

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 12, 2014**

The following narrative and summary describes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road, Raleigh, North Carolina on November 12, 2014, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the NC ABC Commission in the Legal Division.

ROLL CALL

Chairman James C. Gardner and Commissioners Joel L. Keith and Kevin M. Green were present. Chairman Gardner called the meeting to order.

MINUTES OF OCTOBER 15, 2014

Chairman Gardner asked for a motion to waive the reading of the minutes of the October 15, 2014 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the October 15, 2014 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the October 15, 2014 meeting. Commissioner Green made a motion to approve the minutes from the October 15, 2014 meeting. Commissioner Keith seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. § 138A-35, Chairman Gardner asked 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 Keith stated he found no conflicts of interest. Commissioner Green stated he found no conflicts of interest. Chairman Gardner stated he found no conflicts of interest.

I. HEARING CASES – 58

Chief Counsel K. Renee Cowick stated the permits for hearing case number 45, Hide Out, had been cancelled.

Ms. Cowick stated no one was present on behalf of hearing case number 1, Marquis Market. Assistant Counsel Tim Morse stated the permittee failed to maintain records available for inspection, possessed containers of spirituous liquor not bearing tax stamps, and failed to purchase beer and wine only from a wholesaler. The permittee was unresponsive and failed to file a prehearing statement for the Administrative Hearing. The Administrative Law Judge issued a decision of a 20-day suspension of the permittee's ABC permits and a monetary penalty of \$500.00.

Commissioner Keith made a motion to impose the penalty of the Administrative Law Judge's decision. Commissioner Green seconded the motion. Motion Passed.

Ms. Cowick stated Daniel Nourie was present on behalf of hearing case number 33, Scotchman 3176. Mr. Nourie stated the charge was selling to an intoxicated person. Mr. Nourie stated the business had surveillance video which was not viewed by law enforcement. He stated the video did not show the purchaser as being noticeably intoxicated.

Commissioner Keith asked if the permittee did fail to supervise and did they do anything wrong. Mr. Morse stated there are few lesser offenses than sale to an intoxicated person and the permittee signed the Offer in Compromise to avoid a possible negative outcome at trial. Commissioner Green asked if there was any evidence to show the purchaser was intoxicated and Mr. Morse explained later that evening the purchaser was involved in several vehicular accidents while driving under the influence. Mr. Morse stated the police back-tracked through the purchaser's activities prior to the accidents and found the purchase of alcohol at the permittee's business.

Mr. Nourie stated the Offer in Compromise for a charge of failure to supervise was signed to avoid a trial and to prevent charges from being placed against the employees who would have then been fired.

Ms. Cowick suggested if the Commission was not comfortable with the penalty included in the signed Offer in Compromise, a Written Warning might be more appropriate and provide a record of the violation for the permittee's permits.

Commissioner Keith made a motion to issue a Written Warning. Commissioner Green seconded the motion. Motion Passed.

Commissioner Keith made a motion to ratify the remaining offers in compromise. Commissioner Green seconded the motion. Motion Passed.

II. OTHER BUSINESS – ABC STORE LOCATION – MOORE COUNTY ABC BOARD

Administrator Michael C. Herring stated on October 14, 2014, the NC ABC Commission received a request from Pam Smith, the General Manager of the Moore County ABC Board, requesting approval to purchase land to open and operate an ABC Store at 3792 US Highway 15-501 in Carthage, North Carolina. On October 21, 2014, ABC Audit/Investigator Edwin Strickland met with Ms. Smith and began an investigation. Ms. Smith indicated the proposed location is approximately .6 miles from an existing store located at 1005 Unit B Monroe Street in Carthage, North Carolina. The Moore County ABC Board wishes to own the property as the existing store is currently leased. The existing store will be closed upon the opening of the proposed location.

The Audit/Investigators found the proposed location, 3792 US Hwy 15-501, Carthage, North Carolina, is a .53-acre vacant lot located near an intersection of highways, on a main thoroughfare between a gas/retail store and a lawnmower retail store.

On October 22, 2014, ABC Audit/Investigator Michael Arcangel confirmed with the Town Clerk of the Carthage Planning, Zoning and Permit Department, the property is zoned TBD, Thorough Faire Business District, and is approved for ABC retail sales.

The property is owned by Duncan and Barbara Kelly of Carthage, North Carolina. The agreed upon sales price is \$140,000. All Moore County ABC Board members submitted financial disclosure forms and have no direct financial interest in the ownership of the property.

Ms. Smith stated currently there is not a building plan; however, there is a discussion regarding building a store similar to the ABC Board's existing 2,000 SF ABC Store in Pinehurst, North Carolina. Ms. Smith expects 75% of the building will be utilized for retail sales and the remainder for storage.

The nearest school, Carthage Elementary School located at 312 Rockingham Street, Carthage, North Carolina, is approximately 1.4 miles from the proposed location. The nearest church, Community Friends Church located at 3879 US 15, Carthage, North Carolina, is approximately 745 feet from the proposed location.

Currently, the nearest ABC Store is located approximately .6 miles from the proposed site at 1005 Unit B Monroe Street Carthage, North Carolina. This location will be closed upon the opening of the proposed location. The next closest ABC Store is located at 273 NE Broad Street, Southern Pines, North Carolina, approximately 13.1 miles away and is also operated by the Moore County ABC Board.

Mr. Herring stated notice to the public was properly posted on October 13, 2014. Mr. Herring stated the Moore County ABC Board and the NC ABC Commission have not received any objections to the proposed location. The projected annual sales of the proposed ABC Store are approximately \$815,000. Mr. Herring recommended approval of the proposed location.

Commissioner Green made a motion to approve the proposed location. Commissioner Keith seconded the motion. Motion Passed.

**III. OTHER BUSINESS – EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b)
PONYSARAUS BREWING COMPANY, LLC T/A PONYSARAUS BEER COMPANY;
ANGLE MANAGEMENT, LLC T/A THE COOKERY AND THE DURHAM WOOD
FIRED PIZZA CO., LLC T/A DASHI**

Ms. Cowick stated attorney Laura Collier was present with her clients, Nick Hawthorne-Johnson and Rochelle Johnson, on behalf of Ponysaurus Brewing Company, The Cookery and Dashi. Ms. Collier explained, currently Hawthorne-Johnson and Johnson each own 24.5% of Ponysaurus which holds an ABC temporary malt beverage wholesaler permit. Johnson owns 51% and Hawthorne-Johnson owns 49% of The Cookery, which currently holds commercial permits, including a brewery permit, a malt beverages wholesaler permit and a malt beverages special event permit. The Cookery also holds retail permits including malt beverage, fortified wine and unfortified wine on premise permits and a mixed beverage restaurant permit. Johnson owns 26% and Hawthorne-Johnson owns 24% of Dashi, a soon to be opened restaurant which will apply for malt beverage, fortified wine and unfortified wine on premise permits and a mixed beverage restaurant permit.

Ms. Collier stated Ponysaurus will be relocating and apply for commercial ABC brewery and malt beverage wholesaler permits. At this time, Cookery will relinquish their commercial permits. They are seeking an exemption to allow for co-ownership of the brewery, The Cookery, and in the future, Ponysaurus, and the retail outlets, The Cookery and Dashi. Ms. Collier explained currently 300-400 barrels are brewed annually and production will not exceed 5,000 barrels annually. Other malt beverage products will be offered at the retail outlets and the owners will not participate in ordering the malt beverage products as these will be ordered by managers with no financial interest.

Ms. Cowick stated there are no objections and based on the precedent set by the Commission, recommended the ABC Commission grant the exemption under these terms.

Commissioner Green made a motion to grant the exemption based on the defined conditions. Commissioner Keith seconded the motion. Motion Passed.

IV. OTHER BUSINESS – EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – ROBERT GRECZYN, JR., WILLIAM GRECZYN AND FORTNIGHT BREWING, INC.

Attorney Matt Cordell was present with his clients, Stuart Arnold and Will Greczyn, respectively president and a shareholder of Fortnight Brewing, Inc., to request an exemption to allow Robert Greczyn and his son, William Greczyn, who are minority shareholders in Fortnight Brewing to also hold retail permits at other businesses in which they have ownership. Fortnight Brewing holds brewery, malt beverage wholesaler and malt beverage special event commercial permits as well as malt beverage and unfortified wine on premise retail permits. Each of the Greczyns own 8.63% of Fortnight Brewing.

The Greczyns also own shares of four Mellow Mushroom restaurants in North Carolina, each of which hold ABC permits. Currently Fortnight Brewing products are sold at one of the Mellow Mushroom locations.

Mr. Cordell requested an exemption to allow the Greczyns to hold a minority ownership in Fortnight Brewing while having ownership in the retail outlets. The retail outlets will not have any requirements to sell Fortnight Brewing products and if sold, they will only be a small percentage of the malt beverages offered.

Ms. Cowick stated there are no objections and based on the precedent set by the Commission, recommended the ABC Commission grant the exemption under these terms.

Commissioner Keith made a motion to grant the exemption based on the defined conditions. Commissioner Green seconded the motion. Motion Passed.

V. OTHER BUSINESS – COASTAL COCKTAILS, INC. d/b/a MODERN WINE AND SPIRITS – PRODUCT APPROVAL OF MARTINI MASTERS ORNAMENTAL MARTINIS 5-PACK – DISTRIBUTED BY PARK STREET IMPORTS, LLC

Administrator Robert A. Hamilton stated Coastal Cocktails, Inc. d/b/a Modern Wine and Spirits owned Martini Masters which is distributed by Park Street Imports, LLC. Mr. Hamilton stated Martini Masters was seeking product approval for a 5-pack of 150 ml bottles, totaling 750 ml of a 5% alcohol or 10 proof wine-based alcohol product. Each of the five bottles is shaped like a Christmas ornament and the packages are sold during the holidays.

Mr. Hamilton explained the policy of the ABC Commission is to request a sample of products when the item is less than 7 ounces. Mr. Hamilton stated the product had been disapproved the previous year based upon the container and the advertising on the outside. A sample of the packaging had been recently resubmitted for product approval, included a label which had been changed to look less like a spirituous liquor product. Mr. Hamilton stated the names of the products initially were apple martini, blueberry martini, strawberry martini, lemon drop martini and cranberry cosmo. The names had been changed to cocktail rather than martini.

Mr. Hamilton stated the NC ABC Commission staff had disapproved the product based upon authority within 04 NCAC 02S .1005(a) General Restrictions. An advertisement of product label shall not contain: (1) any statement, design, device or representation that is false or misleading in any material particular;

and, (10) any subject matter or illustrations inducing persons under 21 years of age to drink. Mr. Hamilton explained 04 NCAC 02S .0101(4) defines “original container” as a bottle, can or other alcoholic beverage container filled by a manufacturer or bottler that has been approved for sale within this State.

Samples of similar containers used to package and market products to children were shown by Mr. Hamilton. The samples included an apple juice container very similar in shape and size, a pomegranate product of similar size, and a flavored water product with a similar shape and size, all marketed for children. Also shown was the sample of the Martini Masters product. Mr. Hamilton expressed concern with the size of the container as well as the color of the products – red, blue, green, etc. which are reminiscent of the soft cola products such as Kool Aid, also marketed to children.

Tim Zizack, the regional representative for Modern Wine and Spirits, was present to ask for reconsideration on behalf of the company. Mr. Zizack stated Modern Wine and Spirits primarily sold gifting products in Sam’s Club and Wal-Mart stores. Mr. Zizack displayed samples of other alcoholic items sold in grocery stores depicting martini glasses on the labels.

Commissioner Keith asked where the products were manufactured. Mr. Zizack replied Californian wine is sent to China to be repackaged in the ornamental containers and then returned to the United States for distribution.

Mr. Hamilton stated the NC ABC Commission has tried to prevent containers of malt beverage and wine products smaller than 187 ml from being sold in North Carolina, as they are easily concealed and transported. Mr. Hamilton stated the product itself complies with NC ABC regulations and if presented in a more conventional package in a traditional size and shape, the product would be approved.

Commissioner Green made a motion to approve the staff recommendation to disapprove the product. Commissioner Keith seconded the motion. Motion Passed.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, December 10, 2014.

Commissioner Keith made a motion to adjourn. Commissioner Green seconded the motion. Motion Passed. With no further business, the meeting adjourned.

Approved at the December 10, 2014 Commission Meeting

 /S/ James C. Gardner
James C. Gardner, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

 /S/ Caroline Y. Washburn
Caroline Y. Washburn for the Legal Section