

STATE OF IOWA  
BEFORE THE DEPARTMENT OF COMMERCE  
ALCOHOLIC BEVERAGES DIVISION

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IN RE: )  
 ) Docket No. A-2007-00017  
Janel Destival ) DIA No. 07DOCBL071  
d/b/a Triple J Mart )  
246 South Main Street )  
Fayette, Iowa 52141 ) PROPOSED DECISION  
 )  
New Class "E" Liquor License )

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On July 23, 2007, the Iowa Alcoholic Beverages Division (division) sent a letter to Janel Destival, d/b/a Triple J Mart (applicant), denying her application for a new class "E" liquor license for the premises at 246 South Main Street in Fayette, Iowa. The applicant filed a timely notice of appeal. A hearing was held on October 1, 2007 at 1:00 p.m. in the hearing room at the Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa. The undersigned administrative law judge presided and recorded the hearing. Assistant Attorney General John Lundquist represented the division. Attorney Richard Buffington represented the applicant. The applicant and her attorney elected to appear by telephone.

ISSUE

Should the application for a new class "E" liquor license be denied due to lack of financial standing sufficient to meet licensing requirements and due to bootlegging activity on the proposed premises?

THE RECORD

The record includes the Notice of Hearing, proof of service, Notice of Appeal, Acknowledgement of Appeal, Electronic License Application, testimony of the witnesses, and State Exhibits 1-9 (See Exhibit Index for description; Exhibit 9 is a debit card receipt)

FINDINGS OF FACT

1. Janel Destival, d/b/a Triple J Mart (applicant) previously held class "E" liquor license LE-1157 for the premises located

at 246 S. Main Street in Fayette, Iowa. A class "E" liquor license permits a person to purchase liquor from the Iowa Alcoholic Beverages Division (division) and sell it on the licensed premises to other liquor licensees and to the general public for off-premises consumption. When liquor license LE-1157 came up for renewal in March 2007, the division learned that the applicant was delinquent in the payment of sales taxes. On March 26, 2007, the division notified the applicant that it was denying her liquor license renewal application for failure to meet the good moral character requirement, i.e. financial standing. The applicant did not appeal from the notice of denial, and liquor license LE-1157 was cancelled on April 30, 2007. (Testimony of Judy Seib; State Exhibits 3, 4)

2. On or about May 2, 2007, the applicant filed a new application for a Class "E" liquor license for the premises at 246 South Main Street in Fayette, Iowa. (Testimony of Judy Seib; State Exhibit 1)

3. On or about May 3, 2007, the applicant was issued a Class "B" Beer Permit for the premises at 246 South Main Street allowing her to sell beer and wine coolers in their original containers for off premises consumption. The division allowed the applicant to have the beer permit even though the liquor license renewal had been denied because the financial standards and financial scrutiny are less rigorous for a beer permit than for a class "E" liquor license.<sup>1</sup> (Testimony of Judy Seib)

4. On May 25, 2007 at approximately 11:30 p.m., Fayette Police Chief Dusty Dunn observed three men, who appeared underage, leaving the Triple J Mart and carrying cartons of what appeared to be "intoxicants." As Chief Dunn pulled into the parking lot of the Triple J Mart with his car's windows rolled down, he saw Dion Pirillo rush out of the Triple J Mart and heard Pirillo tell the three males "You did not buy any liquor from here." Chief Dunn knew Pirillo and recognized him as a person who owned and operated Triple J Mart with Janel Destival. Dunn saw the men place a six pack carton and a tall glass bottle similar to a 750 ml alcohol bottle in the trunk of a car.

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<sup>1</sup> For example, Class "E" liquor licensees are required to post a bond of \$5,000-\$15,000, unless all purchases of liquor from the division are made in cash or by means to ensure that the division will receive full payment in advance of delivery of alcoholic liquor. Iowa Code section 123.30(1)(c)(2007).

Chief Dunn obtained identification from the three men, one of whom was underage. The men opened the trunk at Chief Dunn's request, and he observed a six-pack of New Castle Brown Ale, a six-pack of Leinenhagel, and a bottle of Grey Goose Vodka. One man, who was of legal age, identified himself as the owner of the alcoholic beverages and stated that he had purchased the vodka from Wal-Mart three days earlier.

