

FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES
AND TOBACCO,

Petitioner,

vs.

GOLD COAST EAGLE DISTRIBUTING,
LTD., d/b/a GOLD COAST EAGLE
DISTRIBUTING, LTD.,

Respondent.

DOAH CASE NO. 99-5306
DABT CASE NO. SA 68 980672
LICENSE NO. 68 00264
SERIES: JDBW

FINAL ORDER

This matter comes before the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (hereinafter referred to as "Division."), pursuant to Section 120.57(1) Florida Statutes, on August 8, 2000, in Tallahassee, Florida. The Recommended Order of the Administrative Law Judge issued June 15, 2000, is attached as App. A.

The Petitioner's exceptions to the recommended order were received July 6, 2000. Counter exceptions from the Respondent were received July 11, 2000.

The issue is whether Respondent violated Section 561.42(1) and/or (2), Florida Statutes:

Tied house evil; financial aid and assistance to vendor by manufacturer or distributor prohibited; procedure for enforcement; exception. --

(1) No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor

by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section.

(2) Credit for the sale of liquors may be extended to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made

With respect to the findings of fact and conclusions of law contained in the Recommended Order, Section 120.57(1), Florida Statutes, provides:

The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings

on which the findings were based did not comply with essential requirements of law.

Upon consideration of the Recommended Order, the exceptions received from Petitioner, counter exceptions received from Respondent, and the complete record of the case, the Division makes the following rulings, findings and conclusions:

Findings of Fact

1. Review of the record reveals that the findings of fact contained in the recommended order are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law. The findings of fact contained in the recommended order are thus accepted in this Final Order.

Conclusions of Law

2. The conclusion of law contained on page 4 at paragraph 11 in the Recommended Order is respectfully rejected. As stated in paragraph 10 of the Recommended Order, the Tied House Evil Act is intended to foster competition by preventing predatory trade practices. Respondent's arrangement for transfer and replacement of a competitor's brand went beyond acceptable trade practice. No provision in the law allows the barter system described in the recommended order. In fact, Rule 61A-4.045, Florida Administrative Codes promulgated pursuant to Section 561.42, Florida Statutes, requires completion of a sales ticket or invoice at the time of sale and delivery of malt beverages. While the Division does not seek to discipline the Respondent specifically with respect to this rule, the regulatory language must be considered to properly construe the statute being enforced. The requirement of an invoice upon delivery is a clear indication that money, rather than property, is the acceptable form of payment. In further support of this interpretation, the rule contains such language and phrases as "sold", "price charged" and "total price paid." In Astral Liquors v. Dept of Business Regulation, 463 So. 2d 1130 (Fla. 1985), the Supreme Court of Florida noted two exceptions to the general rule that the legislature should provide certain standards and guidelines when delegating discretion to an agency. These are when the subject of the statute concerns licensing and when the statute deals with the regulation of businesses which are operated as a privilege rather than as a right. This discretionary authority is particularly necessary where an agency regulates occupations that are potentially injurious to the public welfare. The court emphasized that the state may, within the exercise of its police power, regulate the sale and possession of alcoholic beverages as well as the conditions under which businesses selling alcoholic

beverages operate. Where legislature authorizes an agency to enforce a statute enacted under the police power, specific rules are not required to cover all conceivable situations that may confront the agency. In Astral, the court determined that if a licensee were able to sell or otherwise transfer a license before final action could be taken regarding the licensee's violation of the law, control of the licensing process could be easily circumvented. Similarly, if alcoholic beverages could be transferred among license holders without adequate bookkeeping, audit obligations or records, the ability to regulate the beverage industry would be severely compromised. The recommended interpretation of the Tied House Evil Act would allow undocumented barter payments and permit transactions never intended by the Legislature.

