

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date 4/16/2009
File # 2009-02758

**Department of Business and Professional Regulation
Division of Alcoholic Beverages and Tobacco
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1020**

FILED
2009 APR 22 10:41
DIVISION OF
ADMINISTRATIVE
HEARINGS

Department of Business and Professional Regulation
Division of Alcoholic Beverages and Tobacco
PETITIONER

vs.

M & Y Vaco, Inc
d/b/a M & Y Food Mart

RESPONDENT

CASE NO. 2008-031407
DOAH NO. 05-5485
LICENSE NO. 16-18148
SERIES: 2APS

FINAL ORDER

This matter comes before me for final Agency Order.

The issue before me is whether an administrative fine should be imposed on Respondent for unlawful possession of certain alcoholic beverages on its licensed premises, as alleged in the Administrative Action dated June 2, 2008.

PRELIMINARY STATEMENT

1. On June 2, 2008, the Division issued an administrative action against Respondent
2. Respondent filed a timely request for a formal hearing, citing disputed issues of fact.
3. A formal hearing was conducted by Administrative Law Judge Eleanor M. Hunter on December 23, 2008.
4. A Recommended Order was issued by the Administrative Law Judge on March 19, 2009.
5. Exceptions to the Recommended Order were not received from either party.

FINDINGS OF FACT

6. A thorough review of the entire record of this matter 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.

7. The Division hereby adopts and incorporates by reference the Findings of Fact as set forth in the Recommended Order.

CONCLUSIONS OF LAW

8. A thorough review of the entire record in this matter indicates that the Conclusions of Law contained in the Recommended Order are reasonable and correct interpretations of the law based on the Findings of Fact.

9. The Division hereby adopts and incorporates by reference the Conclusions of Law as set forth in the Recommended Order.

10. This Final Order is entered after a review of the complete record.

ORDER

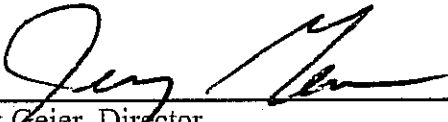
Having fully considered the complete record of this case and the Recommended Order of the Administrative Law Judge, I hereby adopt the Recommended Order and find that Respondent did violate Sections 562.01 and 562.02, Florida Statutes.

It is ORDERED that Respondent pay a civil penalty in the amount of \$500.00 and excise taxes in the amount of \$7.67. Payment, in the amount of \$507.67, must be received on or before May 22, 2009, and must be submitted to the District Enforcement Office located at 5080 Coconut Creek Parkway, Suite C., Margate, Florida 33063-3942.

Failure to fully comply with the terms of this Final Order will result in the initiation of proceedings to revoke the license as provided in Section 561.29(1) (k), Florida Statutes.

DONE and ORDERED at Tallahassee, Florida, this 15 day of April, 2009.




Jerry Geier, 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*.

Mail Certification: This Final Order was sent by Certified Mail
7006 0810 0000 2294 7392 to:
Yves Corneille
Monette Corneille
M & Y Vaco, Inc. d/b/a M & Y Food Mart
301 West Sunrise Boulevard
Fort Lauderdale, FL 33311

By:  Mail Date: April 20, 2009

Additional copies mailed to:

District Enforcement/Licensing Office

Michael John Wheeler
Assistant General Counsel
Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399

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

Gerda Desir
M & Y Vaco, Inc. d/b/a M & Y Food Mart
301 West Sunrise Boulevard
Fort Lauderdale, FL 33311

Eleanor M. Hunter, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building,
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

