



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

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In the matter of)
SHORT'S BREWING COMPANY, LLC)
for a declaratory ruling regarding)
Administrative Rule R 436.1049)
_____)

At the September 25, 2018 business meeting of the Michigan Liquor Control Commission in Lansing, Michigan.

PRESENT: Andrew J. Deloney, Chairman
Dennis Olshove, Commissioner

DENIAL ORDER
REQUEST FOR DECLARATORY RULING

The Commission received a request for a declaratory ruling from Scott Newman-Bale, Partner, Short's Brewing Company, LLC ("petitioner") pursuant to administrative rule R 436.1971. The request is marked as received by the Commission on September 5, 2018. Under administrative rule R 436.1973(1), the Commission has thirty (30) days within which to notify the petitioner if a declaratory ruling shall be issued. On September 25, 2018, the Commission met in an open meeting at 9:30am at the Lansing offices of the Commission and considered the request from the petitioner. After deliberation and discussion at the open meeting, the Commission denied the request for the declaratory ruling. Under administrative rule R 436.1975, if a request for a declaratory ruling is denied, the Commission shall issue a concise written statement of its principal reasons for denial within thirty (30) days of the denial.

Petitioner is a licensee of the Commission and holds Micro Brewer and Small Wine Maker licenses with various permits and permissions at two (2) locations in Michigan.

Petitioner requests a declaratory ruling with regard to three (3) statements made by the petitioner in its request, all with regard to administrative rule R 436.1049. The rule reads as follows:

R 436.1049 Transfer of license or corporate stock while an alleged violation is pending final disposition.

Rule 49.

(1) If the licensee has been cited in a violation report, a transfer of a license shall not be completed before final disposition of the alleged violation.

(2) If the licensee has been cited in a violation report, a transfer of more than 10% in the aggregate of the stock of a licensed corporation or a transfer of 10% or more in the aggregate of the membership in a limited liability company shall not be completed before final disposition of the alleged violation.

(3) A licensee shall not transfer a license, transfer an interest in a license, or remove a license from escrow with the commission until that licensee has paid all outstanding fines, fees, or charges levied by the commission, except upon prior written order of the commission.

The Commission responds to the three (3) statements from petitioner with regard to the rule and the Commission's denial of the request for the declaratory ruling as follows:

Statement 1

The language in administrative rule R 436.1049 is clear and unambiguous. Sub-rules (1) and (2) speak only to a transfer of ownership of a license or a transfer of interest of 10 percent or more in a license not being completed when the licensee has been cited in a violation report and the final disposition of the alleged violation has not occurred. Sub-rules (1) and (2) do not apply to a licensee that has been cited in a

violation report and which has applied for another type of request, such as the adding or dropping of space from the licensed premises, a new permit or permission, or a new license. Sub-rule (3) speaks more broadly to a licensee not transferring a license, transferring any interest in a license, or removing a license from escrow when the licensee has outstanding fines, fees, or charges owing to the Commission, except upon prior written order of the Commission.

Statement 2

The statement posed by petitioner does not clarify what is meant by the term "investigation" and it will be assumed that this term means the process by which the Commission's Enforcement Division conducts investigations of applications, which is commonly referred to by Commissioners, Commission staff, applicants, and attorneys as the "investigation". Established written Commission procedures provide that an application for the transfer of ownership or interest when the licensee has been cited in a violation report and the final disposition of the alleged violation has not occurred shall be authorized by the Commission's Licensing Division for investigation by the Commission's Enforcement Division. The investigation shall be conducted by the Enforcement Division pursuant to the statutory and administrative rule requirements and in keeping with the Enforcement Division procedures for investigating applications. This process also applies to all other applications for other requests when the application requires an investigation by the Enforcement Division.

Statement 3

It is unclear what petitioner means when using the phrase "when a complaint is merely being considered" in the statement. Administrative rule R 436.1041(1) and (2) is clear that the transfer of ownership or of interest of 10 percent or more in a license shall not be completed if the licensee has been cited in a violation report and the violation and the final disposition of the alleged violation has not occurred. Sub-rules (1) and (2) do not condition compliance with this rule on formal notification to the licensee that it has been cited in a violation report. Nevertheless, upon completion of the investigation

of an application for a transfer of ownership or interest in a license by the Enforcement Division when the application is returned to the Licensing Division, if a pending violation on the licensee remains, the Licensing Division notifies the applicant and licensee of the pending violation and the requirement for it to be resolved. All other applications that do not involve the transfer of ownership or interest in a license proceed to the Commission for consideration despite a pending violation.

After reviewing the petitioner's request for a declaratory ruling and the pertinent sections of the administrative code, the Commission concludes that R 436.1049 is clear and unambiguous in its meaning and declines to issue the requested declaratory ruling.

THEREFORE, IT IS ORDERED THAT Short's Brewing Company, LLC's request for a declaratory ruling is DENIED.

MICHIGAN LIQUOR CONTROL COMMISSION



Andrew J. Deloney, Chairman



Dennis Olshove, Commissioner

Date Mailed: September 28, 2018