Chief Dunn took possession of the vodka and asked Dion Pirillo to open the liquor storage room for Triple J Mart. Pirillo initially denied having a key to the storage room and further denied that Triple J Mart carried Grey Goose Vodka in its inventory. When Chief Dunn reminded Pirillo that he was required to open the storage room for inspection, he complied. Once inside, Chief Dunn observed a bottle of Grey Goose Vodka on the storage shelf. The vodka bottle in the Triple J Mart storage room had the same size, shape, and print price tag (\$29.69, but without a dollar sign or period) as the vodka bottle retrieved from the trunk of the customer's car. Both vodka bottles had the same UPC code and the same lot number. (Testimony of Dusty Dunn; State Exhibit 5)

5. Chief Dunn took possession of the two six-packs of beer, the vodka bottle, and a debit card receipt. The debit card receipt had a time stamp of 11:19 p.m. and was in the amount of \$18.26 for "Miscellaneous" products. The men told Dunn that the vodka had been purchased at the Wal-Mart in Independence, Iowa. The following day, Chief Dunn contacted Sue Rindels, Assistant Manager of the Independence Wal-Mart. Rindels advised Chief Dunn that Wal-Mart carries Grey Goose Vodka with the same UPC Code as the seized bottle but that Wal-Mart had not sold any Grey Goose Vodka since May 19, 2007. Rindels further stated that Wal Mart's liquor bottles were not marked with a price sticker, and that the Wal Mart price for Grey Goose Vodka was \$28.64. (Testimony of Dusty Dunn; State Exhibits 5, 7, 9)

6. On June 4, 2007, the local authority approved the applicant's application for a new class "E" liquor license, and the application was forwarded to the division for its review. On June 6, 2007, Dion Pirillo was criminally charged with selling liquor without a valid license (bootlegging), in violation of Iowa Code section 123.59(2007). As of the date of the administrative hearing, Pirillo had entered a plea of not guilty

and was awaiting trial. (Testimony of Dusty Dunn; State Exhibits 5, 8)

7. On July 23, 2007, the division sent a letter notifying the applicant that it was formally denying her application for a new class "E" liquor license for the Triple J Mart for two reasons: lack of financial standing necessary to meet licensing requirements and bootlegging activity on the proposed premises at a time when no class "E" liquor license was in place. (Testimony of Judy Seib; State Exhibit 2)

#### CONCLUSIONS OF LAW

The Iowa Alcoholic Beverages Control Act (Iowa Code chapter 123) is an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is declared to be public policy that the traffic in alcoholic liquors is so affected with a public interest that it should be regulated to the extent of prohibiting all traffic in them, except as provided in chapter 123. Iowa Code section 123.1 (2007).

A class "E" liquor control license may be issued and shall authorize the holder to purchase alcoholic liquor from the division only and to sell the alcoholic liquor to patrons for consumption off the licensed premises and to other liquor control licensees. Iowa Code section 123.30(3)(e)(2007).

Iowa Code section 123.32(5)(b)(2007) provides, in relevant part:

5. *Action by administrator.*

...

b. Upon receipt of an application having been approved by the local authority, the division shall make an investigation as the administrator deems necessary to determine that the applicant complies with all requirements for holding a license or permit... The administrator may appoint an administrative law judge of the department of inspections and appeals to receive the testimony under oath and evidence, and to issue a proposed decision to approve or disapprove the application for a license or

a permit. The administrator may affirm, reverse, or modify the proposed decision to approve or disapprove the application for a license or a permit...

Iowa Code section 123.30(1)(a)(2007) provides that a liquor control license may only be issued to a person who is of good moral character as defined by this chapter. Iowa Code section 123.3(26)(2007) provides the following definition of "person of good moral character":

26. "*Person of good moral character*" means any person who meets all of the following requirements:

a. The person has such financial standing and good reputation as will satisfy the administrator that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person's operations under this chapter...

...

