

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JUNE 7, 2017**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on June 7, 2017, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the NC ABC Commission within the Legal Division.

ROLL CALL

Chairman A.D. Zander Guy, Jr. and Commissioner Michael C. Herring were present. Chairman Guy introduced himself and Commissioner Mike Herring. Chairman Guy called the meeting to order.

MINUTES OF MAY 10, 2017

Chairman Guy asked for a motion to waive the reading of the minutes of the May 10, 2017 meeting into the record. Commissioner Herring made a motion to waive the reading of the minutes. Chairman Guy seconded the motion. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the May 10, 2017 meeting. Commissioner Herring made a motion to approve the minutes. Chairman Guy seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. § 138A-35, Chairman Guy asked if there were any conflicts of interest or any conditions or facts which might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Herring stated he found no conflicts of interest. Chairman Guy stated he found no conflicts of interest.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 98

Chief Counsel Renee C. Metz introduced Walker Reagan who is assisting the Legal Division with the rules approval process. Mrs. Metz also acknowledged a group of officers from the Charlotte Mecklenburg Police Department ABC Unit. Chairman Guy thanked the officers for their service.

Mrs. Metz stated there were five contested cases. Case number 1, Baileys Tavern, was a contested case and assigned to Assistant Counsel Missy Welch. Mrs. Metz stated no one was present on behalf of the permittee and the case was a sanctions case regarding possession of unauthorized spirituous liquor. The permittee failed to respond to the Administrative Law Judge's order for a prehearing statement. The judge issued a sanctions order which imposed a decision of a \$500.00 penalty due by June 30, 2017 and a 20-day active suspension of the permittee's ABC permits to begin July 7, 2017.

Commissioner Herring made a motion to impose the Administrative Law Judge's decision of a \$500.00 penalty due by June 30, 2017 and a 20-day suspension to begin on July 7, 2017. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated case number 2, C Store, was a contested case and assigned to Assistant Counsel Rachel Spears. Mrs. Metz stated the case was a sanctions case regarding drug violations. The permittee failed to respond to the Administrative Law Judge's orders and the judge issued a sanctions order which imposed a decision of a \$500.00 penalty due by June 30, 2017 and an 8-day active suspension of the permittee's ABC permits to begin July 7, 2017.

Commissioner Herring made a motion to impose the Administrative Law Judge's decision of a \$500.00 penalty due by June 30, 2017 and an 8-day suspension to begin on July 7, 2017. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated case number 3, Oval Park Grille, was a contested case and also assigned to Ms. Spears. Mrs. Metz stated the case was a sanctions case regarding missing tax stamps. The permittee failed to respond to the Administrative Law Judge's orders and the judge issued a sanctions order which imposed a decision of a \$500.00 penalty due by June 30, 2017 and a 10-day active suspension of the permittee's ABC permits to begin July 7, 2017.

Commissioner Herring made a motion to impose the Administrative Law Judge's decision of a \$500.00 penalty due by June 30, 2017 and a 10-day suspension to begin on July 7, 2017. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated case number 4, Spring Garden Shell, was a contested case and also assigned to Ms. Spears. Mrs. Metz stated the case was a sanctions case regarding a sale to underage. The permittee failed to respond to the Administrative Law Judge's orders and the judge issued a sanctions order which imposed a decision of a \$1,000.00 penalty due by June 30, 2017 and a 40-day active suspension of the permittee's ABC permits to begin July 7, 2017.

Commissioner Herring made a motion to impose the Administrative Law Judge's decision of a \$1,000.00 penalty due by June 30, 2017 and a 40-day suspension to begin on July 7, 2017. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated case number 5, Byrish Haus and Pub, was a contested case and assigned to Mrs. Welch. Mrs. Metz stated no one was present on behalf of the permittee and the case was a sanctions case regarding failure to file audit reports. The permittee failed to respond to the Administrative Law Judge's orders and the judge issued a sanctions order which imposed a revocation of the permittee's ABC permits to begin July 7, 2017.

Commissioner Herring made a motion to impose the Administrative Law Judge's decision of a revocation of the permittee's ABC permits to commence on July 7, 2017. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated a representative for case number 53, Reys, was present regarding the Offer in Compromise. Mrs. Metz added the case was assigned to Ms. Spears and Mr. Arias was present on behalf of his business.

Mr. Arias stated he wished to explain the violations. He stated when the officer visited, the permits were not posted. He stated there were a couple of bottles without tax stamps and Mr. Arias stated he had a letter showing the dates of purchase. Mr. Arias added he had received a bottle of vodka as a gift from a friend and it was in his office. Mr. Arias also explained a bartender had saved an empty Grand Marnier bottle for an artist friend because it was a pretty bottle. Finally, Mr. Arias stated at the time of the officer's visit, he was unable to find the receipts for alcohol purchases.

Mr. Arias stated he had consented to paying the penalty; however, he wished to state his opinion regarding the violations. Mr. Arias was also accompanied by the bartender and the artist, both his employees. The bartender stated it was his mistake regarding the empty bottle. The artist employee stated it was an unusual cognac bottle and he sometimes incorporates empty bottles into his repurposed art.

Chairman Guy thanked them for attending and asked Ms. Spears if she had any comments. Ms. Spears did not.

Mrs. Metz stated attorney Glenn Lassiter was present on behalf of his client case number 17, Lucha Tigre. Mr. Lassiter stated there were two underage sales included in the Offer in Compromise. Mr. Lassiter explained the penalty in the offer was a 50-day suspension with 47 days suspended with a payment of a \$5,000.00 penalty leaving a 3-day active suspension. Mr. Lassiter stated they proposed instead, a 5-day active suspension with a penalty of \$2,000.00.