3. The courts have narrowly construed, rather than expansively interpreted, the Tied House Evil Act and its amendments. The fundamental intent of the Act is to prevent potentially corrupting economic influence upon and between otherwise independent vendors, distributors, and manufacturers of alcoholic beverages. This point was expressed by the Florida Supreme Court in Pickerill v. Schott, 55 So. 2d 716, 718 (Fla. 1951), wherein the Court confirmed that the purpose of the Act is to prevent as far as possible, by regulation, the integration of retail and wholesale outlets and to remove retail dealers in intoxicating liquors from financial or business obligations to wholesaler, with exception of ordinary credit for liquor sold. The basic aim of the Act, so the Court declared, is to prevent manufacturers and distributors from having any financial interest, direct or otherwise, in the business of any retail vendor. Pickerill, supra at 55 So. 2d 718. See also Mavhue's Super Liquor Store, Inc. v. Meiklejohn, 426 F.2d 142 (U.S. App. 5th Cir. 1970), Musleh v. Fulton Distributing of Florida, 2S4 So. 2nd 815 (Fla. 1st DCA 1971), and Castlewood International Corporation v. William Simon, 367 So. 2d 613 (Fla. 1979). In J.R. Hunter, Jr. v. W.L. McKnight, 86 So. 2d 434 (Fla. 1956), the court found, "The purpose of the Act is to prevent . . . a financial or business obligation from the vendor to the wholesaler. The very terms of the Act itself are susceptible to no other interpretation." See also Jax Liquors, Inc. v. Division of Alcoholic Beverages and Tobacco, 388 So. 2d 1306 (Fla. 1st DCA 1980), and Winn-Dixie Stores, Inc. v. Schenk Company, 662 So. 2d 1021 (Fla. 5th DCA 1995).

4. The expansive interpretation offered in the Recommended Order would subvert the intent of the Act, with the result that the Division would no longer have control over the regulation of alcoholic beverages. The original Beverage Act of 1935 was designed to cover regulation and taxation: "The liquor industry is one industry and the regulation and taxation of such an

industry are so closely related as to be, for all practical purposes, one and the same subject, and properly connected with the subject of the liquor industry." Pickerill, supra at 55 So. 2d 720. Allowing distributors to take property in lieu of cash (i.e., competitor kegs, or conceivably even sporting event tickets, airline tickets, lottery tickets, etc.) on a "fair market value" exchange basis, would impair the Division's ability to track purchases and sales of alcoholic beverages. The bartering of property as a payment method impedes the collection of both excise and surcharge taxes as mandated by statute, because there is no way to accurately audit a licensee's purchases or sales. The recommended interpretation of §561.42, Florida Statutes, does not reflect the intent of the Legislature in enacting the Tied House Evil Act, and is rejected in favor of the more reasonable conclusion that an undocumented barter system is disallowed.

5. Rejection of this critical conclusion requires rejection of the result contained in the Recommended Order. A violation of the Beverage Law occurred and an administrative fine is appropriate in this matter.

ORDER

6. Respondent is hereby ORDERED to pay a civil penalty of \$1000 within 30 days for violation of Section 561.42(1),(2), Florida Statutes. Payment in full is to be received on or before September 25, 2000, and may be made at the Division of Alcoholic Beverages and Tobacco; Building E, Suite 4; 1748 Independence Boulevard; Sarasota, FL 34234.

DONE and ORDERED at Tallahassee, Florida, this 18th day of August, 2000.

RICHARD E. TURNER, Acting Director
Division of Alcoholic Beverages and Tobacco

This Order of the Director of the Division of Alcoholic Beverages and Tobacco will become final unless judicial review is initiated within 30 days of the date of rendition. The rendition date is the date the Order is filed by the Agency Indexing Clerk. Judicial review may be commenced by filing an original Notice of Appeal with the Clerk of the Division of Alcoholic Beverages and Tobacco and a copy, accompanied by filing fees prescribed by law, with the appropriate District Court of Appeal, pursuant to Section 120.68, Florida Statutes and Rule 9.110, F.R.A.P. A transcript of the informal hearing may be obtained upon written request received no later than 60 days from the rendition date of this Order.

Service to Respondent: At business address by certified mail
#7000 0600 0021 6796 8752

By: _____ Date: _____

Copies Furnished to:

John Saputo, President
Gold Coast Eagle Distributing, Ltd.
2150 47th Street
Sarasota, FL 34234

Bureau of Law Enforcement

Enforcement District Supervisor

District Licensing Office

Bureau of Audit Operations

DOAH

Miriam Wilkinson, Assistant General Counsel
Department of Business and Professional Regulation