

Division of

ALCOHOLIC
BEVERAGE
CONTROL

Bulletin

TRW Complex, Bldg. 20, 200 Woolverton Street, CN 087, Trenton, New Jersey 08625-0087

BULLETIN 2458

MAY 1, 1992

SPECIAL BULLETIN NOTICE

DISCIPLINARY PROCEEDINGS - PAYMENT AND ACCEPTANCE OF UNLAWFUL
REBATES, DISCOUNTS AND ALLOWANCES BY PLENARY WHOLESALE LICENSEE,
ITS SOLICITORS, AND A RETAIL LICENSEE - CRIMINAL SANCTIONS AND
\$720,000.00 IN CIVIL FINES IMPOSED.

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Following an undercover investigation by the State Police - Alcoholic Beverage Control Enforcement Unit, Attorney General Robert J. Del Tufo, Alcoholic Beverage Control Director Catherine A. Costa, and State Police Superintendent, Colonel Justin J. Dintino announced, on November 13, 1991, the entry of pleas of guilt by hereinafter identified licensees and solicitors to criminal and civil charges arising out of illegal rebate practices.

The defendants in the cases were Reitman Industries, a New Jersey Plenary Wholesale licensee in West Caldwell; four of its employees - Dennis Resnick, Vice President of Marketing; Robert Feldenkriess, General Manager; and James Trobiano and Donald Warner salesmen; Brewers World, Inc., a Plenary Retail Distribution licensee in Totowa, New Jersey; and Barry March, owner of Brewers World.

In November, 1990, Colonel Justin J. Dintino assigned State Police ABC agents to set up a licensed retail liquor store called the "Diamond in the Rough" on Bloomfield Avenue in the City of Newark (Essex County). As a result of the investigation, a systematic and supported practice of providing discriminatory prices, discounts, rebates, free goods, allowances and other inducements by Reitman Industries and its employees to retailers was disclosed. The crux of the violations involved the "kick back" of solicitor's commissions to the undercover licensee, and the subsequent reimbursement of the "kick back" to the solicitor by Reitman Industries through false accounting transactions. Brewers World, Inc. and its president, Barry March were implicated in the

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Reitman investigation, as well as engaging in other illegal practices involving the falsification of business records to disguise the sale of alcoholic beverages to a Connecticut retail licensee.

The defendants, Reitman Industries and their solicitors, entered guilty pleas to criminal charges that they did falsify, conceal, or alter, a writing or record knowing that it contained a false statement or information, a fourth degree crime under 2C:5-2(a). Mr. Barry March, the President of Brewer's World, Inc. pled guilty to a criminal charge of conspiring to falsify, conceal, or alter, a writing or record knowing that it contained a false statement or information, a fourth degree crime under N.J.S.A. 2C:5-2(b). As part of the criminal proceeding, Attorney General Robert J. Del Tufo indicated that the State would not oppose the applications of the individual defendants to enter a Pretrial Intervention Program. That program is a court monitored opportunity for first offenders to avoid incarceration and eliminate the taint of criminal conviction, if they successfully complete the required period of participation and refrain from any further criminal acts. Reitman Industries will pay a criminal fine of up to \$22,500, but it is precluded from applying for Pretrial Intervention because it is a corporation.

The fact that Reitman Industries, a New Jersey licensed wholesale corporation pled guilty to a fourth degree crime has been addressed by Director Costa. In assessing all of the relevant factors in this case, including but not limited to, the absence of proofs of participation in the illegal acts by any of the owners of the Reitman license, it has been determined that the criminal conviction of Reitman should not be classified as a crime of moral turpitude for the corporate entity. This Eligibility Ruling is limited to the specific facts of this matter, and had this offense been classified as a crime involving moral turpitude, Reitman Industries would have been disqualified from continuing to hold a license in New Jersey under N.J.S.A. 33:1-25.

Any determination of disqualification to hold a license or permit under N.J.S.A. 33:1-25, that could attach to Barry March of Brewers World and Reitman employees, Dennis Resnick, Vice President of Marketing, Robert Feldenkriess, General Manager, and James Trobiano and Donald Warner, solicitors, because of their pleas to criminal acts is deferred, pending the outcome of their compliance with the terms of their participation in the Pretrial Intervention Program.

Director Catherine A. Costa and Robert T. Winter, Director of the Division of Criminal Justice, announced that the defendants agreed to pay civil penalties totaling \$720,000.00. These penalties represent the civil consequence for the violations of the Alcoholic Beverage Control law and regulations, and in settlement of a Civil Forfeiture Proceeding undertaken pursuant to N.J.S.A. 2C:64-1 by the Division of Criminal Justice.

Reitman Industries will pay \$600,000.00 to the State on its and its employees behalf. Presumptively, \$200,000.00 of that amount represents fines in lieu of institution of formal disciplinary proceedings by the Division of Alcoholic Beverage Control, which could have led to the suspension or revocation of the licenses and permits of Reitman Industries and its solicitors. The balance of \$400,000.00 presumptively represents the Civil Forfeiture penalty that has been assessed by Attorney General Robert J. Del Tufo through the Division of Criminal Justice.