Mr. Lassiter explained the same underage individual participated in both of the violations. In the first, the underage girl came in with a man appearing to be in his 30's. Mr. Lassiter stated it was like they were on a date. The server read the ID as 1989 rather than 1998. Mr. Lassiter continued by stating it was unfair to send them in together on what could appear as a date. Mr. Lassiter explained during the second violation, the same underage girl was accompanied by another woman and a man, and they entered the establishment close to the end of the lunch hour. He explained it appeared as if they were a family and the server did not check the ID.

Mrs. Metz stated the first violation had been assigned to Assistant Counsel LoRita Pinnix and the second had been assigned to Mrs. Welch. Mrs. Metz explained the two violations were combined on one Offer in Compromise at Mr. Lassiter's request. Mrs. Metz added they could have been divided so the penalty would not be as high or need to be paid at one time. Mrs. Metz stated a copy of the underage person's identification was available.

Ms. Pinnix stated the driver's license clearly states "turns 21 on ..." so the date was clear and the age would not need to be calculated. Mr. Lassiter stated there are six dates on a driver's license and a reasonable person could misread it.

After conferring with Chairman Guy, Commissioner Herring made a motion to reduce the fine from \$5,000.00 to \$4,000.00 and remove the 3-day active suspension. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated the next case was case number 90, Time Saver 1. Attorney Sherry Prince was present on behalf of her client. Ms. Prince stated one of the owners, Mr. Garrell, had executed the offer in compromise from Mrs. Welch; however she was present to ask that the \$2,000.00 penalty to avoid suspension be reduced. Ms. Prince explained the permits had been issued to the business 34 years prior and during those 34 years this was the first violation. Ms. Prince asked in consideration of the business' history, if the penalty could be reduced.

Chairman Guy stated the Commission feels very strongly regarding underage drinking and is proud of its Talk It Out program. Chairman Guy added a record of no violations for 34 years was commendable.

Commissioner Herring made a motion based on the 34-year history to reduce the penalty by 50% to \$1,000.00. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated attorney William Potter was present with his client for case number 68, D and T Mini Mart. Mr. Potter introduced Anil Patel as the owner of the business. Mr. Potter added he had advised Mr. Patel twice to settle and accept the compromise. Mr. Patel stated he had recently had bad luck with violations, receiving two around the same time and this was the second of those. He added there had been an offer and Mr. Potter had rejected it. Mr. Patel stated he had been speaking with Mrs. Welch.

Mr. Patel explained he was recently able to obtain a new touchscreen register which made it more difficult to make a sale without checking the date on the ID. He added all the employees had gone through ABC training. Mr. Patel explained he is unable to be at the store very much as he is also a real estate agent. He said he keeps in touch with his employees through text messages and reminds them to check ID's and not to make sales without an ID. Mr. Patel added the business is near a college campus and there are some fake ID's.

Mr. Patel stated he takes the alcohol sales seriously and hopes his new policies will help. He stated Mrs. Welch had been very helpful, but asked if the penalty could be reduced. He added this is his only store and he has changed the way it is operated. Chairman Guy asked Mrs. Welch if she had any comments. Mrs. Welch stated this was a surveillance case and the clerk did admit to not checking the ID and explained he thought the underage person was a regular customer.

Commissioner Herring asked if the employees were still employed. Mr. Patel stated the employee in the first violation was not. Mr. Patel explained the employee in the second violation was still employed as he had recently been married and acquired citizenship, so he was giving the employee a second chance.

Commissioner Herring made a motion to adjust the offer in compromise to a 40-day suspension with no active suspension upon the payment of the \$3,000.00 penalty. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated the permittee for hearing case number 9, Central Mini Mart, was present on behalf of his business. Tecleab Masho stated he works from 7:00 to 7:00 and his nighttime employee had gotten him into this situation. Mr. Masho asked if the suspension could be lifted with payment of the penalty. Ms. Pinnix explained he would have the choice of paying a \$3,000.00 penalty or accepting a 30-day suspension.

Mrs. Metz asked the Commission to ratify the remaining cases. Commissioner Herring made a motion to ratify the remaining Offers in Compromise. Chairman Guy seconded the motion. Motion Passed.

II. EXEMPTION REQUEST – G.S. § 18B-1116(b) – MIDTOWN MOTOR LODGE, LLC T/A MOTHER EARTH MOTOR LODGE AND MOTHER EARTH BREWING, LLC AND STEPHEN B. HILL

Mrs. Metz asked that the exemption request be tabled as the business has considered going in a different direction.

Commissioner Herring made a motion to table the exemption request. Chairman Guy seconded the motion. Motion Passed.

III. OTHER BUSINESS

Administrator Robert A. Hamilton stated there was no other business.

Chairman Guy thanked everyone, including the Charlotte Mecklenburg Police Department officers, for attending.

Mrs. Metz reminded the Commission the July ABC Commission Meeting date had been changed to Wednesday, July 19, 2017.

Chairman Guy also acknowledged the ABC Commission staff and stated their endeavors did not go unnoticed. Chairman Guy added at a recent national meeting he was made proud by comments regarding how well the agency is operated.

Commissioner Herring made a motion to adjourn. Chairman Guy seconded the motion. Motion Passed. With no further business, the meeting adjourned.

Approved at the July 19, 2017 Commission Meeting

/S/ A.D. "Zander" Guy, Jr.
A.D. "Zander" Guy, Jr., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

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