State of Florida
Division of Administrative Hearings

Charlie Crist
Governor

Robert S. Cohen
Director and Chief Judge

Claudia Lladó
Clerk of the Division

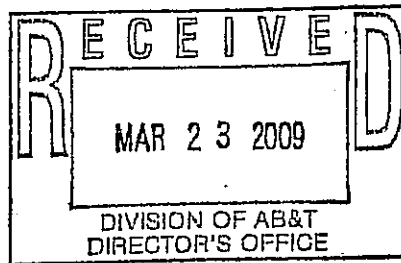


March 19, 2009

Harry L. Hooper
Deputy Chief
Administrative Law Judge

David W. Langham
Deputy Chief Judge
Judges of Compensation Claims

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



Re: DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO vs. M AND Y
VACO, INC., d/b/a M AND Y FOOD MART, DOAH Case No. 08-5485

Dear Ms Hill:

Enclosed is my Recommended Order in the referenced case.
Also enclosed are the Petitioner's Exhibits numbered 1-5.
Copies of this letter will serve to notify the parties that my
Recommended Order and the hearing record have been transmitted
this date.

As required by Subsection 120.57(1)(m), Florida Statutes,
you are requested to furnish the Division of Administrative
Hearings with a copy of the Final Order, along with any
exceptions to the Recommended Order, within 15 days of its
rendition.

Sincerely,

Eleanor M. Hunter
ELEANOR M. HUNTER
Administrative Law Judge

EMH/bcl
Enclosures

cc: Gerda Desir
Michael John Wheeler, Esquire
Yves Corneille
Ned Luczynski, General Counsel

Ned Luczynski, General Counsel
Department of Business and
Professional Regulation
Northwood Centre
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.

PAGE 7

RE: CASE NO. 2008031407
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO
PETITIONER,
VS.
M & Y VACO INC
D/B/A M & Y FOOD MART
LIC NO. BEV1618148 SERIES 2APS
RESPONDENT.

ADMINISTRATIVE ACTION

COMES NOW, THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, HEREIN AFTER REFERRED TO AS "PETITIONER," AND FILES THIS ADMINISTRATIVE ACTION AGAINST **M & Y VACO INC** HEREIN AFTER REFERRED TO AS "RESPONDENT," AND ALLEGES:

1. PETITIONER IS THE STATE AGENCY CHARGED WITH SUPERVISING BUSINESSES LICENSED UNDER THE FLORIDA BEVERAGE, TOBACCO AND TAX, AND TOBACCO PRODUCTS PERMIT LAWS PURSUANT TO SECTIONS 559.061, 561.07, 561.15, 561.19, 561.29, 561.501, 210.15, 210.16, 210.45, 210.50, 569.003, AND 569.006, FLORIDA STATUTES.
2. RESPONDENT IS, AND HAS BEEN AT ALL TIMES MATERIAL HERETO, THE HOLDER OF A VALID LICENSE/PERMIT, ISSUED IN THE STATE OF FLORIDA, BY THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO. RESPONDENT'S LAST KNOWN MAILING ADDRESS IS AS FOLLOWS:

M & Y VACO INC
301 WEST SUNRISE BLVD.
FORT LAUDERDALE, FL 33311

AND THE DIVISION HAS NOT BEEN NOTIFIED OF ANY OTHER DESIGNATED PERSON OR ADDRESS FOR THE SERVICE OF PROCESS AND NOTICES AUTHORIZED BY RULE 61A-2.012, FLORIDA ADMINISTRATIVE CODE.

3. PETITIONER INTENDS TO REVOKE; SUSPEND; ANNUL; IMPOSE ADMINISTRATIVE FINES, INVESTIGATIVE COSTS, AND LATE PENALTIES; OR ANY COMBINATION OF THESE AUTHORIZED PENALTIES. THIS INTENDED ACTION IS BASED ON THE BELOW DESCRIBED FACTS OR CONDUCT.

