had the experience, knowledge, enthusiasm, and focus. River North and City Beverage provided the infrastructure with warehouses, trucks, management and sales force. J.R. Hand, the CEO, is a third-generation wholesaler. Austin Sawyer provided the driving force and management of the craft division. Both were extremely credible and impressive witnesses. The top management and salespeople of River North transferred to Lakeshore Beverage. There is no credible evidence that as of December 31, 2013, Lakeshore did not meet reasonable standards as defined by BIFDA.

Mr. Owston, River North's expert witness, was extremely credible. He explained what the industry looks for when transferring to a wholesaler. Not only was his testimony based on years of experience in the industry, but it was also logical. One cannot succeed in any business without capital, excellent management, knowledgeable sales staff, warehouses to store the beer and trucks to deliver it. After reviewing all the information on Lakeshore Beverage, Mr. Owston concluded that it met the reasonable standards in the industry.

Bob Collins, the President of Windy City, testified that it predominantly sold craft beer in the Chicago area. Windy City had previously sold the Shelton portfolio until Shelton Brothers terminated it in favor of River North. Thus, Mr. Collins was familiar with the Shelton portfolio. He was also familiar with Lakeshore Beverage as a very formidable competitor. In his opinion, Lakeshore Beverage met reasonable standards to sell Shelton brands.

Mr. J.R. Hand is the President and CEO of the Hand Family Company. Mr. Hand is a third-generation wholesaler of alcoholic beverages. He described the process of acquiring River North and City Beverage to form Lakeshore Beverage. The Director of Craft & Imports for Lakeshore Beverage is Austin Sawyer. In 2014 Lakeshore had five warehouse, 140 delivery trucks and some 300 people in sales. The sales reps would call on 8-20 accounts per day. The Hand Family Company entered into the craft business in 2006. When Lakeshore was started, the Hand Family Companies understood that it needed the capital to make the business successful. CBT entered into the deal with its $500,000,000 for investment into Lakeshore. Mr. Hand's acquisition team reached out to Dan Shelton to discuss what Lakeshore could provide for his portfolio. Mr. Shelton never took the call. When Shelton Brothers refused to approve the sale of its brands to Lakeshore, the purchase price of River North was reduced by $540,554. This amount was not designed to be fair market value, but only a way to uniformly come to a number on any suppliers who did not approve.

The contract called for a multiple of 3 times gross profit on the reduction in purchase price for all suppliers who did not approve the in-coming distributor. Mr. Hand further testified that in 2014, Lakeshore had 10 salespeople who were specialized in selling craft beer. Every sales representative can sell any beer that Lakeshore carried. The evidence is clear that Lakeshore had the knowledge, enthusiasm, and focus to sell Shelton Brothers portfolio of craft beer. Not only did it meet Mr. Shelton's standards, but it met Mr. Owston's industry standards. It had the ownership and capital. It had the management team to deliver results. It had the organization and staffing to reach the retail market. Its compensation practices ensured successful selling of craft beer. Finally, it had the warehouses and trucks to store and deliver the beer it purchased for sale to retailers. The Court finds that Lakeshore Beverage met reasonable standards.

The next issue is whether Mr. Shelton unreasonably withheld approval. Mr. Shelton testified that he withheld approval because any AB-InBev or Miller/Coors house cannot successfully sell his esoteric craft and import beers. He testified that these types of wholesalers are so involved with selling the domestic premium beers, that they have no incentive to sell his portfolio. He also claims that these types of wholesalers are involved in getting the right to sell brands and then burying them so there is no competition from the craft side. This is called brand collection. There is no evidence that Lakeshore Beverage was or is involved in brand collection. Under Illinois law there is no practical way for a wholesaler to acquire brands and then bury them without effecting its financials. In order to acquire the right to exclusively distribute a craft portfolio, typically the wholesaler would buy those rights from the prior wholesaler. Thus, the wholesaler has made a capital investment. The purchase is based on the fair market value of those rights. This is usually based on gross profits for the trailing 12 months times a multiple. This multiple can be anywhere from 3 to in excess of 10. The wholesaler has invested significant money into acquiring a portfolio. If the purpose is to kill the sales of the portfolio, the brewer, which necessarily would be less than 10% of the wholesaler's business, can terminate the contract and pay the wholesaler the last 12 months gross profits times a multiple. If the wholesaler has not sold any of the portfolio, the brewer would be able to buy back its rights for $0. The wholesaler loses its investment. There is no evidence of brand collecting by the Hand Family companies or Lakeshore Beverage.

Mr. Shelton's next reason for not wanting to do business with an AB-InBev or Miller/Coors house is that he claims the "at risk" compensation for the sales staff is based on volume, not pricing.

Since the portfolio is small in volume, high in price, Mr. Shelton believes that the Shelton portfolio cannot compete with the premium domestic beer sales. Mr. Shelton did not ask Lakeshore Beverage how it compensated its craft beer salespeople. Austin Sawyer testified that he is Lakeshore Beverage's Sales Director of Import and Craft. Import and craft beers is the majority of the business. His primary responsibilities are to oversee the wholesaler/supplier day to day relations. That starts with business planning at the end of each year to set forth goals to achieve throughout the year. He makes sure that goals of both the wholesaler and the supplier are met and have reasonable commitments behind them to achieve mutual success. He manages only import and craft beers, along with some seltzers. His department does not sell domestic premium brands such as Bud, Bud Light, Michelob Ultra. The craft division is headed up by Ted Champion, a former River North employee. The division includes an 8-10-person sales force which focused on selling only craft brands. Five to six of the craft brands that he sells are owned by AB-InBev. Mr. Austin testified that Lakeshore is not a commission-based company. They do have monthly bonuses based on all craft package pods. Mr. Austin agreed that the sales force must be well versed in all the products. The goal is to sell every brand.

Mr. Shelton did not contact Mr. Hand or Mr. Austin during the vetting process to find out Lakeshore's plans to sell craft beer, its method of compensating its sales force, or how it would sell Shelton Brothers portfolio. Based on evidence, Lakeshore management clearly had all the qualities (focus, enthusiasm, and knowledge) and it had the infrastructure to be successful at selling craft and import beer. It had the ability to sell the Shelton Brothers portfolio. Considering all the evidence, the Court finds that River North has proven more probably true that not that Lakeshore Beverage met reasonable standards as defined by BIFDA.

