

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

Agency Dkt. No. S-18-38432

License No. 1614-44-028-009

DIVISION OF ALCOHOLIC)
BEVERAGE CONTROL,)
)
Petitioner,)
)
v.)
)
SOMERSET WINE COMPANY, LLC,)
t/a GARY'S WINE & MARKETPLACE,)
)
Respondent.)
_____)

CONSENT ORDER

Kevin Marc Schatz, Senior Deputy Attorney General
(Gurbir S. Grewal, Attorney General, attorney)
Attorney for the Division of Alcoholic Beverage Control

Justin P. Walder, Esquire.
(Pashman Stein Walder Hayden, attorneys)
Attorney for Respondent

BY THE DIRECTOR:

This matter having been brought before the Director of the Division of Alcoholic Beverage Control, by the Division of Alcoholic Beverage Control represented by Gurbir S. Grewal, Attorney General of New Jersey (Kevin Marc Schatz, Senior Deputy Attorney General, appearing) and with notice to Respondent, Somerset Wine Company, LLC, represented by Justin P. Walder, Esquire, and this matter having been amicably settled prior to hearing,

IT IS on this 30 day of Jun., 2020, hereby ORDERED with the consent of the parties:

1. Respondent hereby hereby enters a plea of "non vult" to the Charges under Agency Dkt. No. S-18-38432 (Exhibit A) arising from Investigation No. H- 2018-51059 and thereby waiving the right to any hearing or appeal whatsoever in connection with these charges.

2. In return for this “non vult” plea, the Director hereby suspends license for a total of 96 days as follows:
3. The Respondent has made application and the Director has agreed to accept a monetary compromise offer of \$90,000 in lieu of 96 days of suspension. The payment of monetary compromise offer is due in 5 payment(s) of \$18,000 each, by the close of business on the first business day of May 2020, May 2021, May 2022, May 2023 and May 2024. This offer is payable by certified check or attorney’s account check to “Division of Alcoholic Beverage Control” bearing the number S-18-38432 and sent to:

Division of Alcoholic Beverage Control
Attn.: Rebecca Maleski, Enforcement Bureau
140 East Front Street, P.O. Box 087
Trenton, New Jersey 08625-0087

4. Failure to pay this compromise offer in the manner and time set forth above may result in the suspension of the license privilege by ex parte Order of the Director in proportion to the amount of the compromise offer yet unpaid. However, prior to the issuance of such Order, Respondent shall be given notice and at least 5 days to cure the non-payment. Failure to cure the non-payment may be considered by the Director to be a separate violation.
5. Respondent shall have 1 year from the date of this Order to implement corrective action as follows:
 - (a) Respondent shall eliminate and all beneficial interests in Respondent’s licensed business by undisclosed individuals and/or the entity referenced in the Notice of Charges, and all indicia of same including any interests in the financing, accounts, operations, etc.;
 - (b) Respondent’s owners shall divest themselves of any and all beneficial interests in more than two plenary retail distribution or plenary retail consumption licenses with broad package privileges, and all indicia of same including any interests in the financing, accounts, operations, etc.;
 - (c) Respondent will not operate as a unitary business with any other alcoholic beverage licensee unless the ownership of such licensee is identical in all respects to Respondent’s ownership, including the corporate holder of its license;
 - (d) Respondent shall discontinue the comingling of funds with any other licensee and any person (or entity) with a beneficial interest therein; and

(e) Respondent shall keep and maintain accurate business records in accordance with the rules and regulations governing New Jersey alcoholic beverage licensees.

(f) Failure to implement the aforementioned corrective action in one year from the date of this Order will be considered a violation of this Consent Order and may also be considered by the Director to be a separate chargeable violation. Respondent may request a meeting with ABC to discuss any issues that may arise related to implementation of the corrective action.

*could shall
be granted*

(g) Notwithstanding the foregoing subparagraphs in this Paragraph 5, this Consent Order shall not prohibit Respondent from:

(1) having an interest in a separate non-licensed entity that, pursuant to a written contract, provides purely administrative services (such as payroll and invoice payment), but not services related to the operation of the licensed business related to the sale of beverage alcohol. Respondent may pay the non-licensed entity a fee not in excess of the fair market value of the services provided. All records related to these services must be either maintained on the licensed premises, or off-premises provided Respondent obtains a permit for the off-premises storage of certain records, pursuant to N.J.A.C. 13:2-29.4; and/or


(2) entering into a written "concessionaire's agreement" with a non-licensed entity pursuant to which the non-licensed entity sells and/or manages the sale of food and non-alcoholic beverages on Respondent's licensed premises. A concessionaire agreement is used when the licensee does not want to operate the food portion of its business. If a non-licensed entity is selling or managing the sale of non-alcoholic beverages on the licensed premises, Respondent must disclose that fact on page 4 of its license application. Additional requirements of concessionaire agreements are set for in Exhibit B, which is incorporated herein by reference.

