

STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

Joe Bomber's
Scott Winn, Permittee
Joe Bomber's Café LLC, Backer
Permit LCA.6820

Case No. 2011-77
Docket No. 11-1000
December 29, 2011

MEMORANDUM OF DECISION

This matter involves a café liquor permit issued to Joe Bomber's, 24 Greenwoods Road, Burrville, Torrington, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection on December 8, 2011. Proper notice of the hearing was provided to the Respondent; however, the Respondent failed to appear at the hearing.

The allegations against the permit premises arose from a special investigation conducted by the Department of Consumer Protection's Liquor Control Division. It is alleged that on or about December 12, 2010, the Respondent violated: (1) Section 30-86 of the Connecticut General Statutes by selling or delivering alcoholic liquor to an intoxicated person; (2) Section 30-90 of the Connecticut General Statutes by permitting an intoxicated person to remain in the barroom; (3) Section 30-6-A23(a)(1) of the Regulations of Connecticut State Agencies in that four bottles of alcohol located on the back bar contained fruit flies; and (4) Section 30-22a(a) of the Connecticut General Statutes in that this premises did not have available adequate food to meet the requirements for a café permit.

The following facts are found based upon the testimony and documents presented at the hearing, including direct testimony from the intoxicated female patron. At approximately 12:45 a.m., in the early morning of December 12, 2010, Liquor Control Agents Lewis and Driffin entered Joe Bomber's in an undercover capacity to observe the conduct of the premises. Agent Lewis observed a female patron stagger on her way to the toilet area and the woman bumped into Agent Lewis. As Agent Lewis continued to observe, the female bumped into a male patron as she came down the steps from the dance floor, nearly knocking him over. A friend was holding her up and physically helping her to walk. The women went to the end of the bar which was unoccupied. They each ordered a beer from the female bartender, and the intoxicated patron was then served a Bud Light beer. Prior to leaving the premises, Agent Lewis spoke to the bartender and asked her not to serve the female patron any more alcohol. The bartender replied, "Yeah, I know she's drunk, but she is not driving." The intoxicated patron was still inside the premises at the time the agents exited.

When Agent Lewis reentered the premises at approximately 1:20 a.m., she identified the intoxicated patron. The intoxicated patron continued to exhibit signs of intoxication; she slurred her words; swayed as she leaned against a railing; her eyes closed as she spoke and her head bobbed up and down. Officer Brett Johnson attempted to administer a field sobriety test, however, he was unable to do so because the female patron was so intoxicated that she could not follow his instructions.

Liquor Control Agent Boucher located four bottles of alcohol behind the bar which contained fruit flies. Mr. Winn acknowledged that the bottles were contaminated by fruit flies and the alcohol was disposed of.

Liquor Control Agent Bailey spoke to the permittee, Scott Winn, and inquired what food was available. Mr. Winn advised that only chips and crackers were available. The food requirements for premises holding café liquor permits are set forth in Sec. 30-22a(a) of the Connecticut General Statutes, which provides in relevant part,

Premises operated under a cafe permit shall regularly keep food available for sale to its customers for consumption on the premises. The availability of sandwiches, soups or other foods, whether fresh, processed, precooked or frozen, shall be deemed compliance with this requirement.

We find that the food available at Joe Bombers on December 12, 2010 which consisted of chips and crackers does not meet the statutory requirements for a café permit, therefore, the liquor permit cannot be maintained.

Based upon the substantial evidence and the documents presented at the hearing, we find the Respondent to be in violation of all counts as alleged. The Liquor Control Act grants the Liquor Control Commission a liberal discretionary power to determine factual matters with regard to liquor permits and to suspend or revoke the permit after a hearing. Balog v. Liquor Control Commission, 150 Conn. 473, 191 A.2d 20 (1963). This power to suspend or revoke a liquor permit is exercised conservatively, but mindful that dispensing liquor is a privilege, not a right. Beckanstin v. Liquor Control Commission, 140 Conn. 185, 99 A.2d 119

(1953). Accordingly, based upon the foregoing, we must REVOKE the Respondent's café liquor.

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

Elisa A. Nahas, Esq.
Designated Hearing Officer

Angelo J. Faenza, Commissioner

Stephen R. Somma, Commissioner

Parties:

Scott Winn, Permittee, Joe Bomber's, 24 Greenwoods Road, Burville, CT 06790
(Via US Mail and Certified Mail # 7010 1670 0000 0762 0597)
Scott Winn, 34 Cook Street, Winsted, CT 06098-1408
(Via US Mail and Certified Mail # 7010 1670 0000 0762 0603)

Nonparties:

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