

At a Special Term of the Supreme Court, held in and for the County of Erie at the Erie County Courthouse, in the City of Buffalo, New York, on the 2nd day of January, 2007

PRESENT: Hon. John M. Curran, J.S.C.
Justice Presiding

STATE OF NEW YORK : SUPREME COURT
COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK,
by the Attorney General of the State
of New York, ELIOT SPITZER, and THE
NEW YORK STATE LIQUOR AUTHORITY,

Petitioners,

-vs-

CONSENT ORDER
AND JUDGMENT

Index No. I 2006012745

33 UNION SQUARE WEST, INC., BECKENDORF LIQUORS, INC. d/b/a HOLBROOK LIQUORS, EAST RIVER LIQUORS, INC. d/b/a BROOKLYN LIQUORS, WESTBURY LIQUORS INC., CENTURY LIQUORS, INC. a/k/a CENTURY LIQUOR STORE, INC., ECONO ENTERPRISES, INC. d/b/a LIQUOR CITY, EXIT 9 WINE & LIQUOR WAREHOUSE, INC., FIVE TOWNS WINES & LIQUORS, INC., GARNET WINES & LIQUORS INC., GLOBAL WINE & SPIRITS, INC., COLONIAL WINE & SPIRITS, INC., MCKINLEY LIQUOR, INC., HENRY STREET LIQUORS, INC., LISA'S LIQUOR BARN, INC. a/k/a LISAS LIQUOR BARN, INC., P & G TOBIN, INC. d/b/a WHITEHOUSE LIQUORS, MORRELL & COMPANY THE WINE EMPORIUM LTD., NCP LIQUORS, INC. d/b/a PASCALE'S LIQUOR SQUARE, MICHAEL PALMERI, JR. d/b/a MARKETVIEW LIQUORS, PJ WINE, INC. a/k/a PJ'S LIQUORS, INC., PRIME WINES CORP. d/b/a PRIME WINE & SPIRITS a/k/a PREMIER CENTER, JONMARK CORPORATION d/b/a PREMIUM WINE & SPIRITS, PRESTIGE WINES CORP. d/b/a PRESTIGE WINE & SPIRITS, QUARTER HORSE LLC d/b/a STEW LEONARD'S OF YONKERS, VINEYARDS OF FARMINGDALE LLC d/b/a STEW

FILED
ACTIONS & PROCEEDINGS
JAN 03 2007
ERIE COUNTY
CLERK'S OFFICE

LEONARD'S OF FARMINGDALE, R & V, INC. d/b/a
ARLINGTON WINE & LIQUOR, SHERRY-LEHMANN, INC.
a/k/a SHERRY LEHMANN INC., SUPERMARKET
LIQUORS & WINES, INC., THE 67 LIQUOR SHOP,
INC., VISCOUNT LIQUOR CORP., WAREHOUSE WINES
& SPIRITS, INC., ZACHYS WINE & LIQUOR, INC.
a/k/a ZACHY'S WINE & LIQUOR STORE, INC.,

Respondents,

Pursuant to Section 63, Subdivision 12
of the Executive Law.

Upon reading and filing the Verified Petition sworn to on November 27, 2006, by Dennis Rosen, Assistant Attorney General, and the Affirmation of Thomas J. Donohue, Esq., Counsel to the New York State Liquor Authority, dated December 4, 2006, and upon the Stipulation and Consent of each respondent, all of which are attached hereto, in which each respondent acknowledges service of the Notice of Verified Petition and Verified Petition, consents to the entry of this Consent Order and Judgment ("Judgment"), and waives notice of entry thereof,

NOW, on motion of Eliot Spitzer, Attorney General of the State of New York ("Attorney General"), attorney for petitioner, The People of the State of New York, Assistant Attorney General Dennis Rosen, of counsel, it is

