

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF ALCOHOLIC BEVERAGES )  
AND TOBACCO, )  
 )  
Petitioner, )  
 )  
vs. ) Case Nos. 08-5478  
 ) 08-5479  
LIQUOR GROUP FLORIDA, LLC, )  
d/b/a LIQUOR GROUP FLORIDA, )  
LLC, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

This cause came on for final hearing before Robert S. Cohen, Administrative Law Judge with the Division of Administrative Hearings (DOAH) on February 24, 2009, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Joshua B. Moye, Esquire  
Sarah Christine Naf, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: Christopher John Eiras, pro se  
830-13 A1A North, No. 155  
Ponte Vedra Beach, Florida 32082

STATEMENT OF THE ISSUES

Whether Respondent committed the acts alleged in the Administrative Actions dated July 7, 2008, and September 5, 2008, and, if so, what disciplinary action, if any, should be taken against Respondent.

PRELIMINARY STATEMENT

This matter involves two Administrative Actions filed by Petitioner, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, against Respondent, Liquor Group Florida, LLC, d/b/a Liquor Group Florida, LLC. The first Administrative Action, DBPR Case No. 2008-030862, alleges that on or about February 18, 2008, Respondent violated Subsection 561.29(1)(a), within Subsection 561.29(1)(j), within Subsection 561.55(5)(a), Florida Statutes, by failing to maintain and keep records for a period of three years at the licensed premises. The second Administrative Action, DBPR Case No. 2008-049013, alleges that between December 1, 2006, and November 30, 2007, Respondent violated Subsections 561.411(1)(a) and (b), within Section 561.29, Florida Statutes, for failing to meet the qualifications to be a licensed distributor.

Respondent denied the allegations and requested a formal hearing. Petitioner referred the matter to the Division of Administrative Hearings on October 31, 2008, for assignment to an administrative law judge. A final hearing was held in

Jacksonville, Florida, on February 24, 2009. At the hearing, Petitioner presented the testimony of Captain Elizabeth Ledbetter, Margaret Perez, Christopher John Eiras, and Michael Dowling (via telephone), and offered Exhibits 1 through 7, all of which were admitted into evidence. Christopher John Eiras testified on behalf of Respondent and offered Exhibits 1 through 9, 18, 20, 22, and 27, all of which were admitted into evidence except Exhibit 20.

The administrative law judge took official recognition of the statutes cited above as the basis for the alleged violations committed by Respondent, as well as Florida Administrative Code Rules 61A-4.023 and 61A-4.043. A Transcript of the hearing was ordered, and the parties timely submitted proposed recommended orders on May 5, 2009 (Respondent), and May 6, 2009 (Petitioner). References to statutes are to Florida Statutes (2007), unless otherwise noted.

#### FINDINGS OF FACT

1. At all times material to this matter, Respondent was licensed under the Florida Beverage Law by the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.

2. Respondent is subject to the regulatory jurisdiction of Petitioner, having been issued License Number 26-07803, Series

KLD, by Petitioner. A Series KLD license is one issued by Petitioner to distribute alcoholic beverages.

3. Petitioner seeks to impose sanctions on Respondent for violations of Subsection 561.29(1)(a), within Subsection 561.29(1)(a), within Subsection 561.55(3)(a), Florida Statutes, on February 18, 2008.

4. Petitioner also seeks to impose sanctions on Respondent for violations of Subsections 561.411(1)(a) and (b), Florida Statutes, for the period on December 1, 2006, through November 30, 2007.

5. Christopher John Eiras (Eiras) is the managing director of Respondent distributing company. Eiras closed on the purchase of Respondent on August 31, 2007. Although he took over ownership of Respondent on that date, he had been involved with helping the company since its inception and had been directly involved in the creation of the business.

6. Respondent, as a corporate entity and the holder of the license, is ultimately responsible for the violations alleged in the Administrative Action, if proven. Moreover, Eiras kept the records for the audit period at issue in his house and, therefore, had control over the records requested by Petitioner.

7. Petitioner performed an audit of Respondent for the time period of December 1, 2006, through November 30, 2007.

8. In the course of the audit, and pursuant to Subsection 561.29(1)(j), Florida Statutes, Petitioner requested that Respondent produce certain records.

9. Pursuant to Florida Administrative Code Rule 61A-4.023, "distributors shipping or delivering alcoholic beverages for consumption outside the confines of the State of Florida must supply the Division with a copy of the bill of lading, must show the type of beverages, amount by size container and gallonage of each type shipped by common carrier or licensees' vehicles and a certificate from a representative of the appropriate agency of the jurisdiction into which the alcoholic beverages were shipped stating the shipment has been reported properly to that agency." Respondent supplied general documentation from FedEx and UPS regarding shipments, but Petitioner believes this documentation falls short of what is required by Florida Administrative Code Rule 61A-4.023.