Brewers World, Inc. will pay civil penalties totaling \$120,000.00, presumptively allocated at \$40,000.00 for the ABC infractions and \$80,000.00 for the Civil Forfeiture penalty. The plenary retail distribution license of Brewers World, Inc. is also being suspended by Director Costa for seven days as an additional administrative penalty under the Alcoholic Beverage Control Act.

In addition to the above penalties, Director Catherine A. Costa has ordered Reitman Industries and Brewers World to provide her with a Compliance Monitoring Report identifying all internal procedural and policy standards established by them to monitor, supervise and train its sales and marketing employees to deter future noncompliance. An addendum to that report requires the companies to include a full and comprehensive identification of the internal accounting systems utilized by the licensee to keep true books of account of all moneys invested in the business, the original source of all investments, all moneys received in the ordinary course of business, all moneys received other than in the ordinary course of business, a record of all moneys expended from such receipts, and the name of the person receiving such moneys and the purpose for which such expenditures were made.

Monthly reports are also required from Reitman identifying various trade practice promotions and inducements offered to its solicitors or offered to retail licensees not otherwise set forth in the monthly Current Price List filed with the Division under N.J.A.C. 13:2-24.6. Brewers World must similarly report the nature, source and value of any benefits it receives from suppliers

or wholesalers, other than discounts and allowances equally available to the entire retail trade in connection with the purchase of alcoholic beverages, as set forth in the monthly Current Price Lists filed by wholesalers with the Division.

These cases represent the first time that criminal sanctions have been brought against a liquor wholesale distributorship. The civil penalties of \$720,000 to be paid by the defendants is the largest recovery by the State of New Jersey in an alcoholic beverage control related criminal and administrative investigation.

In assessing the impact and consequence of these cases, I feel strongly as Director of the Division of Alcoholic Beverage Control, that some of my reactions and expectations of future conduct by licensees should be noted. If these illegal activities were as prevalent in the alcoholic beverage marketplace in New Jersey as some would indicate, all industry members, whether suppliers, wholesalers or retailers, should be aware that any similar violations will be addressed with equal, if not greater, severity. There can be no tolerance for those that seek to gain, through illegal and devious means, an unfair and disruptive advantage in the commerce of alcoholic beverages. The significant detrimental consequences from such actions affect all citizens of this State and all other industry members who scrupulously comply with the requirement of law and regulation.

The severity of the actions disclosed in this undercover operation warrant this Special Bulletin Notice. Attorney General Robert J. Del Tufo, Colonel Justin J. Dintino and I are committed to utilizing all available resources to deter and detect illegal and inappropriate actions involving alcoholic beverage control. The full spectrum of administrative and criminal sanctions will be utilized if these types of violations are disclosed.

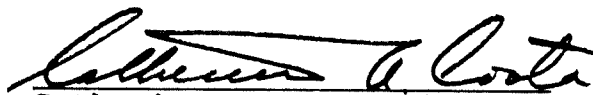
It has been expressed to me in the past, and not in connection with this investigation, that the apparent proliferation of "kick back" practices and other unlawful marketing practices may have developed as a "business" response to marketplace practices of other competitor wholesalers or salesmen, or from pressures on wholesalers to achieve supplier's expectations, or as responses by wholesalers to "maintain or gain" business with retail accounts. Any such "justifications", if they are offered as mitigation for these illegal practices, have absolutely no merit and will be given no deference in assessing an appropriate penalty for future

violations. If an industry member is incapable of addressing the marketing pressures attendant to any competitive business through the existing framework established by law and regulations, and feels compelled to resort to illegal acts, he or she has no basis to continue in this regulated, privileged business.

Vigorous enforcement and oversight will continue on the part of the State in this area. In that regard, I stand ready to accept and act upon any complaints concerning illegal practices to assist me in eliminating from this industry any industry member who fails to exercise appropriate conduct. These complaints will be maintained in strictest confidence. However, it is my fervent hope and expectation that any industry member who would consider succumbing to the pressures and would choose to engage in illegal practices will heed the warnings herein. I have no reservations that voluntary self compliance with all laws and regulations is a reasonable, specific and attainable goal. All industry members must strive to insure satisfaction of this goal. The unacceptable alternatives to voluntary compliance adversely impact on not only the offender, with justification, but upon those prudent industry members that conscientiously comply with the standards established.

I am optimistic that the vast majority of industry members conduct their business in a legitimate manner. But a majority of good licensees is insufficient; all industry members must operate under the same rules, and in a fair, open and legal manner. That is a polestar of the law, and it can be achieved with everyone working with a true commitment and resolve to reflect in their actions the integrity and respect this industry has demonstrated in the past and must reconfirm in the future.

Publication of Bulletin 2458 Is Hereby Directed This
1st Day of May, 1992



Catherine A Costa, Director
Division of Alcoholic Beverage Control