The next issue for the Court to determine is whether Shelton Brothers unreasonably withheld approval of the assignment of River North's contract to Lakeshore Beverage. BIFDA contemplates situations where a substitute wholesaler may meet reasonable standards, but for a viable commercial reason, the supplier still withholds its consent. A perfect example would be if Windy City had been the proposed substitute wholesaler. Shelton Brothers could reasonably withhold its approval as the parties were in litigation. Shelton Brothers notified River North that it was withholding consent to the assignment of its contract to Lakeshore Beverage for the following reason:

"Given the ownership of our "distribution rights" in the Chicago area, and even the question of whether any such rights exist, are the core issues in the litigation to which Shelton Brothers and River North are both parties, Shelton Brothers cannot consent to the proposed transfer of any such "rights" from River North to the Hand Family Companies, as described in River North's letter to us dated October 31, 2013. Please note that our objection to the proposed transfer on these grounds does not waive any other objections we might have." (RN Ex. 92)

It should be noted that the Distributor Appointment and Indemnification Agreement (RN Ex. 73A) appointed River North as the sole and exclusive marketer, promoter and distributor for the Territory for the Products specified in Exhibit A. Exhibit A is blank. Based on the Registration statement and the actions of the parties, it is clear what brands were included in the Shelton portfolio. Based on the Agreement, there was no dispute between Shelton Brothers and River North as to which wholesaler held the exclusive rights. The Complaint filed by Windy City did seek reasonable compensation under BIFDA for the wrongful termination of its relationship with Shelton Brothers. However, the fact that there was litigation pending concerning the distribution rights, if any, of Windy City is not a reasonable basis to fail to consent to the assignment of the contract to Lakeshore Beverage. At the time of the refusal, River North was not being sued for failing to pay Windy City FMV for the rights. It was being sued in two counts for tortious interference. Even if the Complaint was amended to make a claim that Windy City was entitled to be paid by River North, Shelton Brothers had agreed to indemnify River North. Shelton Brothers may have been at risk for refusing to allow River North to pay Windy City FMV for the distribution rights, but that risk would not be impacted by a transfer of those rights from River North to Lakeshore Beverage. If Shelton Brothers was found to have improperly terminated Windy City, BIFDA would require an award of reasonable compensation. However, BIFDA does not provide for the award of distribution rights. At the time of the December 30, 2013 letter, Shelton Brothers had awarded River North the exclusive distribution rights to the Shelton portfolio by the Distributor Appointment Agreement. No potential outcome of the Windy City litigation could impact the Agreement.

Approximately, six months after rejecting Lakeshore Beverage, Shelton Brothers engaged MSV to distribute its portfolio of brands. The Windy City litigation was still pending. No concern was expressed by Dan Shelton in June of 2014 that Shelton Brothers could not retain a distributor because of ongoing litigation. This lack of concern is persuasive evidence that even the reason expressed for the non-consent by Dan Shelton was specious. Nothing had changed in the Windy

City litigation by June of 2014 to free Shelton Brothers to engage another distributor. Nothing in the Windy City litigation impacts River North's distribution rights. The litigation may result in an award of damages to Windy City. Whether that damage award would be entered against Shelton Brothers, River North, or both, in December of 2013, Shelton Brothers would have to pay the award based on the Agreement to indemnify River North. The Court finds that the Windy City litigation was not a reasonable basis upon which to refuse to consent to the transfer of the distribution rights to Lakeshore Beverage.

That finding does not end our analysis. The letter also stated that while Shelton Brothers provided an explanation for its non-consent, the stated reason "does not waive any other objections we might have". Shelton Brothers was trying to keep its options open should it find another reason to refuse. While BIFDA does not require that a non-consenting supplier state all its reasons in writing, the fact that a reason is not stated is evidence that it did not exist at that time. Shelton Brothers now claims that the reason that it did not approve is because Lakeshore Beverage is an AB-InBev distributor. In Dan Shelton's opinion, no Ab-InBev house can successfully sell his brands because the sales model is not geared to selling low volume, high-end, expensive craft beer.

Shelton Brothers did not object to the assignment to Lakeshore Beverage on the basis that it was an AB-InBev wholesaler. If that fact was of importance at the time, it would have been easy to convey that objection. The use of the words "might have" signifies a possibility or an uncertainty. It means that Shelton Brothers did not have any other objection to the assignment at that time but might acquire one in the future. Mr. Shelton testified that he has spent considerable time and effort to terminate his relationships with Ab-InBev houses because the sales staff does not focus on selling his craft and import beers. His is of the opinion that his portfolio cannot compete with the premium domestic beers in compensating sales staff or providing marketing materials. Mr. Shelton maintains that it was reasonable for Shelton Brothers to decline to enter into a wholesaler relationship with Lakeshore because the sales staff would not be able to provide the Shelton portfolio with the focus, enthusiasm, and knowledge to make it a successful endeavor.

This might be a reasonable position for Shelton Brothers' to take on why it did not consent to Lakeshore if not for two persuasive pieces of evidence. The first is that Shelton Brothers failed to object to the assignment from River North to Lakeshore based on the fact it was an AB-InBev house. The non-consent letter never raised that as an issue. The failure to mention its status as an AB-InBev distributor is persuasive evidence that AB-InBev representation was not a factor in the

decision of Shelton Brothers. The other persuasive evidence is that River North was an AB-InBev house. In fact, when Dan Shelton met Phil Birnbaum, River North was just starting its craft division. During the time that River North distributed the Shelton portfolio, River North's sales were 80% Ab-InBev products. Shelton Brothers terminated Windy City, a totally craft and import beer wholesaler, in order to go with River North, an AB-InBev distributor. Dan Shelton's testimony that he had had been trying to extricate Shelton Brothers from wholesalers who also distribute premium domestic beer rings hollow. He left an independent craft beer distributor to go to an 80% AB-InBev distributor. Shelton Brothers stayed with that distributor until the sale to Lakeshore Beverage. If he was dissatisfied with the sales of River North because it was focusing on its AB-InBev products, Mr. Shelton could have taken action to terminate the Agreement under the 10% rule in BIFDA. He could have included the AB-InBev status of Lakeshore Beverage in his letter. No evidence was offered by Shelton Brothers that it was dissatisfied with the performance of River North because it was an AB-InBev house or that Shelton Brothers would not and did not contract within the last 24 months with any wholesaler who handled the premium domestic beers. It could not have offered that evidence since River North fit that profile and so did the Sheehan family of distributors which handled the Shelton portfolio on the east coast during this time period.