10. The records requested by Petitioner are significant because they form the basis for giving a distributor a deduction from the payment of excise tax, the tax required to be remitted to the State of Florida, for out-of-state sales. The distributor must pay the excise tax on the sale of alcoholic beverages within Florida.

11. Petitioner had worked closely with Respondent and made numerous attempts to bring Respondent into compliance through its records production.

12. Because Eiras was the new owner of Respondent, and because the former auditor (with 37 years of experience) passed away during the audit of Respondent, the new auditor, Margaret Perez, gave Respondent what she termed "an enormous gift" by settling the audit for liabilities of \$829.39 and \$45.22, with the understanding that Respondent would still produce the requested records.

13. Petitioner issued two letters related to the audit. The first, dated August 15, 2008, found a liability of \$45.22, and required payment within ten days of receipt of the letter. No mention was made in the letter of any documents required to be produced by Respondent. Respondent timely paid the \$45.22 liability.

14. The second, dated August 18, 2008, found a liability of \$828.39 and required payment within 10 days of receipt of the letter. No mention was made in the letter of any documents required to be produced by Respondent. Respondent timely paid the \$828.39 liability.

15. Petitioner testified that acceptance of the payments from Respondent did not excuse the production of documents, yet no official communication was issued by Petitioner requiring

such production following the August letters and payment of the liabilities set forth in those communications by Respondent.

16. Additionally, pursuant to Subsections 561.411(1)(a) and (b), Florida Statutes, Respondent is required to own "an inventory of alcoholic beverages which is equal to at least 10 percent of the distributor's annual case sales to licensed vendors within this state or to licensed vendors within the malt beverage distributor's exclusive sales territory; or [a]n inventory for which the cost of acquisition is not less than \$100,000."

17. The Distributor Qualifications audit showed that Respondent had zero value for its inventory. Further, although Respondent claimed inventory for two supplier products, Urban Brands and Happy Vodka Corporation, both of which are owned by Eiras, Petitioner has not received proof of payment for these products from Respondent that satisfies its interpretation of the requirements of law.

18. Respondent supplied company-generated spreadsheets which, it argues, are sufficient to comply with Petitioner's requirements. These spreadsheets specifically list the inventory as of August 31, 2007, the date of the purchase of Respondent by Eiras from Gray Solomon, the previous owner. The inventory is listed by item number, item description, number of items on hand, average cost per item, percent of total asset,

sales price, retail value, percent of total retail, and owned inventory. This detailed spreadsheet shows a total owned inventory of \$139,964.24, an asset value of \$480,731.15 (most of which is under bailment for other suppliers), and a total retail value of \$624,140.59 for all product, whether owned or under bailment.

19. Petitioner expected to receive the source documents or back-up for the inventory and sales. Respondent provided canceled checks and invoices at some point that it believed satisfied this request. Clearly, Respondent was not timely in its response to Petitioner's document requests. Respondent supplied documents such as invoices and bills of lading showing deliveries to Respondent's warehouse in Jacksonville and shipments to locations both within Florida and out-of-state.

20. A question remains as to whether the back-up material fully responds to Respondent's requests for production of documents under Subsection 561.29(1)(j), Florida Statutes, for the audit period. Petitioner has not accepted the documentation provided by Respondent as proof of Respondent's compliance with the audit document request.

21. No complete explanations were offered by Petitioner as to why it would not accept Respondent's documentation as at least some evidence of Respondent's intent to comply with Petitioner's document request. Petitioner offered testimony



that it believed shipments were being made by entities other than Respondent. The documentation supplied by Respondent, however, shows numerous shipments and receipts of alcoholic beverage products in the name of "Liquor Group Florida" or "Liquor Group Florida, LLC."

#### CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the subject matter of these proceedings and of the parties hereto pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2008).

23. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Florida Dept. of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

24. As the party seeking to impose penal sanctions on Respondent's license, Petitioner bears the burden of proving by clear and convincing evidence the allegations in the charging document. Department of Bank. and Fin., Div. of Securities & Investor Protection v. Osborne Stern and Co., 670 So. 2d 932, 933 (Fla. 1996); Pic 'N Save Central Fla., Inc. v. Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, 601 So. 2d 245, 249 (Fla. 1st DCA 1992); and Subsection 120.57(1)(j), Florida Statutes (2008).

25. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but the [sic] less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). It is an "intermediate standard." Id. For proof to be considered "'clear and convincing' . . . the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit; and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." In re Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

26. Subsection 561.29(1)(a), Florida Statutes, provides that:

Violation by the licensee or his or her or its agents, officers, servants, or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state or of the United States, or violation of any municipal or county regulation in regard to the hours of sale, service, or consumption of alcoholic beverages or license requirements of special licenses issued under s. 561.20, or engaging in or permitting disorderly conduct on the licensed premises, or permitting another on the licensed premises

to violate any of the laws of this state or of the United States. A conviction of the licensee or his or her or its agents, officers, servants, or employees in any criminal court of any violation as set forth in this paragraph shall not be considered in proceedings before the division for suspension or revocation of a license except as permitted by chapter 92 or the rules of evidence.

