

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 16, 2013**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on January 16, 2013, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Zander Guy, Commissioner Daniel L. Briggs and Commissioner Allen M. Thomas were present at the meeting. Chairman Guy introduced Commissioner Thomas as the newest member of the NC ABC Commission.

MINUTES OF DECEMBER 12, 2012

Chairman Guy asked for a motion to waive the reading of the minutes of the December 12, 2012 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the December 12, 2012 meeting. Commissioner Thomas seconded the motion. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the December 12, 2012 meeting. Commissioner Thomas made a motion to approve the minutes from the December 12, 2012 meeting. Commissioner Briggs seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Chairman Guy asked Commissioner Thomas and Commissioner Briggs if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Thomas stated that that he had found no conflicts of interest. Commissioner Briggs stated that that he had found no conflicts of interest. Chairman Guy stated that he had found no conflicts of interest.

I. HEARING CASES – 56

Chief Counsel Fred Gregory stated for hearing case #26, Via 216 Bar and Grill, the permits have been cancelled so the case will not need to be ratified.

Chief Counsel Gregory stated hearing case #19, Rudys Pub and Grill, will be continued to the February ABC Commission Meeting.

Chief Counsel Gregory stated the next hearing case was contested case #1, Hillsdale Club and no one was present. Assistant Counsel K. Renee Cowick represented the NC ABC Commission in this matter. Ms. Cowick stated someone did show up for the hearing, but it was not the permittee himself. The permittee was elderly and was unable to properly supervise the business. Administrative Law Judge Donald W. Overby's Final Decision imposed a 60-day suspension of the Permittee's ABC permits and a civil penalty of \$1,000.00.

In compliance with the administrative law judge's Final Decision, Chairman Guy made a motion that the monetary penalty of \$1,000.00 be due no later than February 8, 2013, and the 60-day suspension of Permittee's ABC permits would begin February 15, 2013. Commissioner Briggs seconded the motion. Motion Passed.

Chief Counsel Gregory stated the next hearing case was contested case #4, Fat Cats Grill and Oyster Bar and no one was present on behalf of the business. Assistant Counsel Timothy Morse represented the ABC Commission in this matter. Mr. Morse stated this was an Audit case and the proper paperwork had not been filed by the Permittee with the Office of Administrative Hearings; therefore, a sanctions motion had been filed. Administrative Law Judge J. Randall May's Final Decision imposed a 1-year suspension of Permittee's Mixed Beverages Restaurant ABC permit.

In compliance with the administrative law judge's Final Decision, Chairman Guy made a motion that the 1-year suspension of Permittee's Mixed Beverages Restaurant ABC permit would begin February 15, 2013. Commissioner Thomas seconded the motion. Motion Passed.

Chief Counsel Gregory stated the next hearing cases were contested cases #2 and #3, Rock Star Bar Grill and Bar and Mr. Jaswinder Taya was present on behalf of the business. Ms. Cowick and Mr. Morse had represented the ABC Commission on these matters; however, Mr. Morse spoke on both matters. Mr. Morse stated hearing case #2 fell under the current procedural law, requiring the NC ABC Commission not to alter the penalty, but to establish the dates for fulfillment of the penalty requirements. Mr. Morse stated hearing case #3 fell under the previous procedural law, allowing the NC ABC Commission to act on the penalty.

Mr. Taya stated that the business had been closed for a couple of months. He stated he had not received the certified mail sent by the NC ABC Commission as no one had been available at the business. Mr. Morse stated it was the Permittee's responsibility to provide an address on his application, and maintain a current address with the Commission at which to receive mail. Mr. Morse stated that historically, there has been difficulty with establishing service of documents to Mr. Taya's businesses. Mr. Morse stated there was no service problem with hearing case #2. Administrative Law Judge J. Randall May's Final Decision imposed a 30-day suspension of Permittee's ABC permits and a civil penalty of \$750.00.

In compliance with the administrative law judge's Final Decision, Chairman Guy made a motion that the monetary penalty of \$750.00 be due no later than February 8, 2013, and the 30-day suspension of Permittee's ABC permits would begin February 15, 2013. Commissioner Thomas seconded the motion. Motion Passed.

On hearing case #3, Mr. Morse stated that the law enforcement officer could confirm that the business had been closed for 5 days. Mr. Morse recommended that the Commission adopt Administrative Law Judge J. Randall May's Decision to impose a 30-day suspension of Permittee's ABC permits and a civil penalty of \$1,000.00.

Chairman Guy made a motion that there would be no additional monetary penalty and the 30-day suspension of Permittee's ABC permits would begin February 15, 2013, concurrently with the 30-day suspension imposed in hearing case #2. Commissioner Briggs seconded the motion. Motion Passed.

Chief Counsel Gregory stated Mr. William Fairbanks, the owner of hearing case #34, Carrburritos Taqueria, was present to speak on behalf of the business. Mr. Fairbanks stated the business had received two violations for underage sales. Mr. Fairbanks stated he had been a permit holder at this location for nearly 16 years and these were the first violations. He stated he had four cashiers and the two violations occurred with his newest staff members. Mr. Fairbanks stated his staff had taken the RASP classes previously and he would require his staff to take additional training. He had also posted new signage to assist his staff with determining the age of patrons. Mr. Fairbanks asked for consideration on the penalty. Assistant Counsel LoRita Pinnix stated that the business did have an outstanding record prior to these two underage campaign violations and there was room for flexibility on the penalty.

Commissioner Briggs made a motion to reduce the penalty by 50% based upon confirmation of training within 30 days. Commissioner Thomas seconded the motion. Motion passed.