Shelton Brothers called two experts to support its position. Spencer Noakes, a wholesaler from the east coast, testified from the point of view of an independent craft wholesaler. Mr. Noakes started a company called Remarkable Liquids. Remarkable Liquids is the Shelton Brothers distributor in New York and surrounding territory. Adam Vavrick, a former buyer for one of the Binny's Beverage Depot stores, testified from the viewpoint of a retailer.

Spencer Noakes has a long history with Shelton Brothers. Mr. Noakes initially started small craft distributor called Premier Beverage. He sold that business to L. Knife & Sons because the business was not making a profit. He then went to work for L. Knife & Co., a large premium domestic beer distributor which was part of the Sheehan family business. L. Knife & Sons did not have a craft division. After he started employment there, he convinced Dan Shelton to sign with L. Knife & Sons. When Mr. Noakes left L. Knife & Sons, he again started an all craft distributorship. After two years, he convinced Shelton Brothers to sign with Remarkable Liquids. As a result of litigation, Remarkable Liquids paid L. Knife & Sons for the distribution rights to Shelton Brothers brands. He was exceedingly enthusiastic about distributing Shelton Brothers and,

naturally, is of the opinion that only an independent craft distributor has the focus, enthusiasm, and knowledge to distribute the type of portfolio that Shelton Brothers represents. Remarkable represents the Shelton Brothers portfolio over the entire state of New York. Thus, a significant factor in Remarkable's continued success is the relationship between Remarkable Liquids and Shelton Brothers. Mr. Noakes is of the opinion that a craft only distributor is the best fit for Shelton Brothers. His opinion is that the Shelton portfolio contains the highest quality, most rare, and expensive craft beer and takes the most time and attention to sell. The sales needs of high-end craft beers are different than premium domestic beers. There is a different skill set to selling esoteric craft beer. The distributor's sales staff need a level of knowledge, passion, and focus to sell the type of craft beer carried by Shelton. The target is exclusively the consumer of high-end craft beer.

In 2013 Shelton Brothers was exclusively distributed in New York by L. Knife & Sons. L. Knife & Sons was an Ab-InBev distributor as well as a distributor of craft beers. It was not until November of 2014 that Shelton Brothers left L. Knife & Sons for Remarkable Liquids. Remarkable Liquids was two years old by then. Thus, in 2013 when Shelton Brothers objected to the assignment of the River North distributor Agreement to Lakeshore Beverage, allegedly on the basis that Lakeshore was an Ab-InBev house, in the prior 24 months, the Shelton Brothers portfolio was distributed in New York by L. Knife & Sons, an Ab-InBev house, as well as in Chicago by River North, an Ab-InBev wholesaler.

Spencer Noakes testified that in his opinion distributors that are geared to high volume sales cannot successfully sell craft beers because they do not have a sales model compatible with high-end expensive craft and import beers. He is also of the opinion that market penetration is not important for high-end craft beers. He testified that the number of retailers a distributor places the brands does not matter. One needs the right retailer to get the sales. Mr. Noakes further testified that it is vitally important that Shelton Brothers brands not be with a cannibalistic distributor. In his opinion, it is reasonable for Shelton Brothers to rule out a distributor that handles Ab-InBev or Miller/Coors products. Mr. Noakes admitted that he has staked his whole career on convincing craft brewers to sign with an all craft distributor. He also is of the opinion that it is reasonable to choose not to sell in the market if there is no craft-only distributor to choose. This means that in Mr. Noakes opinion, if a supplier cannot find a small independent craft distributor similar to Remarkable Liquids, then it is better to sell no beer in that market. He would advise brewers to skip the market if there is no right distributor. If one were to accept that premise, that would mean

that no craft beer would be sold in the Chicago Metropolitan market. No one in Chicago and its suburbs would be able to buy any craft beer. Mr. Noakes agreed that Chicago is an important market. He agreed that it was a big market. The Court does not accept the premise that it is better to sell no craft beer if a supplier cannot find the perfect craft distributor. The craft beer drinkers of the Chicago area would not accept that premise either. That suggestion is just not good business. Nor is it required under BIFDA. If a distributor is not selling a supplier's beer in sufficient quantities and that supplier makes up 10% or less of the distributor's business, the supplier can terminate the contract without cause, pay the distributor the fair market value of the distribution rights, and find another distributor which will be more successful. There is no viable business reason to pull out of the Chicago market based on the belief that there are no distributors who can sell craft beer.

Mr. Noakes testified that it is not unreasonable to decline to consent to transfer the Shelton Brothers brands to an AB-InBev house. He is of the opinion that a macro-volume distributor cannot meet the needs of the Shelton Brothers portfolio. However, Mr. Noakes has no opinions about Lakeshore itself. Mr. Noakes did not read the depositions of Mr. Hand, Mr. Birnbaum, Mr. Champion or Mr. Sawyer. He has no knowledge of Lakeshore's ownership, management, sales staff, compensation protocol, or craft beer division. He expressed no opinion whether Lakeshore Beverage is capable of successfully selling the Shelton Brothers portfolio. His opinions are based on 20 years in the business and his experience with the Sheehans. He has no knowledge regarding how the Hand family does business. His opinions are not based on any specific facts in the instant litigation.

On cross-examination Mr. Noakes admitted that the Sheehan family distributors are his #1 competitor. Since they are a large premium domestic beer distributor that also sells craft, it defies logic that the Sheehans distributorships could be in competition with Remarkable Liquids since, according to Mr. Noakes, a large AB-inBev house cannot successfully sell craft beer.