27. Subsection 561.29(1)(j), Florida Statutes, allows Petitioner to suspend or revoke a license for:

Failure of any licensee issued a license under s. 561.20(1) to maintain records of all monthly sales and all monthly purchases of alcoholic beverages and to produce such records for inspection by any division employee within 10 days of written request therefor.

Respondent produced a spreadsheet that showed \$139,964.24 of owned inventory and a far greater amount of inventory that is available for sale under bailment for other suppliers.

Respondent produced a significant amount of documentation that Petitioner does not deem sufficient or responsive to its request, even though the settlement letters required payment of the tax liability, yet made no mention of any documentation required as a condition of settlement. Therefore, Petitioner has failed to show, by clear and convincing evidence that Respondent has failed to meet the requirements of Subsection 561.29(1)(j), Florida Statutes.

28. Although the audit was settled for the amounts of \$829.39 and \$45.22, Petitioner believed it to be with the understanding that Respondent would still produce the requested documents. The settlement letters themselves do not support this contention and, therefore, Petitioner has failed to meet its burden of proof on the issue of the charge of failure to provide documents within 10 days of request.

29. Subsection 561.411(1), Florida Statutes, provides that:

The distributor must maintain warehouse space which is either owned or leased by the distributor, or dedicated to the distributor's use in a public warehouse, which is sufficient to store at one time:

(a) An inventory of alcoholic beverages which is equal to at least 10 percent of the distributor's annual case sales to licensed vendors within this state or to licensed vendors within the malt beverage distributor's exclusive sales territory; or

(b) An inventory for which the cost of acquisition is not less than \$100,000.

30. Respondent's records are not entirely complete on the issue of its sales of alcoholic beverages during the audit period. However, the inventory dated August 31, 2007, the date of closing on the sale and purchase of the business, demonstrates compliance with the \$100,000 inventory requirement of Subsection 561.411(1)(b), Florida Statutes. Oddly, the Distributor Qualifications audit showed that Respondent has zero

value for its inventory. If the inventory has zero value, it neither meets the required minimum 10 percent inventory threshold nor the minimum \$100,000 threshold. However, Respondent offered solid proof of its inventory being greater than \$100,000, and at least some proof of inventory of at least 10 percent of its sales. The self-generated spreadsheets are sufficient to prove substantial compliance with Subsection 561.411(1)(b), Florida Statutes. Moreover, Respondent has supplied evidence, through bills of lading, canceled checks, and invoices, that demonstrates partial compliance with the requirements of Subsection 561.411(1)(a), Florida Statutes. Petitioner has not met its burden of proving, by clear and convincing evidence, that Respondent has failed to maintain the required inventory or sales that would qualify it to be licensed as a distributor in Florida. Respondent, therefore, remains qualified to hold a distributor's license in Florida.

31. Petitioner has proven, by clear and convincing evidence, that Respondent has not fully complied with its requests for document production under Subsection 561.29(1)(j), Florida Statutes. Accordingly, Respondent has violated this statutory provision. Since Respondent complied with the document request to some extent, suspension or revocation of its license is not an appropriate penalty. Rather, a fine will

serve as an appropriate sanction to remind Respondent of its statutory obligations under Chapter 561, Florida Statutes.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that Petitioner enter a final order as follows:

1. Assessing a \$500.00 fine against Respondent for violating Subsection 561.29(1)(j), Florida Statutes;
2. Ordering Respondent to produce all reasonably requested records for any and all future audits, including, but not limited to, bills of lading as required by Florida Administrative Code Rule 61A-4.023, for sales made outside of Florida;
3. Dismissing the Administrative Action against Respondent alleging violations of Subsection 561.411(1)(a) or (b), Florida Statutes; and
4. Dismissing the Administrative Action against Respondent alleging violations of Subsection 561.55(3)(a), Florida Statutes.

DONE AND ENTERED this 4th day of June, 2009, in  
Tallahassee, Leon County, Florida.



---

ROBERT S. COHEN  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of June, 2009.

COPIES FURNISHED:

Sarah Christine Naf, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 40  
Tallahassee, Florida 32399-2202

Joshua B. Moye, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 42  
Tallahassee, Florida 32399-2202

Christopher John Eiras  
830-13 A1A North, No. 155  
Ponte Vedra Beach, Florida 32082

Ned Luczynski, General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

Jerry Geier, Director  
Division of Alcoholic Beverages  
and Tobacco  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

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 should be filed with the agency that will issue the Final Order in this case.