PARTIES SUBJECT TO JUDGMENT

1. ORDERED, ADJUDGED AND DECREED that this Judgment shall extend to respondents, their officers, directors, employees, agents, successors and assigns, and any other entities under

respondents' ownership or control; and it is further

INJUNCTIVE RELIEF

Soliciting or Receiving Gifts Prohibited

2. ORDERED, ADJUDGED AND DECREED that each respondent is permanently barred and enjoined from, directly or indirectly, soliciting or receiving cash, cash equivalents, or gifts such as credit card swipes or AMEX checks, trips or reimbursement of travel expenses, consumer items, or any other inducement to purchase wine or liquor from wholesalers or suppliers, except as explicitly permitted by Title 9, Subtitle B of the Official Compilation of Codes, Rules and Regulations of the State of New York ("SLA Rules"), or a Bulletin issued by the New York State Liquor Authority ("SLA"); and it is further

Discriminating Among Retailers Prohibited

3. ORDERED, ADJUDGED AND DECREED that each respondent is permanently barred and enjoined from, directly or indirectly, purchasing wine or liquor at prices other than prices respondents have a good faith belief have been filed, by wholesalers, in price schedules with the SLA; and it is further

Tie-Ins Prohibited

4. ORDERED, ADJUDGED AND DECREED that each respondent is permanently barred and enjoined from, directly or indirectly, requiring a wholesaler to sell them an item that has been filed in a price schedule with the SLA as one of limited availability, or

specific quantities of such an item, in order for the wholesaler to be able to sell them another item, or specific quantities of another item; and it is further

Credits and Rebates Prohibited

5. ORDERED, ADJUDGED AND DECREED that each respondent is permanently barred and enjoined from, directly or indirectly, soliciting or receiving any form of rebate or discount that has not been filed in a price schedule with the SLA, such as a credit against future purchases, except that nothing herein shall prohibit requesting or receiving lawful credits in the regular course of business, including but not limited to reimbursement for breakage, spoilage, failure to deliver, or delivery of the wrong items; and it is further

Soliciting Payments to Certain Persons or Entities Prohibited

6. ORDERED, ADJUDGED AND DECREED that each respondent is permanently barred and enjoined from, directly or indirectly, soliciting, receiving, or in any manner benefitting from, any payment by a wholesaler or supplier, or a person or entity acting on their behalf, to another person or entity if:

(a) Such payment constitutes, in effect, an incentive, reward, or rebate for purchasing or featuring wine or liquor products; or

(b) The entity is, directly or indirectly, owned or controlled by a respondent or a group of retailers including

a respondent, or services a respondent or a group of
retailers including a respondent; or

(c) A principal, officer, or employee of a respondent
or relative of a principal, officer, or employee of a
respondent, is an officer or employee of the entity;

Nothing herein shall prohibit a respondent from receiving a
benefit, where explicitly permitted by SLA Rule or Bulletin, from
a person or entity that is not related to such respondent as
described in (b) or (c) above; and it is further

Soliciting or Receiving Free Products Prohibited

7. ORDERED, ADJUDGED AND DECREED that each respondent is
permanently barred and enjoined from, directly or indirectly,
soliciting or receiving free wine or liquor, except that nothing
herein shall prohibit a respondent from soliciting or receiving
free wine or liquor:

(a) In reasonably limited quantities to sample; or

(b) For consumer tastings on a respondent's premises

where the respondent receives none of the wine or liquor;

and it is further

No Advertising Funds from Wholesalers or Suppliers
Except for Out-of-State Catalogues

8. ORDERED, ADJUDGED AND DECREED that each respondent is
permanently barred and enjoined from directly, or indirectly
through an advertising company, printing company or any other
entity or person, accepting payment from a wholesaler or supplier,

or a person or entity acting on behalf of a wholesaler or supplier, for all or a portion of any advertisement produced by or on behalf a respondent, regardless of the medium in which the advertisement may appear, except where explicitly permitted by Paragraph 9 below, SLA Rule or Bulletin; provided nothing herein shall prohibit a respondent from soliciting or receiving product or brand imagery and artwork for use in an advertisement; and it is further