From 2014 to 2017 Shelton Brothers was Remarkable Liquids' biggest supplier. It remains in the top five of its suppliers. Remarkable Liquids presently does not have a written distribution agreement with Shelton Brothers. Remarkable Liquids has 5200 retail accounts, 23 trucks, and recognizes the importance of warehouse space with refrigeration. Mr. Noakes agreed that the quality of the sales staff is important. He had no information on how many retail accounts Lakeshore has, the quality of its sales staff, its infrastructure, or ability to pay its suppliers for the

beer that it purchases. Mr. Noakes agreed that a supplier needs to investigate the quality of the sales staff of a proposed distributor. He agreed that the success of Remarkable Liquids is dependent on not only its knowledge, passion, and focus, but also the ability to deliver the beer to the retailer, the number and quality of the retail accounts it had, and the quality of the management team. His opinions that Lakeshore Beverage did not meet reasonable standards and that it was not unreasonable to reject Lakeshore as a distributor for Shelton Brothers portfolio is based solely on the fact that Lakeshore distributed Ab-InBev products. On the other hand, Mr. Noakes agreed that a meeting with management of the proposed distributor is important. Such a meeting gives the supplier the best possible information, combined with third-party sources, to determine whether a proposed distributor meets reasonable standards. Mr. Noakes had no opinion on whether Lakeshore lacked a focus, knowledge, or passion for craft beers, was brand collecting, or qualified for volume-based incentives from Ab-InBev. Mr. Noakes did not know Lakeshore's level of experience in craft sales or how it compensated its craft sales staff. Mr. Noakes did not know who the owners of Lakeshore were or if the Hand family owns Lakeshore. He did not know if Lakeshore prohibited the sale of craft beers that competed with Ab-InBev brands. He did not need to know any of these details because he paints all distributors of premium domestic beers with the same brush even though his only experience is with the Sheehan family. In Mr. Noakes' opinion is that any AB-InBev house cannot successfully sell high-end low volume craft and import beers. If one accepts the opinion of Mr. Noakes, it would be impossible for a Sheehan distributorship to be Remarkable Liquids' #1 competitor.

Mr. Noakes testified that the custom and practice in the industry when a supplier withholds consent is to name an alternative distributor and that alternative distributor pays the outgoing distributor fair market value for the distribution rights. Mr. Noakes agreed that his opinions are not specific to this case.

Since Mr. Noakes owns an all craft independent distributorship it is not surprising that his opinion in general is that his model of distributorship is superior to one that also sells premium domestic brands. His opinions, although no doubt honestly held, are not persuasive. Mr. Noakes did not review any information specific to Lakeshore. His opinions are not based on any information concerning Lakeshore other than it sold AB-InBev products. He equates Lakeshore with the Sheehan companies without knowing how each company compares to the other. Additionally, Mr. Noakes was unaware that River North was also an Ab-InBev house. He was

unaware that Lakeshore Beverage was formed by a sale of River North to RN Acquisitions and then a sale and merger of City Beverage to form Lakeshore Beverage under the ownership of CBT and the Hand family companies. Because he has no knowledge of Lakeshore, Mr. Noakes has no basis upon which to hold an opinion whether Lakeshore Beverage meets reasonable standards. His opinion is that any distributor that sells premium domestic beers cannot successfully sell craft beers. Mr. Noakes opinions do not bear up to scrutiny.

Adam Vavrick, a former beer manager for one of Binny's Beverage Depot stores, testified for Shelton Brothers as an expert on the retail side of the business. His job included buying beer for one store, designing the shelves, pricing the beer and going to marketing events. He met with distributors twice a week. He worked with at least 30-50 distributors. His experience as a buyer for a retail store is limited to one Binny's store. He bought craft beer from River North and later Lakeshore Beverage. Mr. Vavrick testified that from a retail perspective, every distributor is different. Some do a better job of selling than others. He purchased high-end low volume craft beer from Lakeshore similar to those brands in Shelton Brothers portfolio during 2014. In his opinion, compared to other distributors Lakeshore Beverage did an "ok" job of selling high-end low volume craft beer. He agreed that Shelton Brothers brands could be represented by a large Bud distributor. In 2014 Lakeshore had regular sales meetings to present the brands. It had split up the sales teams as to who was handling the brands and had a separate sales team for craft and import beers. He felt he was in constant contact with Lakeshore and found it frustrating to be dealing with two separate teams of sales staff, one for craft and import beers and one for AB-InBev products. He believed Lakeshore Beverage would not be a "good fit" with Shelton Brothers portfolio. He testified that Lakeshore would not be able to successfully represent Shelton Brothers brands. Mr. Vavrick did not describe the differences in detailing craft beers between a distributor which also sold AB-InBev products and one that only sold craft beer. He did not testify that he was not sufficiently informed of the craft beer carried by Lakeshore. In fact, Mr. Vavrick did not testify that he had any difficulty in buying high-end craft beer from Lakeshore.

On cross-examination, Mr. Vavrick testified that he has formed a company named Do Right Distributors which is attempting to break into the business. He left Publican, a restaurant, where he was a buyer, to form Do Right with CE Boxmover which is owned by Dan Shelton. Mr. Vavrick is the managing partner. Mr. Vavrick is still trying to get Do Right Distribution off the

ground with the help of Dan Shelton. Clearly, the business relationship between Mr. Vavrick and Dan Shelton impacts Mr. Vavrick's credibility.

When asked about the management at Lakeshore, Mr. Vavrick first testified that Ted Champion does not have the mindshare for brands. However, at his discovery deposition Mr. Vavrick testified, "I love Ted Champion. He is one of those people that has the mindshare for brands." He also testified in his deposition that Ted Champion is absolutely that kind of guy and that Ted Champion had a focus on the sale of craft beer. Mr. Vavrick was further impeached by his deposition testimony where he stated that if Lakeshore was representing Shelton Brothers portfolio, he would have bought those brands from Lakeshore. Mr. Vavrick agreed that just because a distributor is an AB-InBev or Miller/Coors house does not mean that it cannot be a successful craft beer distributor. Being an AB-InBev house, by itself, does not disqualify a distributor for craft beer. There would be a whole number of other factors. He agreed that Lakeshore had a separate sales staff for craft.

Since Mr. Vavrick is attempting to break into the distributor business with Dan Shelton, the Court does not view him as an unbiased or neutral witness. His experience as a buyer for a retail store and a restaurant give him a limited one-sided view. That view is from a retailer's perspective. This Court would have been interested in the differences between the sales presentation of an all craft distributor versus one which handled craft and Ab-InBev products. Another helpful discussion would have centered around whether it was more difficult to get the product from a small all craft distributor versus an Ab-InBev house. Did Mr. Vavrick ever have difficulty getting high-end craft brands that Binny's or Publican wanted to sell because the distributor was an Ab-InBev house? Did he have difficulty getting information from Lakeshore about any craft beer Binny's wanted to stock? None of these questions were addressed. An expert's opinion is only as persuasive as the underlying support for that opinion. While the fact that Mr. Vavrick is attempting to become a distributor with the help of Dan Shelton does not negate his opinions, it does color them. The fact that he found it frustrating to be detailed by a craft sales team and a premium domestic sales team from the same distributor, speaks volumes about his opinions. While on the one hand, he thinks a small distributor of craft beer is a "good fit" for Shelton Brothers, he does not want to be bothered or "hand sold" by the sales team for craft beers. Based on his testimony, Mr. Vavrick could have purchased any craft beer carried by Lakeshore without any obstacle if Binny's wanted to carry that brand. He failed to discuss any impediments put in

place by an Ab-InBev distributor to the purchase of a craft beer. Mr. Vavrick' s testimony is not persuasive on the relevant issues. Shelton Brothers position that it was reasonable to deny consent to the assignment because Lakeshore Beverage was an Ab-InBev wholesaler lacks credibility.