PAGE 8

RE: CASE NO. 2008031407
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO
VS.
M & Y VACO INC
D/B/A M & Y FOOD MART
LIC NO. BEV1618148

YOU, M & Y VACO INC, D/B/A M & Y FOOD MART, ARE CHARGED WITH THE FOLLOWING COUNT(S):

1. ON OR ABOUT MAY 29, 2008, YOU, THE AFOREMENTIONED LICENSEE, HOLDING A LICENSE UNDER THE BEVERAGE LAW, OR YOUR AGENT(S), OFFICER(S), SERVANT(S), OR EMPLOYEE(S) OR OTHER PERSON, TO WIT: VICE PRESIDENT, MONETTE CORNEILLE, DID UNLAWFULLY ON YOUR LICENSED PREMISES, ALLOW OR PERMIT THE POSSESSION OF ALCOHOLIC BEVERAGES; TO WIT: (FOUR) 750 ML BOTTLES BARBANCOURT-RHUM, (ONE) 1.44 LITER BOTTLE OF DISARONNO LIQUOR, (ONE) 1 LITER BOTTLE OF RON LLAVE PUERTO RICAN RUM, (ONE) 1 LITER BOTTLE OF BAILEYS IRISH CREAM AND (ONE) 1.75 BOTTLE OF FLORDE CANA RUM, NOT AUTHORIZED BY LAW TO BE SOLD UNDER YOUR LICENSE, THIS ACT BEING CONTRARY TO AND IN VIOLATION OF SECTION 562.02, WITHIN 561.29(1)(A), FLORIDA STATUTES.

2. ON OR ABOUT MAY 29, 2008, YOU, THE AFOREMENTIONED LICENSEE, HOLDING A LICENSE UNDER THE BEVERAGE LAW, OR YOUR AGENT(S), OFFICER(S), SERVANT(S), OR EMPLOYEE(S), TO WIT: VICE PRESIDENT, MONETTE CORNEILLE, DID UNLAWFULLY ON YOUR LICENSED PREMISES, ALLOW OR PERMIT A PERSON, TO WIT: VICE PRESIDENT MONETTE CORNEILLE, TO OWN OR POSSESS ALCOHOLIC BEVERAGES, TO WIT: (FOUR) 750 ML BOTTLES BARBANCOURT RHUM, (ONE) 1.44 LITER BOTTLE OF DISARONNO LIQUOR, ON WHICH FLORIDA EXCISE TAXES WERE UNPAID, THIS ACT BEING CONTRARY TO AND IN VIOLATION OF SECTION 562.01, WITHIN 561.29(1)(A), FLORIDA STATUTES.

SIGNED THIS JUNE 2, 2008

CYNTHIA HILL
DIRECTOR
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO


JOSH HOOPER
LAW ENFORCEMENT CAPTAIN

EXPLANATION OF SERVICE:

DATE SERVED _____

RECEIVED BY _____
PERSONAL
SERVICE BY _____

CERTIFIED MAIL # _____

ATTACH RECEIPT IF SERVED BY MAIL.



Track & Confirm [FAQs](#)

Track & Confirm

Search Results

Label/Receipt Number: 7006 3450 0001 2584 0791
Status: Delivered

Your item was delivered at 10:44 AM on June 12, 2008 in FORT LAUDERDALE, FL 33311.

[Additional Details >](#) [Return to USPS.com Home >](#)

Track & Confirm

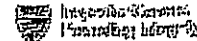
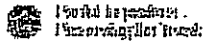
Enter Label/Receipt Number.

[Go >](#)

Notification Options

Track & Confirm by email.

Get current event information or updates for your item sent to you or others by email. [Go >](#)



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GERTIFIED MAIL: 7006 3450 0001 2584 0791
M & Y VACO INC
D/B/A M & Y FOOD MART
301 WEST SUNRISE BLVD
FORT LAUDERDALE, FL 33311

RE: CASE NO. 2008031407, 11760011001000

2. Article Number

(Transfer from service label):

7006 3450 0001 2584 0791

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
X [Signature] Addressee

B. Received by (Printed Name) C. Date of Delivery
Monie He Comolite *6-12-08*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

JUN 16 2008

FT LAUDERDALE, FL 33311

6. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes