

IN THE DISTRICT COURT OR THE UNITED STATES WITHIN AND FOR THE WESTERN DIVISION OR THE WESTERN DISTRICT OF MISSOURI.

T. J. Pendergast Wholesale)
Liquor Company, a corporation,)
)
Plaintiff,)
)

vs. : In Equity, No. 255.

Shrader P. Howell, Federal)
Prohibition Director of)
Missouri..... Defendant.)

ANSWER.

Comes now the above named defendant and for his answer to the plaintiff's petition herein shows to the court;

This defendant admits that T. J. Pendergast Wholesale liquor Company is a corporation organized and existing under the laws of the State of Missouri and is a resident and citizen in the State of Missouri; that Shrader P. Howell is the legally appointed and qualified and acting Federal Prohibition Director of Missouri and a citizen and resident of Kansas City, Missouri.

This defendant denies that this is a suit in equity arising under the Constitution and laws of the United States and avers that this is a special proceeding in which the equitable jurisdiction of this court is based upon Section 9 and Section 5 of Title II of the Act of Congress known and described as the National Prohibition Act and that the jurisdiction of this court is confined exclusively to the jurisdiction conferred under and by virtue of said Act. This defendant denies that the matter in controversy here in exceeds the sum of Three Thousand Dollars and that the petitioner is without adequate remedy at law.

This defendant admits that on February 17, 1920, there was issued to the petitioner by this defendant as Federal Prohibition Director for Missouri, permit number Mo-B-6, authorizing petitioner to sell intoxicating liquors for other than beverage purposes, to wit,

to others holding permits which confer authority to purchase and use intoxicating liquors for non-beverage purposes, but this defendant avers that said permits hereinbefore last mentioned which would confer authority to purchase and use intoxicating liquors as aforesaid were required by law and by the regulations, customs and practices of the Treasury Department to be in prescribed forms and upon prescribed conditions and this defendant says and shows to the court that unless said forms, conditions, laws, regulations and customs were observed and kept in good faith by said petitioner herein, the permit issued to him was of no effect in permitting sales to others holding permits to purchase and use intoxicating liquors as aforesaid. This defendant further admits that in pursuance of said permit to the petitioner herein, said petitioner engaged in the wholesale liquor business.

This defendant further admits that on the 14th day of August, 1920, he, as said Federal Prohibition Director of Missouri, issued an order of citation directing petitioner to appear and show cause why the aforesaid permit should not be revoked which said order was returnable on the 31st day of August, 1920; this defendant further admits that the copy of said order attached to petition herein and marked "Exhibit A" is a true copy of said order. This defendant further avers that on said 14th day of August, 1920, said notice and order were served by said defendant upon one P. H. McCrory, Secretary of said petitioner by registered mail to said McCrory, at the address of said petitioner, 525 Delaware Street, Kansas City, Missouri. This defendant further admits that upon the return day of said order the petitioner herein appeared by attorney at the time and place in said order specified and filed its answer to said order; that the copy of said answer attached to the petition and marked "Exhibit B" is a true copy of said answer. Defendant further admits that at the time and place aforesaid he proceeded to a hearing of the matters and things set forth in said complaint, order or citation.

This defendant denies that petitioner at all times in good faith conformed to the provisions of the National Prohibition Act and the regulations promulgated thereunder; denies that there was no evidence, fact or grounds for finding that the petitioner had not in good faith conformed to the said Act and regulations. This defendant admits that he made the order set forth in plaintiff's petition in substance revoking and cancelling said permit issued to said petitioner and stating as a reason for such revocation, the finding

that said petition- er had not in good faith conformed to the provisions of the National Prohibition Act in the particulars in said order and in said petition set forth.

This defendant denies that the aforesaid order, finding and ruling of this defendant as Federal Prohibition Director was arbitrary, was not founded upon evidence of probative value, that said order is or was oppressive, unreasonable, unsupported by established facts and without authority of law. On the contrary, this defendant says and shows to the court that said order was by him made in good faith in conformity with his duties prescribed by the National Prohibition Act and the regulations, customs and usages of the Treasury Department. That said order was based upon the hearing aforesaid upon due notice and opportunity granted to the said petitioner for full opportunity to present any and all evidence that was desired and after hearing of the evidence, adduced at said hearing. That the findings and order of this defendant were within the scope of his official duties and were made by him pursuant to the duties imposed upon him by the law and by the regulations, customs and usages of the Treasury Department, and that said findings of fact are true.

WHEREFORE, this defendant prays that the decision and order of the defendant as said Federal Prohibition Director be affirmed and that plaintiff's petition be dismissed at plaintiff's cost.

Geo H English

Assistant United States Attorney Solicitor for Defendant.

No. 255.

IN THE U.S. DISTRICT COURT.

T.J.Pendergast Wholesale Liquor Company, a corporation

vs.

Shrader B. Howell, Federal Prohibition Director of Missouri.

ANSWER.

Filed Dec. 23, 1920

Edwin R Durham

Clerk US Dist. Court

George H. English, Assistant U.S. Attorney