

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

In the Matter of the Proposed)
Suspension of the Basic Permit Issued)
to:)
)
) No. AF-97,547-AASUS
)
Rubissow Family Wines LLC)
830 School Street, Suite 14)
Napa, CA 94559)
Basic Permit No. CA-P-17054)

INITIAL DECISION

On or about October 30, 2018, the Deputy Assistant Administrator, Field Operations (DAAFO), of the Alcohol and Tobacco Tax and Trade Bureau (TTB) issued an Order to Show Cause (OTSC) (Form TTB F 5000.6) as to why Rubissow Family Wines LLC's (Rubissow), Wholesaler's Basic Permit (CA-P-17054) should not be suspended.

Pursuant to 27 U.S.C. § 205(d), 27 C.F.R. §§ 11.21 and 71.45, the DAAFO, alleged in the OTSC that Rubissow has willfully violated the conditions of its Wholesaler's Basic Permit issued under 27 U.S.C. § 203(c) and its implementing regulations, Title 27, Code of Federal Regulations, Part 11; Basic Permits being conditioned on the permittee's compliance with the applicable provisions of 27 U.S.C., the XXI Amendment and laws relating to its enforcement; all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect to them; the Federal Water Pollution Control Act; and, all applicable regulations made pursuant to law.

The specific bases for issuance of the OTSC are set forth in the OTSC and the attachment thereto. Rubissow, through counsel, submitted a request for hearing dated December 3, 2018.

On December 11, 2018, TTB made a request to the United States Office of Personnel Management (OPM) for assignment of an Administrative Law Judge (ALJ) to oversee this case. On February 26, 2019, OPM informed TTB that Chief Administrative Law Judge Walter J. Brudzinski, United States Coast Guard, would be designating the Administrative Law Judge (ALJ) to be on loan to the Alcohol and Tobacco Tax and Trade Bureau (TTB), pursuant to 5 U.S.C. § 3344 and 5 C.F.R. § 930.208, in the above-referenced matter. On March 2, 2019, TTB sought designation of an ALJ from Chief ALJ Brudzinski.

On March 12, 2019, Rubissow, through counsel, notified TTB that Rubissow wished to immediately withdraw its request for a hearing in this matter.

Given that Rubissow requested a hearing and then withdrew said request, TTB is treating Rubissow's actions consistent with 27 C.F.R. § 71.63. Therefore, under the authority of 27 C.F.R. § 71.79(b), TTB, makes the following Findings and Decision.

EVIDENCE PRESENTED BY THE GOVERNMENT

1. The OTSC, and attachment thereto, issued October 30, 2018, which is hereby incorporated by reference with the same force and effect as though fully set forth herein.

FINDINGS OF FACT AND CONCLUSIONS

1. Rubissow waived its right to a hearing on this matter and its right to file an Answer.
2. The DAAFO finds that Rubissow willfully violated the conditions of its Wholesaler's Basic Permit as detailed in the OTSC and attachment thereto.
3. Rubissow's authority to operate under Basic Permit number CA-P-17054 may and should be suspended for a period of one day.

DECISION AND ORDER

1. In pertinent part, Basic Permits issued pursuant to the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 201-219A, are conditioned upon compliance with the requirements of 27 U.S.C. §§ 205 and 206 "and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto." 27 U.S.C. § 204(d).
2. Rubissow willfully violated the conditions of its Basic Permit in the following manner and instances:
 - a. Rubissow, is a TTB-permitted beverage alcohol wholesaler located in California.
 - b. [REDACTED] is a TTB-permitted beverage alcohol wholesaler located in New York and a "trade buyer" within the meaning of 27 U.S.C. § 205(d)).
 - c. In or around October 2016 through approximately August 2017, Rubissow sold wine to [REDACTED] on consignment.
 - d. Specifically, Rubissow provided wine to [REDACTED] pursuant to an arrangement whereby [REDACTED] was not obligated to pay for the wine until after it sold such wine to retailers.

- e. Peter Rubissow admitted to TTB investigators that Rubissow deals with [REDACTED] and noted that they have a “consignment relationship.” According to Mr. Rubissow, [REDACTED] takes possession of Rubissow’s wine and only furnishes payment, a percentage of the sales price, after the wine has been sold to retailers.
 - f. Rubissow acted willfully, or with plain indifference to the requirements of the FAA Act, in entering into the consignment sale arrangements with [REDACTED].
3. The FAA Act, 27 U.S.C. § 205(d), makes it unlawful for an industry member (such as Rubissow, here) to sell, offer for sale, or contract to sell to any trade buyer (i.e., a wholesaler or retailer) on consignment.
 4. Consignment sales are arrangements where the trade buyer is not obligated to pay for distilled spirits, wine, or malt beverages until after the trade buyer sells the distilled spirits, wine, or malt beverages. 27 C.F.R. § 11.22.
 5. An FAA Act Basic Permit is conditioned upon compliance with the requirements of section 205 of the FAA Act. 27 U.S.C. § 204(d).
 6. TTB may suspend a Basic Permit issued under the FAA Act if its holder willfully violates any of the conditions of the permit. 27 U.S.C. § 204(e)(1).

Based on the foregoing, the DAAFO finds that Rubissow willfully violated the conditions of its Wholesaler’s Basic Permit as detailed in the OTSC and attachment thereto. Accordingly, Rubissow’s authority to operate under Basic Permit number CA-P-17054 is to be suspended for a period of one day. It is, therefore, decided that the period of suspension will and shall be on April 19, 2019.

March 14, 2019
Dated



Ronald Hancock
Deputy Assistant Administrator, Field Operations
Alcohol and Tobacco Tax and Trade Bureau