Chief Counsel Gregory stated Mr. Laxman Dahal, the owner of hearing case #55, Raceway, was present to speak on behalf of the business. Mr. Dahal stated that the business had been open for six months when the first violation occurred. The employee had had family issues and tried to find a substitute to work his shift, but was unable to and was distracted at work. For the second violation, Mr. Dahal stated the employee asked the purchaser how old he was and the underage buyer stated "23," so the employee did not check his identification.

Ms. Pinnix stated the violations occurred while the business was under temporary permits. The first was a campaign by law enforcement and the second violation occurred while the business was under surveillance. Ms. Pinnix stated all employees were required to take the training classes prior to the business receiving permanent permits. Mr. Dahal asked for consideration on the penalty.

Commissioner Briggs made a motion to reduce the penalty by 25%, upon confirmation of training. Commissioner Thomas seconded the motion. Motion passed.

Chief Counsel Gregory stated Mr. Vincent Ferri, the owner of hearing case #5, Bodacious Bear Pub, was present to speak on behalf of the business. Mr. Ferri stated the business was issued violations for two underage sales. The staff has taken the classes offered by ALE. Mr. Ferri asked the Commission to allow the suspension to begin on January 20, 2013 rather than on February 15, 2013 as documented in the Offer in Compromise.

Ms. Cowick stated alcohol sales are relatively new to the area and the two violations were treated as a first and second violation. Ms. Cowick stated the violations could be treated as two first offenses as they occurred within a short period of time, reducing the penalty to a 24-day suspension or a \$2,400.00 penalty.

Commissioner Thomas made a motion to reduce the penalty to a 24-day suspension or a \$2,400.00 penalty and adjust the suspension date so it would begin on January 20, 2013. Chairman Guy seconded the motion. Motion passed

Chief Counsel Gregory stated Ms. Yuerong Zhu, the owner of hearing case #56, Tavern 51, was present to speak on behalf of the business accompanied by one of her employees. The employee stated they did not know about the violations until they received the notice in the mail. He stated they could not watch and control the parking lot for drinking and the fights and shooting occurred when they were closed.

Ms. Cowick stated the possession and consumption of alcoholic beverages in an area not specifically approved could be avoided by obtaining the landlord's permission to extend the premises to an area outside and receiving permission from the ABC Commission for an extension of the premises. Ms. Cowick stated that local law enforcement had contacted her regarding their concern about this location.

Ms. Zhu agreed to take the 10-day suspension and pay the \$4,000.00 penalty to avoid the final 30-day suspension.

Commissioner Briggs made a motion to accept the offer. Commissioner Thomas seconded the motion. Motion passed.

Chief Counsel Gregory stated Mr. Earl Pickett, the owner of hearing case #24, Town N Country 48, was present to speak on behalf of the business with two employees. Mr. Pickett stated he had been a permit holder for 45 years and this was his first violation. Mr. Pickett stated they had taken training with the Durham ABC and employees were now taking refresher classes every quarter. Mr. Pickett asked for consideration on the penalty. Ms. Cowick confirmed Mr. Pickett had responded quickly to the notice.

Commissioner Briggs made a motion to reduce the penalty by 25%, based upon confirmation of training within 30 days. Motion passed.

Chief Counsel Gregory stated Ms. Mercedes Marshall, the owner of hearing case #54, Salsa and Beer, was present to speak on behalf of the business. Ms. Marshall stated she owns five restaurants. The contents of one were being relocated from one establishment to another establishment and a case of wine was mistakenly transported. Ms. Marshall stated the wine was in a storage area not in the bar area and she was responsible for inspecting the items in the storage area. Ms. Pinnix stated the agent reported that in the move, there was some confusion regarding the transfer of the alcohol and there was some flexibility regarding the penalty.

Chairman Guy made a motion to reduce the penalty by 50% with no suspension. Motion passed.

Commissioner Briggs made a motion to approve the remaining offers in compromise, with the exception of the previously ratified cases. Motion Passed.

II. OTHER BUSINESS – PROPOSED AMENDMENT TO 04 NCAC 02S .0228 DISPENSING ALCOHOLIC BEVERAGES: PRODUCT IDENTIFICATION

ABC Deputy Administrator Hamilton asked that the Commission enter the proposed rule change and the impact statement into the record and waive the reading of the rule. Mr. Hamilton asked the Commission to open a public hearing on the proposed rule change to 04 NCAC 02S .0228 Dispensing Alcoholic Beverages: Product Identification.

Chairman Guy stated the period for public comment on the proposed rule change would be open until February 1, 2013 and action regarding the proposed rule change would be taken at the February 13, 2013 NC ABC Commission meeting. No one was present to comment on the proposed rule change. Chairman Guy closed the public hearing on the proposed rule change.

III. OTHER BUSINESS – APPROVAL OF FUTURE COMMISSION MEETING DATE

Mr. Hamilton asked for approval for April 10, 2012 as the date of the April NC ABC Commission Meeting. Commissioner Thomas made a motion to approve April 10, 2013 for the April NC ABC Commission meeting date. Commissioner Briggs seconded the motion. Motion passed.

Mr. Shelly Willingham, president of the NC Association of ABC Boards was present and stated the Board looks forward to working with the Commission on alcohol education and control.

Commissioner Briggs made a motion to approve the remaining offers in compromise, with the exception of the previously ratified cases. Commissioner Thomas seconded the motion. Motion Passed.

With no further business, the meeting adjourned.

A.D. "Zander" GUY, JR., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division