

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MEETING MINUTES
FEBRUARY 9, 2022**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission (hereinafter “Commission”) meeting held via teleconference at 400 East Tryon Road in Raleigh, North Carolina on February 9, 2022, beginning at 10:00 AM. The meeting was recorded, and a copy of the recording is on file at the Commission within the Legal Section.

ROLL CALL

Chairman William Henry “Hank” Bauer, Jr. called the February 2022 Commission meeting to order and welcomed those who were participating. Chairman Bauer introduced himself, Commissioner Norman A. Mitchell, Sr. and Commissioner Karen Stout, who were joining the meeting virtually, Deputy Commissioner Terrance L. Merriweather, General Counsel Stacy Carter-Coley and Assistant Attorney General Bob Pickett.

Chairman Bauer thanked Legal staff for all of their hard work.

MINUTES OF THE JANUARY 12, 2022 COMMISSION MEETING

Chairman Bauer requested a motion to waive the reading of the minutes of the January 12, 2022 Commission meeting into the record. Commissioner Stout made the motion. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Chairman Bauer requested a motion to approve the minutes of the January 12, 2022 Commission meeting. Commissioner Stout made the motion. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. §138A-35, Other Rules of Conduct, Chairman Bauer 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. Chairman Bauer stated he had reviewed the agenda and found no conflicts. Commissioner Stout and Commissioner Mitchell also stated they found no conflicts.

I. HEARING CASES AND OFFERS IN COMPROMISE – 40

Chairman Bauer recognized General Counsel Stacey Carter-Coley regarding the hearing of the cases on the agenda.

Ms. Carter-Coley presented case number one on the agenda, a contested case, concerning permittee Royal, located in Burlington, NC. She established that this case was heard before the Office of

Administrative Hearings, where the Commission was represented by Assistant Counsel Rachel Spears and was heard before Administrative Law Judge Michael C. Byrne. Ms. Carter-Coley stated that Judge Byrne upheld the summary suspension issued by the Commission, found that the permittee was no longer suitable to hold ABC permits and ordered a revocation of said permits.

Chairman Bauer asked if there was anyone who would like to address the Commission regarding the contested case. Hearing none, Chairman Bauer asked Ms. Carter-Coley for staff's recommendation.

Ms. Carter-Coley recommended imposing the Administrative Law Judge's decision with a revocation date of March 11, 2022.

Commissioner Stout made a motion to follow staff's recommendation. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Ms. Carter-Coley continued onto the remaining hearing cases on the agenda and asked if there was anyone on the line who would like to address any of the Offers in Compromise on the agenda.

Attorney Glenn B. Lassiter, Jr. stated he would like to address number thirty-nine on the agenda, Yummy Crab.

Yummy Crab was charged with four violations: Failure to Superintend, Failure to Maintain Invoices, Failure to Purchase from a Wholesaler and Failure to Destroy Unconsumed (alcoholic beverage left by a customer).

Mr. Lassiter stated that when working on the settlement, he believed Assistant Counsel Rachel Spears was following the letter of the rules regarding the penalty schedule. He stated that once six to seven of his client's employees completed training, Ms. Spears reduced the penalty from \$2,800.00 or a 28-day suspension to \$2,000.00 or a 20-day suspension. Mr. Lassiter believed the penalty to be excessive and equated it to the penalty for Sale to Underage which is \$2,000.00 or a 20-day suspension for a first-time offense.

Mr. Lassiter stated that his client did not admit to the charges but stated that Failure to Purchase from a Wholesaler would be proven if the case went to hearing. For this reason, he advised his client to accept the Commission's offer in compromise.

Mr. Lassiter stated that his client opened for business in November of 2019, just prior to the COVID-19 pandemic. He said that they struggled as a new business and in the summer of 2020 alcohol shortages caused his client to have trouble ordering certain malt beverages – particularly Corona and Modelo. His client sent an employee to a retail store to purchase those beverages on four occasions. Mr. Lassiter admitted that his client should not have purchased the alcohol from a retail store.

Mr. Lassiter stated that on the day of inspection there was a language barrier between the agent and the employees. They did not know where to locate the records, but the manager was contacted and stated that she would be there within fifteen minutes. He stated that not all records were in the same place because there was food on some of the invoices (retail receipts).

Mr. Lassiter stated that he did not believe his client was guilty of Failure to Superintend and he stated that he had never seen the charge for Failure to Destroy Unconsumed used. He requested that the Commission issue a Written Warning in this matter or further reduce the penalty. He stated that he

believed that his client's actions were not as serious as Sale to Underage and the penalty should not be the same.

Ms. Carter-Coley noted, from staff's perspective, that the penalty had already been reduced, there were four separate charges in total and the client did sign the Revised Offer in Compromise for \$2,000.00 or a 20-day suspension. However, she said staff was not opposed to additional consideration.

In lieu of a decision, Chairman Bauer asked for a Motion to Continue this case to the March Commission meeting. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

Chairman Bauer asked if there was anyone else who would like to address any of the Offers in Compromise in the agenda.

Hearing none, Ms. Carter-Coley asked that the remaining Offers in Compromise be ratified. Commissioner Stout made a motion to ratify the remaining offers. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

II. REVISION TO EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – OLD ARMOR BEER COMPANY, INC. AND TIPSY HARE CIDERWORKS, INC.

Chairman Bauer recognized Ms. Carter-Coley regarding the Revision to the Exemption Request.