(3) The individuals cited in the Notice of Charges as undisclosed interests may also have ownership interests in the non-licensed entity or entities referenced in the two preceding subparagraphs.

6. Respondent hereby waives all rights to further hearings and appeals and to the repossession or return of any alcoholic beverages or evidence, as well as any cash or any other personalty seized in connection with the investigation of this matter,

excluding books and records of the licensed business, and Respondent consents to the forfeiture of same and disposition by the Director in accordance with the provisions of N.J.S.A. 33:1-66 and/or N.J.S.A. 2C:64-1, et seq.

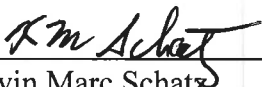
7. This Consent Order, terms thereunder, and conditions imposed are hereby attached to this license. Hence, the existing licensee and any prospective or subsequent transferee of this license takes and are bound by the terms and conditions imposed herein.



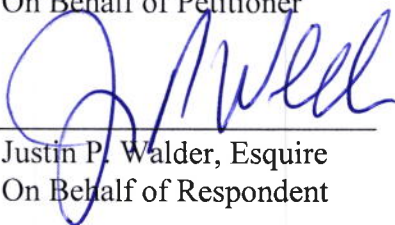
JAMES B. GRAZIANO
ACTING DIRECTOR

We are authorized and do hereby consent to the entry,
form and substance of the above Order.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 
Kevin Marc Schatz
Senior Deputy Attorney General
On Behalf of Petitioner

Date: _____

By: 
Justin P. Walder, Esquire
On Behalf of Respondent

Date: 1/21/2020



State of New Jersey

PHILIP D. MURPHY
Governor

SHEILA OLIVER
Lt. Governor

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
P.O. BOX 087
TRENTON, NJ 08625-0087
Phone: (609) 984-2830 Fax: (609) 633-6078
HTTP://WWW.NJ.GOV/LPS/ABC

GURBIR S. GREWAL
Attorney General

JAMES B. GRAZIANO
Acting Director

January 9, 2020

Somerset Wine Company LLC
t/a Garys Wine and Marketplace
1308 Rt 23
Wayne, NJ 07470

LICENSE NO.: 1614-44-028-009
AGENCY DKT. NO.: S-18-38432, H-2018-51059;
ISSUED BY: Mayor and Council of Wayne
Township, Passaic County

Attached hereto is a copy of the Notice of Charges wherein the Division of Alcoholic Beverage Control ("Division") has alleged that the holder of this license has committed the violations set forth therein and is seeking to revoke your license. Upon receipt of this letter you must enter either a guilty, non-vult or not guilty plea to these charges within 30 days. Failure to enter a plea within the 30-day period shall be deemed to be a statement that you do not contest the charges, which are the subject of this matter. Consequently, if a plea is not entered within the 30-day period, a non-vult plea will be entered on your behalf unless the plea period has been extended by the Division. The Director upon certification from the Division may suspend or revoke your license without further opportunity for you to oppose the charges.

Before entering a plea you may request a copy of the Report of Investigation on which the charges were based and request an additional 14 days to examine the report before you enter a plea. As set forth on the "plea" page, the cost for the report is \$50.00. To receive such reports send a money order or check made payable to the New Jersey Division of Alcoholic Beverage Control. Send your request to Senior Deputy Attorney General, Kevin Marc Schatz and include the license number and "S" number on all letters and forms of payment.

You are entitled to have an attorney advise you. However, consultation with an attorney will not toll or stop the time of the 30 days for you to enter your plea.

Please be advised if there is a determination of guilt to the charges, the Enforcement Bureau pursuant to N.J.S.A. 33:1-31 will seek revocation and will also seek the forfeiture and disposal of any cash, evidence, alcoholic beverages (or other prima facie contraband nature) seized in connection with these charges.



If you enter a plea of guilty or non-vult (not contesting the charges) you have informed the Division that you do not dispute the charges in this matter and will accept the penalty as set forth. You do have the right to submit in writing mitigating circumstances and requesting the charges be reduced in penalty. In cases in which ABC seeks suspension, the Director may also consider reduction of the penalty by 20% in consideration of your guilty or non-vult plea. In cases in which ABC seeks revocation, the Director may accept a monetary offer and/or suspension in lieu of revocation.

In addition, you have the right to make application to the Director that he accept a monetary compromise offer in lieu of the days suspended pursuant to N.J.A.C. 13:2-19.12.

If you plead not guilty, this case will be sent to the Office of Administrative Law or be retained to be heard before the Director. You or your attorney will receive the necessary notice that the case has been forwarded and the time and place of the hearing.

To assist you in responding to the Division, you may use the "plea" page to advise us of your decision in this matter. If you do utilize this form, after you fill it out we suggest you make a copy and keep it for your records. Please send this reply to SDAG Kevin Marc Schatz.