This is the bottom line. River North has the burden of proving that Lakeshore Beverage met reasonable standards. The testimony of Mr. Owston, Mr. Birnbaum, Mr. Hand, Mr. Sawyer, and Mr. Champion, and Mr. Collins proves that Lakeshore met reasonable standards. The five criteria testified to by Mr. Owston make perfect business sense. Lakeshore Beverage not only met but exceeded those five criteria. River North also demonstrated that Lakeshore Beverage had the staff to meet Shelton Brothers' requirements of knowledge, focus and enthusiasm.

River North also has the burden of proving that the Shelton Brothers unreasonably withheld consent to the assignment of the Distributor Agreement. River North has proved more probably true than not that Shelton Brothers unreasonably withheld consent when it sent its December 30, 2013 letter. Whether Lakeshore Beverage was a "good fit" or it was the best choice to distribute Shelton Brothers high-end low volume expensive craft and import beers is not the issue. BIFDA does not require that the substitute distributor be a "good fit" or that it be the best choice or even the preference of the supplier. All that is required is that it meet reasonable standards. If it does, then the supplier cannot unreasonably withhold consent. If Shelton Brothers did not feel that Lakeshore was not a good fit or not the best distributor for its portfolio, it could have easily named an alternate distributor. That distributor would have paid River North fair market value for its distribution rights. Instead, Dan Shelton had a point he wanted to make at the expense of River North and Windy City. His theory was that once Windy City was legally terminated, it would not be entitled to FMV for its distribution rights. That would then allow Shelton Brothers to charge River North for those rights. During this trial, Shelton Brothers made much of the fact that neither Windy City nor River North had paid for the exclusive right to distribute Shelton Brothers portfolio. It maintains that it is unfair for River North to be paid fair market value for Shelton Brothers' rights. In Dan Shelton's opinion, Shelton Brothers should be paid for those rights. The problem with this theory is that Shelton Brothers signed a contract with River North that awarded the exclusive distribution rights to River North in exchange for its agreement to use its best efforts to sell the portfolio within that territory. The Agreement did not require any payment from River North for those rights. BIFDA recognizes that those rights have value to the distributor who creates the market for the brands. Custom and practice in the industry recognizes the value of exclusive

distribution rights. Shelton Brothers could have put a price on those rights and made it part of the distribution contract. Nothing in BIFDA prevents that agreement. The Windy City litigation would have no impact on the sale of River North's assets to Lakeshore nor River North's right to be paid fair market value for the assignment of the Agreement with Shelton Brothers. Shelton Brothers refusal to give consent to the transfer of the Distributor Appointment Agreement to Lakeshore Beverage was not reasonable.

The non-consent letter of December 30, 2013 does not suggest that Lakeshore Beverage does not meet reasonable standards in the industry, Shelton Brothers standards of focus, enthusiasm, and knowledge, or that Shelton Brothers is refusing to consent because it does not want to be distributed by a AB-InBev wholesaler. The fact that the letter does not raise any of the above concerns is persuasive evidence that Shelton Brothers did not have those objections to Lakeshore when it refused consent. The Court finds that those concerns, first raised in this litigation, are pretextual and created after the fact to justify the refusal.

Eighteen months prior to the non-consent, Mr. Shelton terminated Windy City, an all craft distributor, to sign the Agreement with River North, an AB-InBev distributor. Further, at the same time, in New York, Shelton Brothers' distributor was L. Knife & Sons, an AB-InBev house. This evidence does not support Mr. Shelton's testimony that Shelton Brothers rejected Lakeshore Beverage because it was an Ab-InBev wholesaler.

BIFDA is silent on whether a supplier must provide its reasons for non-consent in writing. The Court has held that the reasons for the refusal need not be made in writing. However, when a non-consenting supplier states its reason for that non-consent in a writing, that letter is persuasive evidence as to what the true reason is for not consenting. These parties did most of their business by email. Neither before the non-consent letter or after is there any email objecting to Lakeshore Beverage on the basis that it is an AB-InBev distributor. In May of 2014, Lakeshore was still reaching out to Dan Shelton offering to distribute Shelton Brothers brands. If an agreement could be reached, Lakeshore was willing to pay River North for those brands. (RN Ex. 70) Dan Shelton did not respond by informing Lakeshore that he would not place his brands in an AB-InBev house. In fact, as late as June of 2014, Dan Shelton was still communicating with Austin Sawyer, the Craft Beer and Import Director of Lakeshore by email and stated:

"We can continue discussing, but the short take here is that it was very clear from your message that we are miles apart in our understanding of the situation. Things are quite tangled at this point, and I can't see how your giving money to River North (or whatever is left of it) helps

us in any way, especially in view of the fact that Windy City is still suing us, claiming the value of the very same "rights" that River North wants to sell to you - which neither of those parties ever paid for in the first place. Meanwhile we need to mitigate our damages resulting from River North's dropping its business with us, and send some beer into Chicago. We prefer to do that on an expressly time-limited basis with no strings attached. River North rejected that suggestion on behalf of Lakeshore when I brought it up back in December and January.
I'm back in the States on Wednesday, but can stay in touch by e-mail in the meantime and in general if you have any thoughts you want to share.
Best,
Dan" (RN Ex. 71)

This email from Dan Shelton demonstrates that Shelton Brothers was willing to allow Lakeshore Beverage to buy and distribute its brands. It wanted a time limited arrangement, which is a violation of BIFDA, and Shelton Brothers did not want Lakeshore to pay River North for those rights which is a violation of custom and practice. It's failure to approve Lakeshore had nothing to do with Shelton Brothers assessment whether Lakeshore met its or the industry's reasonable standards. Nor was the rejection because Lakeshore was an AB-InBev house. Further evidence of this is that Shelton Brothers acquiesced to Jolly Pumpkin's desire to keep selling beer in the Chicago market through Lakeshore Beverage. Tony Grant, CEO and CFO of Jolly Pumpkin knew that Dan Shelton had not agreed to Lakeshore Beverage representing the Shelton portfolio, but Jolly Pumpkin overruled that decision for Jolly Pumpkin. Mr. Grant testified that it was not in the best interests of Jolly Pumpkin to not be represented in the Chicago market. Jolly Pumpkin wanted to sell beer in the Chicago market and it seemed that there would be no difference going from River North to Lakeshore Beverage. Mr. Grant did not know why Mr. Shelton did not approve the sale to Lakeshore. Jolly Pumpkin requested Lakeshore to sell its beer over the objection of Dan Shelton.

