

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE
JOHN O. PASTORE CENTER
CRANSTON, RI 02920**

<u>IN THE MATTER OF:</u>	:	
	:	
SUN LEE ENT. INC.,	:	DBR No. 11-L-0006
d/b/a MAI TAI RESTAURANT,	:	
	:	
<u>RESPONDENT.</u>	:	

**EMERGENCY CEASE AND DESIST ORDER
AND NOTICE OF OPPORTUNITY FOR HEARING**

Pursuant to R.I. Gen. Laws §§ 3-2-2, 3-5-21, 42-35-9, and 42-35-14(c), *Commercial Licensing Regulation 8-Liquor Control Administration* (“CLR 8”) and *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings* (“CMR 2”), the Director (“Director”) of the Department of Business Regulation (“Department”) hereby orders that Sun Lee Ent. Inc. d/b/a Mai Tai Restaurant, located at 856 Tiogue Avenue, in Coventry, Rhode Island, cease and desist from all business activity. This Order is effective upon issuance.

Upon receipt of a written request for a hearing within thirty (30) days of the date of this Order, a Hearing Officer will be appointed by the Director and the matter will be set down for hearing no less than twenty (20) and no more than sixty (60) days from the date such request is received. The Director will promptly notify the Respondent of the time and place for any hearing. If no hearing is requested and none is ordered by the Director, this Order shall become permanent thirty (30) days after entry and shall remain in effect unless or until it is modified or vacated by the Director or his successor.

The Director makes the following finds of fact and conclusions of law with respect to entry of this Emergency Order:

I. FACTS

A. Respondent had a Class B liquor license, number 09-B-7 issued by the Town of Coventry for a location at 856 Tiogue Avenue in Coventry, Rhode Island that authorized Respondent to keep for sale and sell alcoholic beverages for consumption on the premises where food is served (“License”).

B. Upon information and belief, the License expired on December 1, 2010 pursuant to R.I. Gen. Laws § 3-5-8.¹

C. On or about December 22, 2010, an investigator from the Department conducted an inspection of Respondent’s premises to confirm compliance with statutory and regulatory requirements and informed Respondent of the following seven (7) violations:

1. Respondent was serving alcohol with an expired license in violation of R.I. Gen. Laws § 3-7-7 and CLR 8 Rule 44.
2. Respondent did not have a minor book in violation of R.I. Gen. Laws § 3-8-6(c)(1);
3. Respondent was given a verbal warning for lacking alcohol server training cards pursuant to R.I. Gen. Laws § 3-7-6.1;
4. A Department of Health and Safety Food Manager Certificate was not available for inspection as required by R.I. Gen. Laws § 3-7-7 and CLR 8 Rule 21;

¹ R.I. Gen. Laws § 3-5-8 states:

Expiration date of licenses. – Every license except retailer's Class F licenses and retailer's Class G licenses shall expire on December 1 after its issuance.

5. A Department of Health Food Business Certificate was not available for inspection as required by R.I. Gen. Laws § 3-7-7 and CLR 8 Rule 21;
6. Respondent was offering free shots upon any scoring by the New England Patriots football team in violation of R.I. Gen. Laws § 3-7-26(b); and,
7. Respondent was offering \$2.00 Michelob on Monday nights only in violation R.I. Gen. Laws § 3-7-26(b) and CLR 8 Rule 16, which prohibit happy hours and any similar type of activities.

D. At the inspection on December 22, 2010, the Department inspector informed Respondent's owner that he should contact the State of Rhode Island Division of Taxation ("Division of Taxation") and the Town of Coventry to rectify all tax and licensing issues. The Department inspector also informed Respondent that no alcohol was to be served until it received a valid liquor license from the Town of Coventry. Respondent's owner indicated to the Department's inspector that he had paid all outstanding taxes but that payment was later discovered to be a payment for a traffic violation.

E. Upon information and belief, Respondent was unable to renew said License due to its failure to obtain a certificate of payment of state taxes as required by R.I. Gen. Laws § 3-7-24.²

² R.I. Gen. Laws § 3-7-24 states:

Certificate of payment of state taxes. – Every licensee under this chapter, upon filing an application for renewal or transfer of a license, shall submit with the application a certificate executed by the tax administrator, or some employee designated by the tax administrator, that taxes due the state have been paid. For the purposes of this section, "taxes due the state" shall include contributions due including taxes, interest and penalties due to the department of labor and training pursuant to the employment security act, chapters 42-44 of title 28, and temporary disability insurance act, chapters 39-41 of title 28. No license under this chapter shall be renewed or transferred without that certificate.

F. Upon information and belief, the Division of Taxation revoked Respondent's permit to make retail sales due to failure to pay state taxes and thereby prohibited Respondent from making any retail sales.