Very truly yours,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 
Kevin Marc Schatz
SENIOR DEPUTY ATTORNEY GENERAL

Attachment



**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

LIC. NO.: 1614-44-028-009
AGENCY NO.: S-18-38432, H-2018-51059;

DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL,)
)
Petitioner,)
)
v.)
)
Somerset Wine Company LLC,)
)
Respondent.)

**NOTICE OF CHARGES
SEEKING REVOCATION**

Take Notice that under the authority of the Director, as set forth in Division of Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, et seq.; and the regulations promulgated pursuant thereto, the New Jersey Division of Alcoholic Beverage Control (“Division”) will seek to revoke plenary retail license 1614-44-028-009 held by Somerset Wine Company LLC, t/a Garys Wine and Marketplace, issued by Mayor and Council of Wayne Township, Passaic County, for premises located at 1308 Rt 23, Wayne, NJ 07470, for violation of the aforementioned statute and/or regulations. The Division hereby prefers the following charges and will seek the noted penalty to wit:

<u>CHARGE</u>	<u>PRESUMPTIVE PENALTY</u>
1. On 6/18/18, you failed to keep or maintain books of account which were true, complete and accurate in all respects on your licensed premises or failed to produce same for inspection upon demand and did not produce same within seven (7) days thereof; in violation of N.J.A.C. 13:2-23.32.	30-day suspension
2. On 6/18/18, you sold or accepted delivery of alcoholic beverages upon terms other than those set forth in the applicable Current Price List filed with the Division of Alcoholic Beverage Control; in violation of N.J.A.C. 13:2-24.6(a)6.	15-day suspension
3. On or about 6/18/18, you offered, provided or accepted a retail incentive program payment (RIP); in violation of N.J.A.C. 13:2-24.1.	15-day suspension
4. By virtue of your acquisition of retail liquor license number 1614-44-028-009 on or about 6/18/18, you acquired a beneficial interest in more than two retail liquor licenses; in violation of N.J.S.A. 33:1-12.31.	Revocation

However due to the aggravating circumstances in this case, the Division will seek revocation of the license based upon the total circumstances.

The licensee must enter a plea to the charges within 30 days of its receipt. Failure to do so will result, pursuant to N.J.A.C. 13:2-19.3(c), in the entry of a non-vult plea on your behalf and the Director upon certification by the Division may impose the penalty stated in this Notice of Charges without further notice.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: *Km Schatz*
Kevin Marc Schatz
SENIOR DEPUTY ATTORNEY GENERAL

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

LIC. NO.: 1614-44-028-009
AGENCY NO.: S-18-38432, H-2018-51059;

DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL,)
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PLEA

TO: Kevin Marc Schatz
SENIOR DEPUTY ATTORNEY GENERAL
ENFORCEMENT BUREAU

CIRCLE THE APPROPRIATE TERM CONTAINED IN THE PARENTHESES “()”

I am the (owner) (partner) (member) (president/vice-president) (attorney) of this license duly authorized to enter the decision(s) in this matter as checked below:

- ___ 1. Please send me a copy of the Report of Investigation issued in this matter. I request you to extend my time to enter a plea by 14 days. Therefore, I enclose a money order or check in the amount of \$50.00 to cover the cost of the report.
- ___ 2. (For cases in which license suspension is sought and suspension is accepted by licensee): I am pleading non-vult to all of the charges listed in the Notice of Charges and accept the suspension of the subject license to be imposed thereon. I understand that by doing so I will not formally contest the charges and that they will be administratively concluded without a hearing. I am giving up my rights to a hearing and/or to repossess or have returned any cash, evidence, alcoholic beverages, or other property seized in connection with these proceedings. I request that the Director reduce the proposed suspension by 20% in consideration of my plea. I request that the Division consider the following mitigation prior to determining the ultimate penalty. (You may write on the back of this page or use additional separate pages, if necessary.)
- ___ 3. (For cases in which license suspension is sought and licensee requests to make a monetary compromise in lieu of suspension): I am pleading non-vult to all of the charges listed in the Notice of Charges.

I understand that by doing so I will not formally contest the charges and that they will be administratively concluded without a hearing. I am giving up my rights to a hearing and/or to repossess or have returned any cash, evidence, alcoholic beverages, or other property seized in connection with these proceedings. I request that the Director reduce the proposed penalty by 20% in consideration of my plea. Additionally, I petition the Director, pursuant to N.J.A.C.13:2-19.12, to accept a monetary compromise offer in lieu of suspension. I am enclosing the licensee's Federal Tax Return for the most recent year and/or a letter from the license's accountant showing the total sales of alcohol and the total costs of alcohol in the most recent year. I request the opportunity to offer a monetary penalty in lieu of having my license suspended. I understand that if the Director grants my request, the Division will compute the penalty amount which must be offered and provide me with a petition to sign and return for the Director's consideration. I request that the Division consider the following mitigation prior to determining the ultimate penalty. (You may write on the back of this page or use additional separate pages, if necessary.)