Based on all the testimony and documents in evidence, the Court finds that the rejection of Lakeshore Beverage by Shelton Brothers had everything to do with Dan Shelton not wanting Shelton Brothers to be bound by the provisions of BIFDA and nothing to do with Lakeshore being an AB-InBev house. Strong evidence of this rejection of Illinois law is the contract that Shelton Brothers tendered to MSV in June of 2104. (SB Ex. 29-1) Mr. Silva could not remember whether he signed the agreement but admitted that Shelton Brothers tendered it to him. The MSV agreement violates BIFDA in that it is a temporary time limited agreement, it did not convey distribution rights, is not an exclusive agreement, Shelton Brothers was free to sell beer to any other distributor in the same territory and said sale could not be a basis for damages, payment was due in 30 days,

there would be no possibility of renewal, and the agreement stated that it would be governed by Massachusetts law. All those terms are a violation of BIFDA.

The Court accepts that under the right circumstances a master supplier of craft and import beers, such as Shelton Brothers, could reasonably decline to approve an assignment of its distributor contract to a large distributor of domestic premium beers and craft. We are not faced with those circumstances in the instant case. Shelton Brothers was already distributed by an AB-InBev house. It was not able to object to the substitute distributor on the basis that it, too, was an AB-InBev house. Additionally, if the objection was truly based on the distributor being an AB-InBev house, then the next reasonable step and one that custom and practice in the industry demands, is to name an alternate distributor. The fact that no alternate distributor was named by Shelton Brothers speaks to the fact that Shelton Brothers was more interested in challenging Illinois law than selling its portfolio in Chicago. When it finally did sell to a distributor, MSV, in June of 2014, it offered a contract which was a clear violation of the spirit and the law in Illinois. Further, MSV did not offer to pay River North for its distribution rights. Miguel Silva had just started MSV. He had no prior experience or training in the distribution of craft or any other kind of beer, only $10,000 in capital, no trucks, no sales staff, rented warehouse space, and clearly no knowledge of BIFDA. Eighty-five to ninety percent of its sales came from Shelton Brothers portfolio. Not surprising, Shelton Brothers terminated its agreement with MSV in 2019 after MSV owed a significant amount of money to Shelton Brothers. To owe Shelton Brothers money, MSV had to have bought beer from Shelton Brothers, but not sell it to retailers. Otherwise, it would not have owed hundreds of thousands of dollars to Shelton Brothers. During the time MSV distributed Shelton Brothers portfolio, MSV did not enlarge its rented warehouse space, did not purchase trucks, did not enlarge its sales staff above two employees. MSV had no expertise, experience, infrastructure, sales staff or capital to distribute craft beer. If MSV is an example of the standards required by Shelton Brothers of its distributors, Shelton brothers clearly had no standards, reasonable or otherwise.

While an AB-InBev house may not be the “best fit” for an elite, esoteric, elegant, and expensive portfolio of craft and import brews, the actions and words of Dan Shelton from 2011, when he was courting River North, through 2014 when he was still considering Lakeshore as a potential distributor, speak loudly that being an AB-InBev house was not an impediment to representing Shelton Brothers. Nor was being an AB-InBev house the reason that Shelton Brothers

rejected Lakeshore. Dan Shelton's objection was that he did not want River North to be paid for the fair market value of what he considered to be Shelton Brothers' "distribution rights". He did not want Shelton Brothers to be controlled by Illinois law and bound by another long-term contract which granted those distribution rights to yet another entity. Based on all the testimony and the documents admitted into evidence, the Court finds that Shelton Brothers unreasonably withheld its consent in clear violation of section 6 of BIFDA.

DAMAGES

Under Section 7 of BIFDA any brewer who unlawfully denies approval of any assignment, transfer, or sale of a wholesaler's business assets shall pay the wholesaler reasonable compensation for the fair market value of the wholesaler's business with relation to the affected brand or brands. Further under section 9(4) the Court may grant such relief as the Court determines is necessary or appropriate considering the purposes of this Act. Under section 9(5) the prevailing party shall be entitled to actual damages, all court costs, and attorney fees in the Court's discretion.

River North is seeking compensation for the fair market value of its business with relation to the exclusive distribution rights to sell the Shelton Brothers portfolio. It is asking the Court to award $1,713,224 as fair market value. In support of this request, River North presented the testimony of Ilhan Geckil, an expert is business economics. He has performed numerous business valuations in his career. In his early years, 40-50% of his work was business valuations. In the last 8 years, he has spent more of his time providing expert valuations that are litigation related. The custom and practice in the beer industry is to calculate the fair market value of distribution rights by taking the trailing 12 months gross profits of sales and then establishing a multiple to arrive at what a willing buyer would pay to a willing seller. This is not a business valuation because the assets, accounts receivables, etc. is not included as you would when valuing the business itself. The distribution rights do not affect the rest of the business. What creates value is consumer demand. The more consumer demand, the higher the multiple. In this case, Mr. Geckil was asked to determine the fair market value of the Shelton portfolio, minus Jolly Pumpkin, as of December 31, 2013. Mr. Geckil reviewed several documents in this case including the sales agreement between River North and R.N. Acquisitions. He reviewed the amount that R.N. Acquisitions would deduct from the sales price for any non-consenting suppliers. He also reviewed what multiple each non-consenting supplier or its alternative distributor paid to River North. River North was paid for

its distribution rights by an alternate distributor for every non-consenting supplier other than Shelton Brothers.

