

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF ALCOHOLIC )  
BEVERAGES AND TOBACCO, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 99-5306  
 )  
GOLD COAST EAGLE )  
DISTRIBUTING, LTD., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Sarasota, Florida, on April 24, 2000.

APPEARANCES

For Petitioner: Ralf Michels  
Assistant General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: John Saputo, President  
Qualified Representative  
Gold Coast Eagle Distributing, Ltd.  
2150 47th Street  
Sarasota, Florida 34234

STATEMENT OF THE ISSUE

The issue is whether Respondent, as a licensed distributor of alcoholic beverages, is guilty of violating the Tied House Evil Act by distributing alcoholic beverages without charge to a licensed

dealer, in violation of Section 561.42(1) and (2), Florida Statutes, and, if so, what penalty should be imposed.

#### PRELIMINARY STATEMENT

By Administrative Action dated September 13, 1999, Petitioner alleged that Respondent, as a licensed distributor of alcoholic beverages, unlawfully provided financial aid or assistance to a licensed vendor.

At the hearing, Petitioner called two witnesses and offered into evidence two exhibits. Respondent called three witnesses and offered into evidence one exhibit. All exhibits were admitted.

The court reporter filed the Transcript on May 11, 2000.

#### FINDINGS OF FACT

1. Respondent is a licensed distributor of alcoholic beverages. A bar known as "Wills," located at 5748 Swift Road in Sarasota is a licensed vendor of alcoholic beverages, pursuant to a series 2COP license.

2. Respondent distributes Anheuser-Busch products. One of its main competitors is the distributor of Miller Beer products.

3. For an unidentified period of time prior to June 2, 1999, Wills tapped only Anheuser-Busch products for retail sale as draft beer. However, the Miller distributor persuaded Wills to switch one of its two taps from Amber Bock, an Anheuser-Busch product, to Ice House, a Miller Beer product, when the Amber Bock keg ran dry. Pursuant to their agreement, Miller Beer delivered one keg of Ice House for tapping.

4. Wills was to be the site of a promotion of June 5, 1999. In anticipation of the promotion, a representative of Anheuser-Busch visited Wills after June 2, but before June 5, to see if Wills required any additional Anheuser-Busch product. The Anheuser-Busch representative saw the untapped Ice House keg and learned that Wills intended to switch one of its taps to the Miller Beer product.

5. The Anheuser-Busch representative convinced Wills not to make the switch. The question then arose what should be done with the Ice House keg. Fearing that the Miller Beer distributor would be slow to credit Wills for a refund, Respondent chose instead to take the Ice House keg in payment for the new Bud Light keg that the Anheuser-Busch representative delivered to Wills without delay.

6. Although Respondent failed to invoice the transaction, there is no dispute that the wholesale prices of the Ice House and Bud Light products, together with the kegs, are substantially identical.

#### CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes.

(All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

8. Also known as the "Tied House Evil Act," Section 561.42 requires:

(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.

\* \* \*

(7) The extension or receiving of credits in violation of this section shall be considered as an arrangement for financial assistance and shall constitute a violation of the Beverage Law and any maneuver, shift, or device of any kind by which credit is extended contrary to the provisions of this section shall be considered a violation of the Beverage Law.

9. In its proposed recommended order, but not its Administrative Action, Petitioner cites Rule 61A-4.045 which requires the use of invoices in all licensed transactions. It is unnecessary to determine whether Respondent violated this rule because Petitioner did not timely raise this issue as a basis for imposing discipline. At the hearing, the Administrative Law Judge ruled that evidence of the lack of an invoice was inadmissible to establish a separate, unpleaded violation of the law, but was admissible solely for the purpose of trying to show a violation of the cited statute.

10. Among other objectives, the Tied House Evil Act is intended to foster competition by preventing predatory trade practices. However, the credit transactions described by the statute do not describe the transaction in this case, in which Respondent charged Wills a keg of Ice House for a keg of Bud Light.

11. Nothing in the cited statute prohibits a licensed manufacturer or distributor paying a licensed vendor for an alcoholic beverage product--even one manufactured and distributed by a competitor-- with property, rather than cash. To avoid the subsidization of the vendor, the law prohibits the manufacturer or distributor from transferring to the vendor property whose fair market value exceeds the value of the alcoholic beverage product transferred to the manufacturer or distributor. Even if the property transferred to the vendor is an alcoholic beverage product, the cited statute is not violated as long as the value of the alcoholic beverage purchased by the manufacturer or distributor from the vendor is not less than the value of the alcoholic beverage transferred to the vendor. As noted above, Respondent paid Wills for the Ice House keg with a Bud Light keg, and the evidence fails to establish that the value of the Bud Light keg exceeded the value of the Ice House keg.

#### RECOMMENDATION

It is

RECOMMENDED that the Division of Alcoholic Beverages and Tobacco enter a final order dismissing the Administrative Action.

DONE AND ENTERED this 15th day of June, 2000, in Tallahassee,  
Leon County, Florida.

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ROBERT E. MEALE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of June, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.