185 Iowa Administrative Code 4.2(4)"a" provides in relevant part:

**4.2(4)** A local authority or the administrator may consider an applicant's financial standing and good reputation in addition to the other requirements and conditions for obtaining a liquor control license, wine or beer permit, or certificate of compliance, and the local authority or the administrator shall disapprove or deny an application for a liquor control license, wine or beer permit, or certificate of compliance if the applicant fails to demonstrate that the applicant complies with the lawful requirements and conditions for holding the license, permit or certificate of compliance.

...

a. In evaluating an applicant's "financial standing," the local authority or the administrator may consider the following: An applicant's "financial standing" may include, but is not limited to, verified source(s) of financial support and adequate operating capital for the applicant's proposed establishment, **a record of prompt payment of local or state taxes due....** (emphasis supplied)

Iowa Code section 123.59(2007) prohibits any person who, acting individually, or through another acting for the person, keeps or carries on the person, or in a vehicle, or leaves in a place for another to secure, any alcoholic liquor,...with intent to sell or dispense the liquor..., by gift or otherwise in violation of law...is a bootlegger and subject to the general penalties provided in this chapter.

The applicant has failed to establish that she complies with the good moral character requirement for holding a class "E" liquor license in the state of Iowa. The preponderance of the evidence established that the applicant very recently forfeited a class "E" liquor license for the same premises due to her failure to timely pay state sales taxes. While the applicant is now current in paying her sales taxes and was issued a class "B" beer permit by the division on May 3, 2007, class "E" liquor licensees have greater financial obligations than beer and wine permittees and are subjected to greater financial scrutiny. Iowa Code sections 123.30(1)(a); 123.30(1)(c); 123.3(26)(a)(2007). A history of past sales tax delinquency constitutes grounds for denial under the division's rules. 185 IAC 4.2(4)"a."

In addition, the preponderance of the evidence established that an employee or manager of the Triple J Mart sold a bottle of vodka to a customer at a time when the licensed premises did not have a class "E" liquor license authorizing it to sell liquor. Any violation of the Act or the rules of the division by any employee, agent or servant of a licensee or permittee shall be deemed to be the act of the licensee or permittee... 185 AIC 4.8.

The applicant presented no evidence to refute the credible observations and conclusions of Chief Dusty Dunn. The claim that the vodka was purchased at the Indianola Wal-Mart was effectively refuted by Officer Dunn's observations, by Pirillo's overheard incriminating statement to the purchasers, and by the information obtained from the Wal-Mart Assistant Manager. While the charges shown on the debit card receipt were lower than the price tag on the vodka bottle, it is entirely possible that cash was paid for the vodka and/or that the price paid was less than the ticketed price. The division must be convinced that a liquor licensee will conduct its business in conformance with

all statutes, rules, and ordinances applicable to its operations. Based on the applicant's past sales tax delinquency and the illegal bootlegging of liquor by the applicant's employee at the proposed premises, the division was justified in denying the Janel Destival's application for a new class "E" liquor license on grounds of failure to meet the good moral character requirements.

#### DECISION AND ORDER

It is therefore ORDERED that the application for a new class "E" liquor license filed by Janel Destival, d/b/a Triple J Mart, is hereby DENIED.

Pursuant to the administrative rules of the division, any adversely affected party may appeal a proposed decision to the Administrator of the Alcoholic Beverages Division within thirty (30) days after issuance of the proposed decision. In addition, the Administrator may initiate review of a proposed decision on the Administrator's own motion at any time within thirty (30) days following the issuance of a proposed decision. 185 IAC 10.27(1) and (2).

Requests for review shall be sent to the Administrator of the Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, IA 50021. Unless otherwise ordered, each appealing party may file exceptions and briefs within thirty (30) days of the notice of appeal or order for review. Within thirty (30) days thereafter, any party may file a responsive brief. The Administrator may shorten or extend the briefing period as appropriate. The Administrator may resolve the appeal on the briefs or provide an opportunity for oral argument. 185 IAC 10.27(6). The administrator may affirm, reverse or modify the proposed decision.

A party who is adversely affected by the proposed decision shall not be deemed to have exhausted administrative remedies unless the adversely affected party files a request for review of the proposed decision within the time provided and the Administrator has reviewed the proposed decision and has affirmed, reversed, or modified the proposed decision.

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Dated this 17<sup>th</sup> day of October, 2007.

*Margaret LaMarche*

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