River North's gross profit on the sales of Shelton Brothers portfolio for the trailing 12 months was $175,715.30 excluding ciders and Jolly Pumpkin. In order to determine fair market value, one must determine what multiple a willing buyer would pay, and a willing seller would accept. The market area controls the multiplier. How valuable are the distribution rights? What is the growth potential? In 2013, craft beer distributors had growth potential. Distributors of premium domestic beer had little to no growth potential. The multiplier for an AB-InBev distributorship would be 1.5 because there is little growth potential. Craft beers, depending on the brands, have growth potential to support a multiple between 5 to 16. The RN sales contract assigned a multiplier of 3 for all craft suppliers. When Shelton Brothers refused to give consent, R.N. Acquisitions did not pay River North 3x gross profit. Mr. Geckil testified that non-consenting suppliers with a craft portfolio were generally purchased by the alternate distributor using a multiple of 3 to 8.989. In his opinion a reasonable multiplier for the Shelton portfolio would be 9.75. Mr. Geckil reviewed data concerning consumption of beer in the U.S. In 2012-2013 overall consumption of craft beer had increased 13% and in Illinois the increase was 10.6 %. The growth potential of the sale of craft beer affects the value of the distribution rights. In Mr. Geckil's opinion the growth figures support a multiple of 9.75%.

He next looked at actual transactions in the industry from 2010 to 2017. There was a high demand for craft beer, so this also creates value. Since this transaction occurred in Chicago area, he looked at the figures for Chicago. He also looked at the economy in 2013. He stated that it was back to normal. He felt that there was no need to adjust based on the economy. Therefore, after considering all the factors, Mr. Geckil testified that the fair market value of the distribution rights to the Shelton Brothers portfolio was $1,713,224 which is the sum of gross profit of $175,715.30 multiplied by 9.75.

Mr. Geckil testified that the 17 months that River North sold Shelton Brothers portfolio was not sufficient to determine growth rate of that portfolio. Therefore, he considered the growth rate of craft beers nationally, in Illinois, and Chicago. Mr. Geckil agreed that some craft beers grow in popularity and some disappear. He used an overall growth rate of craft beer in Illinois of 10.6%. Mr. Geckil is aware that Shelton Brothers had 118 suppliers with multiple brands. When looking at other sales across the country at around that time period, most of the multiples were

between 8-16. Mr. Geckil disagreed that since the agreement called for a multiple of 3 to be used in calculating the value of the distribution rights of any non-consenting supplier, that a multiple of 3 would be evidence of fair market value.

Shelton Brothers did not offer any expert to testify to the fair market value of its distribution rights.

Section 7 of BIFDA provides that when the Court finds a violation of Section 6, it shall award the fair market value of the wholesaler's business in relation to the affected brands. Fair market value is determined by what a reasonable buyer is willing to pay, and a reasonable seller is willing to accept when under no pressure. The custom and practice in the industry to determine fair market value is a simple formula of gross profits for the trailing 12 months times an agreed upon multiplier. The issue here for the Court to determine is the appropriate multiplier. The only expert to testify on this issue was Mr. Geckil, an eminently well qualified economist and expert in business valuation. However, the Court does not just accept his testimony, but must look at the basis of the testimony in relation to all the evidence. While Mr. Geckil looked at the trends of craft sales across the nation, in Illinois, and in Chicago to reach his opinion, he did not provide any evidence as to the trends of sales of the high-end, esoteric, elegant and expensive brands carried by Shelton Brothers. While that data might not have been available, it would have been of interest to see whether the sales of craft and import brands in Shelton Brothers portfolio had increased over the three to five years prior to the sale. Dan Shelton testified to all the difficulties Shelton Brothers had in selling their brands to their wholesalers across the nation. At and after 2014, Shelton Brothers has been in litigation across the nation to extricate Shelton Brothers from wholesalers who also sold premium domestic beer. The only reason to do that would be if the sales trends were going down, not up. He did not have success with his small independent craft distributors since the ones he discussed ended up owing hundreds of thousands of dollars to Shelton Brothers and those relationships were terminated. Mr. Geckil did not look at the sales trend for Shelton Brothers, so the Court does not have the benefit of his opinion specifically regarding Shelton Brothers sales trends. Because of that, Mr. Geckil's opinion that the multiplier for the Shelton Brothers distribution rights should be 9.75 is a mathematical average rather than an assessment of what a reasonable incoming distributor/buyer would pay a reasonable outgoing distributor/seller for the Shelton portfolio in Chicago. When reviewing the data provided by Mr. Geckil, it is apparent that one craft supplier is not the same as another craft supplier. The multipliers range anywhere from

3 to as high as 16 and all depend on the risk evaluation of the buyer. After having spent significant capital for the distribution rights, the buyer must believe that it can increase the sales to a point to justify the multiplier. This requires more than a mathematical averaging in the Court's opinion. The Court has available for analysis two data points that Mr. Geckil did not take into consideration. The first is that River North and Lakeshore agreed to a multiple of three to deduct from the sales price for a non-consenting supplier. While the actual amounts paid to River North by alternate distributors were all calculated using a higher multiplier except for one, this is still evidence that River North and Lakeshore, a willing seller and a willing buyer, determined that 3 times gross profit was fair market value for the purpose of the acquisition. The other data point is contained in the email from Phil Birnbaum to Dan Shelton dated May 13, 2012 (SB Ex. 39). At that time, the parties were talking about River North paying Shelton Brothers fair market value for the distribution rights. The problem was that neither party had the gross profit number. The suggestion by Phil Birnbaum was a payment to Shelton Brothers of 3x gross profits with a bonus of 3.5 to 4 based on actual sales by River North. No response was made by Dan Shelton to the suggested multiples. However, this is evidence of what River North calculated the fair market value to be in May of 2012. There is no evidence that the multiplier should be significantly increased by trends in sales between May of 2012 and December of 2013. Mr. Birnbaum was involved in many deals, both sales and purchases, before this transaction. His opinion of the fair market multiplier in 2012 is another piece of evidence for the Court to consider.