9. ORDERED, ADJUDGED AND DECREED that each respondent is permanently barred and enjoined from directly, or indirectly through an advertising company, printing company or any other entity or person, accepting payment from a wholesaler or supplier to participate, in any manner, in a catalogue published by, or on behalf of a respondent, unless the following conditions are met:

(a) None of the catalogues are distributed within New York State; and

(b) All payments are made to a *bona fide* printing company, that is independent of the respondent, for the reasonable cost of printing an advertisement in the catalogue;

and it is further

FINES AND COSTS

10. ORDERED, ADJUDGED AND DECREED that respondents shall, contemporaneously with the filing of this Judgment, pay to petitioner, The People of the State of New York, civil penalties,

pursuant to ABCL § 17(3) and New York General Business Law Art. 22-

A, in the following amounts:

33 Union Square West, Inc.	\$35,000.00
Beckendorf Liquors, Inc. d/b/a Holbrook Liquors	\$35,000.00
East River Liquors, Inc. d/b/a Brooklyn Liquors	\$35,000.00
Westbury Liquors, Inc.	\$40,000.00
Century Liquors, Inc. a/k/a Century Liquor Store, Inc.	\$10,000.00
Econo Enterprises, Inc. d/b/a Liquor City	\$20,000.00
Exit 9 Wine & Liquor Warehouse, Inc.	\$10,000.00
Five Towns Wines & Liquors, Inc.	\$20,000.00
Garnet Wines & Liquors Inc.	\$20,000.00
Global Wine & Spirits. Inc.	\$10,000.00
Colonial Wine & Spirits, Inc.	\$10,000.00
McKinley Liquor, Inc.	\$10,000.00
Henry Street Liquors, Inc.	\$20,000.00
Lisa's Liquor Barn, Inc. a/k/a Lisas[sic] Liquor Barn, Inc.	\$10,000.00
P & G Tobin, Inc. d/b/a Whitehouse Liquors	\$10,000.00
Morrell & Company The Wine Emporium LTD.	\$10,000.00
NCP Liquors, Inc. d/b/a Pascale's Liquor Square	\$20,000.00
Michael Palmeri, Jr. d/b/a Marketview Liquors	\$10,000.00

PJ Wine, Inc. a/k/a PJ's Liquors, Inc.	\$40,000.00
Prime Wines Corp. d/b/a Prime Wine & Spirits a/k/a Premier Center	\$50,000.00
Prestige Wines Corp. d/b/a Prestige Wine & Spirits	\$30,000.00
Jonmark Corporation d/b/a Premium Wine & Spirits	\$30,000.00
Quarter Horse LLC d/b/a Stew Leonard's of Yonkers	\$20,000.00
Vineyards of Farmingdale LLC d/b/a Stew Leonard's of Farmingdale	\$20,000.00
R & V, Inc. d/b/a Arlington Wine & Liquor	\$10,000.00
Sherry-Lehmann, Inc. a/k/a Sherry Lehmann Inc.	\$10,000.00
Supermarket Liquors & Wines, Inc.	\$10,000.00
The 67 Liquor Shop, Inc.	\$20,000.00
Viscount Liquor Corp.	\$20,000.00
Warehouse Wines & Spirits, Inc.	\$50,000.00
Zachy's Wine & Liquor Store, Inc. a/k/a Zachys Wine & Liquor, Inc.	\$10,000.00

and it is further

11. ORDERED, ADJUDGED AND DECREED that each respondent shall, contemporaneously with the filing of this Judgment, pay \$2,000.00 costs to petitioner, The People of the State of New York; and it is further

12. ORDERED, ADJUDGED AND DECREED that each respondent

shall make the payments ordered in Paragraphs 10 and 11 by certified check or bank check payable to the Attorney General of the State of New York; and it is further