Ms. Carter-Coley stated that this Exemption Request first appeared on the January Commission meeting agenda. She explained that the revision proposes that the requirement for a wholesaler be removed. The permittees intend to self-distribute. She stated that this Exemption Request would allow owners Stefan Perrine and Kyle Lingafelt to own concurrent interest in Old Armor Beer Company, Inc. and Topsy Hare Ciderworks, Inc.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner Mitchell made a motion to accept staff's recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

III. PUBLIC HEARING ON PROPOSED PERMANENT EXPAND ALLOWABLE GROWLER SIZE RULE – 14B NCAC 15C .0307

Chairman Bauer stated that item III on the agenda was a Public Hearing on the Expand Allowable Growler Size rule and recognized Rules Coordinator Walker Reagan.

Mr. Reagan summarized that on December 8, 2021 the ABC Commission proposed the Permanent Expand Allowable Growler Size rule. The proposed rule, Notice of Public Hearing and Notice of Written Comment Period were filed with the Office of Administrative Hearings on December 8, 2021 and were published in the North Carolina Register on January 3, 2022. Copies of the notices and proposed rule were posted on the ABC Commission's website on December 9, 2021 and were emailed to the Commission's rulemaking mailing list on December 10, 2021.

Mr. Reagan continued that the public hearing on the proposed rule was properly noticed for the current date, February 9, 2022 at 10:00 AM, and that the Commission was in compliance with the statutory time period of at least 15 days after publication for holding the public hearing. He added that the public comment period was also properly noticed and would run through March 4, 2022.

Mr. Reagan recapped that during the 2021 Session the General Assembly enacted Section 7 of Session Law 2021-150 directing the ABC Commission to increase the allowable growler size that a retail permittee can offer for malt beverages and unfortified wine from no larger than two liters to no larger than four liters. This change became effective on September 10, 2021. He stated that the law also directed the ABC Commission to amend rule 14B NCAC 15C .0307(a) to change the maximum allowable growler size from two liters to four liters. Mr. Reagan stated that the Session Law enacting this change would remain in effect until the rule adopted by ABC Commission became effective.

Mr. Reagan stated that as of this meeting and although the time to comment would continue to run through the March 4, 2022, he had not received any written comments on the proposed rule. He stated that because the time for public comment was still open, the Commission was not currently in position to take action on the adoption of the rule but could do so at the March 16, 2022 meeting.

Mr. Reagan stated that no one had contacted him to speak at the public hearing, but he would be happy to answer any questions from the public or the Commission.

Chairman Bauer asked if anyone would like to address the Commission regarding this topic. Hearing none, Chairman Bauer made a motion to close the public hearing. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

IV. REVIEW OF MEDIATED SETTLEMENT AGREEMENT - F&C GROUP, LLC vs. NC ABC COMMISSION (21 CVS 5138)

Chairman Bauer stated that item IV on the agenda was a review of the mediated settlement agreement between F&C Group, LLC and the Commission. He again recognized General Counsel Stacey Carter-Coley.

Ms. Carter-Coley explained that this was the result of a summary suspension appeal to Superior Court in Greensboro where the Plaintiff requested a temporary restraining order and preliminary injunction which were both denied by the court. She continued that the Plaintiff then filed an amended complaint seeking relief from the order of summary suspension. She further added that the Commission had filed a motion to dismiss in this matter.

Ms. Carter-Coley stated that the parties were ordered to participate in a mediated settlement conference before the Greensboro Superior Court. The Commission was represented by the Attorney General's Office by Bob Pickett who was present at the meeting.

Pursuant to N.C.G.S. §143-318.11(a)(3), Ms. Carter-Coley called for a motion to move into closed session to consult with counsel regarding the proposed mediated settlement agreement. Commissioner Stout made the motion to move into closed session. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

CLOSED SESSION

After returning from closed session, Ms. Carter-Coley stated that staff recommended the Commission accept the proposed mediated settlement agreement. She summarized the agreement as follows: Any future application for an ABC permit made by F&C Group, LLC or its members Ernest Cannon and/or Gregory Forbes and received by certified mail within six months of the current date, would receive immediate review by the North Carolina ABC Commission for a temporary ABC permit. Plaintiff would notify the North Carolina ABC Commission's General Counsel that the application had been delivered. Ms. Carter-Coley stated there were no guarantees of issuance of any temporary or other permit. The parties agreed to file a joint motion to continue the case for six months and thereafter Plaintiff would file a voluntary dismissal with prejudice of its claims set out in the amended complaint.

The North Carolina ABC Commission agreed to pay the entirety of the mediator's fee. Each party was otherwise responsible for its own costs and attorneys' fees. The parties recognized that this agreement was conditional upon approval by the North Carolina ABC Commission and neither party admitted liability for any wrongdoing by entering into the proposed settlement agreement.

Chairman Bauer asked the Commissioners if they had any questions. Commissioner Mitchell stated he had none and made a motion to adopt staff's recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

V. OTHER BUSINESS

Chairman Bauer asked Ms. Carter-Coley and Mr. Merriweather if there was any additional business. They expressed there was no additional business.

Chairman Bauer stated that the next ABC Commission meeting would be held virtually on Wednesday, March 16, 2022.

Chairman Bauer requested a motion to adjourn the February 2022 Commission meeting. Commissioner Stout made a motion for adjournment. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Chairman Bauer thanked everyone for their participation.

William Henry Bauer, Jr., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

Jennifer L. Temple for the Legal Section