



The Commonwealth of Massachusetts # 27
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

NO. 25E-1294
M.S. WALKER, INC.
PETITIONER

V.

CONSTELLATION BRANDS, INC.
RESPONDENT

**MEMORANDUM AND ORDER IN RESPONSE
TO CONSTELLATION'S MOTION FOR CLARIFICATION
AND RECONSIDERATION OF COMMISSION ORDERS
WITH COMMISSION'S AMENDED DISCOVERY AND SCHEDULING ORDER**

The Commission hereby issues this Order in response to Constellation's Motion for Clarification and Reconsideration of Commission Orders, for the purpose of amending and clarifying Commission Orders dated July 29, 2014 and July 30, 2014.

The Commission has three requests before it from Constellation, to which this Order addresses:

- a. Constellation's Motion for Reconsideration of Order to Produce documents between Horizon and Constellation;
- b. Constellation's Motion for Reconsideration of "Orders Extending Discovery Period"; and
- c. Constellation's Motion for the Commission to Establish a "Date Certain for a hearing on Constellation's Motion for Summary Decision".

The Commission has fully considered the Motion of Constellation, and the Commission is determined to focus squarely on the important matters of legal substance necessary to move this case forward.

DISCUSSION

Section 25E of Chapter 138 "serves as a vehicle by which the Commission may reconcile the competing equities between suppliers and wholesalers of liquor in the Commonwealth." *Seagram v. ABCC*, 401 Mass. 713, 716-717 (1988); citing *Eastern of Maine, Inc. v. Vintners*

Group Ltd., 455 A.2d 936, 941 (Me.1983) (construing Maine liquor statute similar to §25E), also citing Amoco Oil Co. v. Dickson, *supra* 378 Mass. at 50. It thus falls upon the Commission to determine "the exact nature of the corporate transactions at issue," Pastene v. ABCC, 401 Mass. 612, 615 (1988), as the Commission is charged with the interpretation and application of §25E to any particular factual scenario. Any proper decision of the Commission must be "supported by substantial evidence." Seagram v. ABCC, 401 Mass. 713, 721 (1988). The disclosure of relevant facts through the process of discovery is very important to this process and agency function. The facts which appear before the Commission will be instrumental in determining the outcome of this case. Accordingly, it is essential for the Commission to have access to evidence bearing on the questions at hand, in order to form a solid factual foundation for any Commission decision to follow.

CONCLUSION

Constellation's Motion for Reconsideration is ALLOWED in part and DENIED in part. The Commission hereby orders as follows:

a. Order to Produce Documents As to Horizon

Constellation's request to not produce documents between Constellation and Horizon is ALLOWED.

b. Orders Extending Discovery Period

Constellation's request for reconsideration of the orders extending the discovery period is DENIED. The Discovery period shall be as provided below.

c. Date Certain for Motion for Summary Decision

Constellation's request for a date certain for a hearing on Constellation's Motion for Summary Decision is ALLOWED.

The Commission shall establish a new case schedule as follows. While no Motion for Summary Decision currently is before the Commission as the previous Motion has been denied, the Commission will, once again, entertain any such Motion filed.

SCHEDULING ORDER

- a. All Answers to Interrogatories and Responses to Requests for Production of Documents must be furnished by December 1, 2014;
- b. Any and all requests for Depositions must be filed with this Commission by December 22, 2014;
- c. Any and all Depositions must be completed by January 22, 2015;
- d. Pre-Hearing Memorandum due by February 22, 2015;
- e. Motion(s) for Summary Decision due by February 23, 2015;

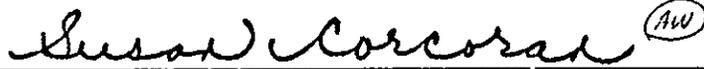
f. Response to Motion for Summary Decision March 23, 2015.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Susan Corcoran, Commissioner



Dated: November 3, 2014

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty days of receipt of this decision.

cc: William F. Coyne, Jr., Esq., via Facsimile
Mary O'Neal, Esq., via Facsimile
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