PROSPECTIVE PENALTIES

13. ORDERED, ADJUDGED AND DECREED that, upon a finding by the Court that a respondent has committed any violation(s) of this Judgment, the Court may impose upon that respondent: (a) any injunctive relief it deems appropriate, and (b) any penalty set forth in the ABCL for violations of its provisions, including but not limited to a fine not to exceed \$10,000.00 per violation, and/or the revocation, cancellation or suspension of any licenses issued to that respondent pursuant to the ABCL; and it is further

14. ORDERED, ADJUDGED AND DECREED that nothing herein shall limit or prohibit any party's right to appeal an adverse determination by the Court pursuant to Paragraph 13; and it is further

ENFORCEMENT

15. ORDERED, ADJUDGED AND DECREED that either or both petitioners may apply to the Court, upon 10 days notice to all parties, for relief pursuant to Paragraph 13, or for any further relief as may be necessary to effectuate the terms of this Judgment; or, in the alternative and to the exclusion of either petitioner applying to the Court for relief, the SLA may pursue violations of this Judgment or the corresponding ABCL violations by

administratively imposing any penalty contained herein, or contained in the ABCL independent of the terms of this Judgment, pursuant to its functions, powers and duties as set forth in ABCL § 17 *et al.*; however, petitioners shall not commence separate proceedings regarding alleged violations of this Judgment or the ABCL for the same conduct; and it is further

16. ORDERED, ADJUDGED AND DECREED that, for any of the conduct alleged in the Verified Petition or prohibited by the Judgment, which occurred prior to the date of each of the respondents agreeing in a Stipulation and Consent to the entry of this Judgment, there shall be no administrative, civil, criminal, regulatory, or other action taken by either or both petitioners adverse to the respondents, their officers, directors, employees, agents, successors and assigns, and any other entities under respondents' ownership or control, pursuant to the ABCL, and they shall not be liable to petitioners in any manner other than as set forth in this Judgment; and it is further

17. ORDERED, ADJUDGED AND DECREED that any party may apply to the Court, upon 10 days notice to all parties, for a modification or termination of this Judgment as a result of any change in the ABCL, or SLA Rules, or any other material change in circumstances, and this Judgment with any such modifications shall be enforceable against all parties; and it is further

18. ORDERED, ADJUDGED AND DECREED that petitioners shall,

within 90 days of entry of this Judgment, provide a copy of this order through any method they deem reasonable, to all holders of a license issued pursuant to the ABCL to sell wine or liquor to consumers for off-premise consumption, with notice that any conduct which violates this Judgment shall be considered a violation of the ABCL which will subject the violator to the penalties set forth in Paragraph 13 above; and it is further

VENUE

19. ORDERED, ADJUDGED AND DECREED that all applications under this Judgment shall be made in Erie County before this Court, except that any application by the SLA may instead be brought in New York State Supreme Court in Albany County; and it is further

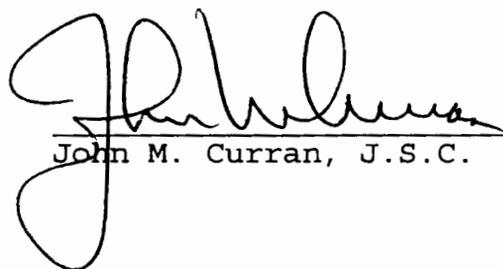
NO ADMISSION

20. ORDERED, ADJUDGED AND DECREED that this Judgment, or any provision thereof, shall not be construed as an admission by any respondent of any violation of law, or of the truth of any fact alleged in the Verified Petition or that it has engaged in the conduct prohibited by this Judgment; and it is further

PRIVATE RIGHT OF ACTION

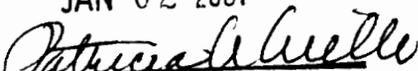
21. ORDERED, ADJUDGED, AND DECREED that nothing herein shall be construed to deprive any person, corporation, association or other entity of an existing private right or remedy under law,

or to create any private right or remedy.


John M. Curran, J.S.C.

GRANTED

JAN 02 2007

BY 
PATRICIA A. AIELLO
COURT CLERK