G. Upon information and belief, the Division of Taxation conducted an inspection of Respondent's premises on January 20, 2011 and witnessed Respondent making retail sales without a permit and liquor being served by Respondent without a valid liquor license. The Division of Taxation delivered a Notification To Business Making Sales at Retail Without a Permit to Respondent on January 20, 2011.

H. On January 24, 2011, a Department inspector arrived at Respondent's premises and observed that Respondent was open, making retail sales, and serving alcoholic beverages at its bar.

II. STATUTORY AUTHORITY

A. R.I. Gen. Laws § 3-1-5 states that "[t]his title shall be liberally construed in aid of its declared purpose which declared purpose is the promotion of temperance and for the reasonable control of the traffic in alcoholic beverages."

B. R.I. Gen. Laws § 3-2-2(a) states that the Department "has general supervision of the conduct of the business of...keeping for sale and selling beverages" and R.I. Gen. Laws § 3-2-2(b) further states that the Department "shall supervise and inspect all licensed places to enforce the provisions of this title and the conditions, rules and regulations which the [D]epartment establishes and authorizes."

C. R.I. Gen. Laws § 3-5-21(a) provides that every license is subject to revocation or suspension and a licensee is subject to fine by the Department, on its own motion, for breach by the holder of the license of the conditions on which it was issued or

for violation by the holder of the license of any statute, rule or regulation applicable. See also *Kmiec v. Liquor Control Hearing Board*, 140 A.2d 133, 136 (R.I. 1958).

D. R.I. Gen. Laws § 42-35-14(c) states, in pertinent part that, “[I]f the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of license may be ordered pending proceedings for revocation or other action.”

E. CMR 2 Section 4(B) provides that the Department, on its own authority, may initiate an investigation and take action against a licensee.

F. Under CLR 8 Rule 15 the Department may initiate a hearing on its own motion to fine, revoke or suspend any type of alcoholic beverage license for any violation of Title 3 of the General laws of Rhode Island or these regulations. See also *Belconis v. Brewster*, 65 R.I. 279, 14 A.2d 701 (1940).

G. CLR 8 Rule 44 requires, in pertinent part, that “If the Certificate of Good Standing [from the Division of Taxation] is not provided by November 30 the licensee shall be closed on December 1 and thereafter until said Certificate is so provided.”

III. FINDINGS AND STATUTORY VIOLATIONS

A. Based on the above facts and violation of statutory and regulatory requirements, the Director finds that Respondent’s willful disregard of statutory and regulatory requirements is detrimental to the public health, safety, and welfare and emergency action is required to enforce compliance by Respondent.

B. Based on the foregoing, the Department has reason to believe that Respondent has repeatedly, since December 1, 2010, violated: (i) R.I. Gen. Laws § 3-7-7 and CLR 8 Rule 44 by operating a food establishment and serving liquor therein without a license; (ii) R.I. Gen. Laws § 3-8-6(c) by failing to use and provide a minor book; (iii)

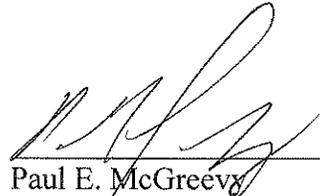
R.I. Gen. Laws § 3-7-6.1 by failing to implement alcohol server training; (iv) R.I. Gen. Laws § 3-7-7 and CLR 8 Rule 21 by failing to comply with Food Safety Manager and Food Business Certificate requirements; and, R.I. Gen. Laws § 3-7-26(b) and CLR 8 Rule 16 by offering free shots and by offering reduced drink prices on Monday.

IV. ORDER

THEREFORE, based upon the foregoing, the Director ORDERS that:

The Respondent shall immediately cease and desist operating its restaurant and serving alcoholic beverages, pursuant to R.I. Gen. Laws § 42-35-14(c).

Dated as of the 28 day of January 2011.



Paul E. McGreevy
Acting Director

If you have any questions regarding the subject matter of this ORDER, please contact Neena Sinha Savage at (401) 462-9540 or NSSVG1@dbr.ri.gov and reference the case name and number.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.ri.gov at least three (3) business days prior to the meeting.

CERTIFICATION

I hereby certify on this 28th day of January 2011 that a copy of the within Order was hand-delivered to the following:

Sun Lee Ent. Inc. d/b/a Mai Tai Restaurant
C/O Ngar Len
856 Tiogue Avenue
Coventry, RI 02816

Ngar Len, President
Sun Lee Ent. Inc.
74 Hopkins Hill Road
Coventry, RI 02816

Sent by regular mail, postage prepaid to the following:

Cheryl George, Town Clerk
Town of Coventry
1670 Flat River Road
Coventry, RI 02816

Paul Guertin
RI Division of Taxation
One Capitol Hill
Providence, RI 02908

And by electronic delivery to the following members of the Department of Business Regulation:

Maria L. D'Alessandro, Esq.
Deputy Director

Neena Sinha Savage, Esq.
Chief of Legal Services

Thomas Broderick
Chief, Auto Body & Public Protection Inspector

R B Ellison