

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Five-O Food Store & Deli

Han Kim Ky, Permittee

KY Corporation of Fairfield, Backer

Docket No. 009-642

Liquor Permit LGB.13121

Case No. 2008-1451

June 18, 2009

MEMORANDUM OF DECISION

This matter involves a grocery store beer permit issued to Five-O Food Store & Deli, 1539 Black Rock Turnpike, Fairfield, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection on April 23, 2009. Han Kim Ky, permittee and president of the backer corporation, appeared at the hearing with counsel. The record was held open until May 14, 2009 to allow the Respondent an opportunity to submit additional documentation concerning its grocery sales.

The alleged violations against the Respondent arose from a referral from the State of Connecticut Department of Revenue Services and a subsequent investigation conducted by the Department of Consumer Protection's Liquor Control Division.

It is alleged that on or about May 6, 2008, the Respondent violated (1) Sec. 30-20(c) of the Connecticut General Statutes by failing to be primarily engaged in the retail sale of grocery items; (2) Sec. 30-6-A40(i) of the Regulations of Connecticut State Agencies by failing to post the price of beer

for sale; (3) Sec. 30-53 of the Connecticut General Statutes by failing to record his liquor permit with the Fairfield Town Clerk; and (4) Sec. 30-92b(a)(1) of the Connecticut General Statutes by repackaging 12-packs of beer. The Respondent denied charge 1 and admitted charges 2, 3 and 4. The matter proceeded to a hearing.

This Based upon the testimony and documents presented at the hearing, we find the following facts. As a result of a referral from the Department of Revenue Services, liquor control agents visited the premises and conducted a special investigation on May 6, 2008. Agents observed that although the premises has had an active grocery store beer permit for approximately 10 years, it does not now appear to be primarily engaged in the sale of groceries, as is required by Section 30-20(c), Connecticut General Statutes. Agents requested and received a breakdown of sales form for the month of April 2008. Approximately 39% of the sales were for items considered to be "grocery" items, i.e., dairy products, eggs and poultry, fruits and vegetables, seafood, bakery products and all other edible items. An additional breakdown of sales for the month of February 2009 was subsequently received. Approximately 28.1% of sales for February 2009 were for items considered to be "grocery" items.

In order to maintain a "grocery store" beer permit, a retailer must be "*primarily engaged in the retail sale* of all sorts of canned goods and dry goods" (emphasis added). Even if a premises meets the standard when the

permit is first granted, the statutory requirements must continue to be met in order to retain the permit.

Accordingly, we do not find that Five-O Food Store & Deli is “primarily engaged in the retail sale of all sorts of canned goods and dry goods” in accordance with Section 30-20(c), Connecticut General Statutes. The grocery store beer permit for Five-O Food Store & Deli must be revoked. We will, however, hold the record open until July 10, 2009, to afford Mr. Ky an opportunity to cancel this permit in lieu of the revocation. Further, in view of the foregoing, it is not necessary for us to reach a determination on the other alleged matters.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY:**

Elisa A. Nahas, Esq.
Designated Presiding Officer

Angelo J. Faenza, Commissioner

Stephen R. Somma, Commissioner

Parties:

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Non-Parties:

John Suchy, Director, Liquor Control Division
Connecticut Beverage Journal
Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106