- ___ 4. (For cases in which license revocation is sought): I am pleading non-vult to all the charges listed in the Notice of Charges. I request the opportunity to divest the license in lieu of revocation. Therefore, I am requesting that the Division contact me to schedule a conference to discuss the options for settlement. In the event that no settlement is reached, I understand that I must surrender my license to the issuing authority.
- ___ 5. I wish to plead not guilty to all of the charges listed in the Notice of Charges and request that this matter be forwarded for a hearing.
- ___ a. I am requesting a hearing.
- ___ b. I am requesting a meeting to discuss settlement. If no settlement is reached, I request the matter be forwarded for a hearing.

LICENSEE'S SIGNATURE

TYPED OR PRINTED NAME

DATED:

On the facts submitted, "Grace" already has a beneficial interest in three retail licenses. The proposed additional license, by its enumerated privileges under Title 33 and under the submitted proposal to use it as a package store in a discount department store, does not fall within the hotel or restaurant exceptions. Accordingly, you are advised that the proposed acquisition would be contrary to N.J.S.A. 33:1-12.31 et seq.

JOSEPH H. LERNER
DIRECTOR

5. OPINION LETTER - CONTROL OVER A LICENSED PREMISES - CONCESSION AND LEASE AGREEMENTS.

September 19, 1980

Waters, McPherson, Hudzin & McNeil, Esqs.
Jersey City, N. J.

Re: Vincent Arnot
Restaurant Service Contract
Your File No. 4428

Dear Mr. O'Shea:

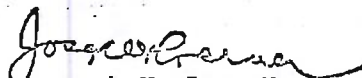
This is with reference to your recent inquiry concerning the granting by the holder of an alcoholic beverage license of a food service concession on the licensed premises.

You are advised that a liquor license must always retain full possession and control over all portions of the licensed premises whereon alcoholic beverages may be sold, served or stored. Hence, where a licensee leases any part of his licensed premises to another he thereby loses the requisite possession and control over the leased part. The licensee must exclude the leased portion from his licensed premises and may no longer sell or serve any alcoholic beverages in the leased portion and may not allow, permit or suffer any alcoholic beverage drinks sold and served in the licensed portion to be taken into the leased portion. It follows, also, that no wine list or any other reference to alcoholic beverages may be kept upon the unlicensed portion.

On the other hand, there is no objection to the licensee agreeing to a restaurant concession whereby a restaurant concessionaire is given the privilege (and not a lease) to come and be upon the licensed premises for the purpose of selling and serving food. In the event of a concession agreement, as distinguished from a lease, alcoholic beverages may be sold and served in all portions of the licensed premises, including the licensed restaurant portion, and, of course, a wine list or other alcoholic beverage menu may be kept there.

For your further guidance we point out that when a restaurant concession is given by a licensee to another, the following conditions must be complied with:

1. Everyone engaged in the concessionaire's business at the licensed premises must satisfy the various qualifications as to persons employed on licensed premises. For example, they must be fully qualified as to age and free from conviction of crime involving moral turpitude. If not so qualified, they must obtain employment permits from this Division. See New Jersey Administrative Code 13:2 - SUBCHAPTER 14, governing the qualifications of employees (but do not be misled by the exceptions in those regulations relating to bona fide restaurants since those exceptions prevail only when the licensee is conducting the restaurant business). Cf. N.J.S.A. 33:1-26.
2. Alcoholic beverages may be sold and served only by the liquor licensee and his bona fide employees. Neither the concessionaire nor any persons solely in the concessionaire's employ may take orders for or sell or serve or otherwise handle alcoholic beverages. However (if a man can serve two masters), we have no objection to a person being upon the payroll of both the licensee and the concessionaire, provided that such person is a bona fide employee of each party. In this connection, we may warn that it is not permissible for the concessionaire to reimburse the licensee for the payroll expense incurred by the licensee in meeting salaries paid to employees of the concessionaire since this would be nothing more than an evasion of the prohibition against persons solely in the employ of the concessionaire taking orders for selling, serving, or otherwise handling alcoholic beverages.
3. The records and receipts of the alcoholic beverage business must be kept separate and apart from the records and receipts of the concessionaire's business.
4. The concessionaire may not participate in any way, directly or indirectly, in any proceeds from the sale of alcoholic beverages.
5. The licensee shall be responsible for any unlawful acts or regulatory violations engaged in, or allowed, permitted or suffered, by the concessionaire on the licensed premises. Re McCarthy's Bar, Inc. Bulletin 2297, Item 5.


Joseph H. Lerner