After reviewing all the evidence available, the Court finds that the appropriate multiplier to apply as of December 31, 2013 would be 4. The Court does not find persuasive that all multipliers used in the sale of a craft supplier should be averaged and then divided. The testimony has been that Shelton Brothers portfolio is unique. It consists of mainly European craft beers of low volume and expensive brands. The only supplier that is similar to Shelton Brothers would be Twelve Percent and that supplier carries domestic high-end craft. Twelve Percent was included in the same back out calculation using a multiplier of 3 if it had not consented. If the fair market value of the craft portfolios was as high as testified to by Mr. Geckil, it is hard to understand why Lakeshore Beverage would agree to using only a multiplier of 3. Additionally, the Shelton Brothers portfolio has a small market of high-end craft drinkers. The testimony was that the brands in the portfolio require hand selling and are more difficult to place than regular craft brews. On the other side of the coin, there was also testimony that the brands sell themselves. Whether the brands are

easy or difficult to sell, the consensus is that they have a small market of connoisseurs of high end, esoteric, expensive craft beers. From Mr. Shelton's testimony, it is difficult to find a wholesaler with the knowledge, enthusiasm, and focus which will increase sales of his brands. The Court does not find that the evidence supports the opinion of Mr. Geckil that a willing buyer and seller would agree to a multiplier of 9.75 for the Shelton Brothers' portfolio.

It is undisputed that the gross profit of River North for the sale of Shelton Brothers portfolio of brands for the trailing 12 months before the sale to Lakeshore Beverage was $175,715.30. When that number is multiplied by 4, the fair market value for the distribution rights granted to River North by the Distributor Appointment and Indemnification Agreement is $702,861.20. Based on section 7 of BIFDA, the Court awards River North $702,861.20 as reasonable compensation for Shelton Brothers violation of BIFDA. The prevailing party is also entitled to court costs. The Court awards to River North court costs and it may tender an affidavit outlining the court costs it wishes to recover.

Section 9 of BIFDA allows the Court to also award actual damages. River North has not requested actual damages. Even if they did, the actual damages would be the amount of money that was held back from the sale due to Shelton Brothers failure to consent. That amount was 3 times gross profit which is less than the award by the Court for fair market value.

Under Section 9, the prevailing party is also entitled to attorney fees at the discretion of the Court. Since this case was tried on only two counts of River North's counterclaim, Shelton Brothers may wish to contend that in some respects it is the prevailing party. Therefore, both parties may submit a Petition for Attorney Fees incurred as a result of defending or prosecuting those counts in which it prevailed.

Both parties are requesting that the Court award it a penalty pursuant to Section 9(7) for failing to act in good faith in this proceeding. Shelton Brothers claim that River North did not act in good faith by not paying Shelton Brothers for its distribution rights. There are two things wrong with this claim. First is that Section 9(7) allows the award of a penalty when a party does not act in good faith in the proceedings before the Court. Secondly, while it is clear there were discussions between Mr. Birnbaum and Mr. Shelton concerning River North paying Shelton Brothers for the distribution rights instead of Windy City, no agreement was reached. No amount was agreed upon, no time for payment was agreed and the Distributor Appointment and Indemnification Agreement was signed which granted River North exclusive distribution rights without payment. There was

no meeting of the minds regarding payment of River North to Shelton Brothers. Much is made by Shelton Brothers that neither Windy City or River North paid for the distribution rights and yet Lakeshore Beverage was willing to pay River North for those rights. Shelton Brothers assigned those rights to River North without payment to Windy City or Shelton Brothers. There is no evidence of bad faith by River North. Mr. Shelton was driving this deal and he choose the route he wanted to take. He cannot be heard to complain about what he created himself with full knowledge of the beer industry in Illinois and the laws that govern that industry.

Turning to River North's request for a penalty for the bad faith of Shelton Brothers, River North argues that Shelton Brothers acted in bad faith by unreasonably withholding consent. River North further argues that Shelton Brothers' refusal to consent, its refusal to pay the indemnification, and its protracted and continued litigation was in bad faith. River North argues that if Shelton Brothers had acted in good faith, it would have named an alternate distributor who would then have paid fair market value to River North. There would have been no need for litigation and River North would not have been embroiled in court for over 5 years. It would not have incurred legal fees nor been delayed in the payment of its distribution rights. BIFDA defines good faith in Section 1.1(10). That section states:

"'Good Faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade as defined and interpreted under Section 2-103 of the Uniform Commercial Code."

Section 2-103 of the Uniform Commercial Code states in part:

"(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade. 810 Ill. Comp. Stat. Ann. 5/2-103

River North maintains that Shelton Brothers did not act with honesty in fact and the observance of reasonable commercial standards because it defended this lawsuit on a specious and pretextual basis, i.e. that Lakeshore Beverage did not meet reasonable standards for a distributor of craft beer, that there were unique standards that Shelton Brothers used in entering into a distributor relationship (knowledge, enthusiasm, and focus) that Lakeshore did not have, and that it did not approve the sale because Lakeshore was an AB-InBev house. Further, Shelton Brothers had no legal basis to fail to pay indemnification. The Court agrees with River North's assessment. This litigation was unnecessary and was defended in bad faith. It was unreasonable not to pay the attorney fees, court costs, and settlement incurred by River North as a result of the Windy City

litigation. It was unreasonable for Shelton Brothers to deny consent of the assignment of the Agreement to Lakeshore without naming an alternate distributor. The reason for the non-consent stated in the letter of 12/30/13 was not reasonable. The later reasons were pre-textual and conceived after the fact. Reasonable commercial standards required Shelton Brothers to either name an alternate distributor or pay for the distribution rights itself. The many and multiple paragraphed affidavits filed by Dan Shelton during this litigation only increased the cost of litigation and delayed the final resolution. This pattern of obfuscating the issues continued before the trial by the presentation of multiple motions and during the trial by irrelevant questioning of almost every witness regarding, among other things, the differences between domestic premium beer, crafty beer and craft beer. The issues to be decided was not which is a better beer or where each beer falls on a spectrum of beers.

The Court finds that Shelton Brothers did not act in good faith as defined by BIFDA. River North should not have had to litigate the issues for over five years nor participate in an almost five-week trial. Because of the position maintained by Shelton Brothers and its actions throughout this litigation, the Court awards a penalty of $100,000 to River North and against Shelton Brothers. If Shelton Brothers desires to act as a master distributor/supplier in the State of Illinois, it must comply with the Beer Industry Fair Dealing Act.

For all the above stated reasons, the Court finds in favor of River North and against Shelton Brothers on Counts III and VI of its Fourth Amended Counterclaim. A judgment shall be entered incorporating and consistent with this opinion by separate order.

March 17, 2020

Circuit Judge Dorothy French Mallen