

OFFICE OF
ADMIN. HEARINGS
STATE OF NORTH CAROLINA
COUNTY OF PASQUOTANK

JUN 28 11 29 AM '02

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
01 ABC 1473

NC Alcoholic Beverage Control
Commission,

Petitioner,

v.

Headlights, Inc., T/A
HEADLIGHTS

Respondent.

DECISION

This matter was heard before Beryl E. Wade, Administrative Law Judge, on January 22, 2002 in Edenton, North Carolina.

APPEARANCES

For Petitioner:

LoRita K. Pinnix, Assistant Counsel
North Carolina Alcoholic Beverage
Control Commission, Raleigh, North
Carolina

For Respondent:

William H. Potter, Jr.
Sink Powers Sink & Potter
Raleigh, North Carolina

ISSUES

1. Whether the Respondent's employee allowed the yards or grounds of the licensed premises to be used as a toilet by urinating on the grounds on December 15, 2000 at 11:00 p.m. in violation of ABC Commission Rule 4 NCAC 2S .0215(b)?
2. Whether the Respondent's employee allowed a person under the age of 21 to possess or consume alcoholic beverages on the licensed premises on April 15, 2001 at 12:33 a.m., in violation of ABC Commission Rule 4 NCAC 2S. 0233?

3. Whether the Respondent's employee failed to determine the age of a person consuming or possessing alcoholic beverages on the licensed premises on April 15, 2001 at 12:33 a.m., in violation of ABC Commission Rule 4 NCAC 2S. 0233(b)?
4. Whether the Respondent's employee allowed the licensed premises to be open to the general public by failing to limit the use of the private club to members and their guests on December 15, 2000 at 11:10 p.m., in violation of ABC Commission Rule 4 NCAC 2S. 0107(a)?
5. Whether the Respondent's employee allowed the licensed premises to be open to the general public by failing to limit the use of the private club to members and their guests on February 24, 2001 at 11:49 p.m., in violation of ABC Commission Rule 4 NCAC 2S. 0107(a)?
6. Whether Respondent's employee performed services while or after consuming alcoholic beverages on the licensed premises on February 24, 2001 at 11:49 p.m., in violation of ABC Commission Rule 4 NCAC 2S. 0212(a)?

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. On December 15, 2000, April 15, 2001 and February 24, 2001, the Respondent held on-premise Malt Beverage, on-premise Unfortified Wine and Mixed Beverages Private Club permits from the Petitioner for its business located at 440-446 North Hughes Boulevard, Elizabeth City, Pasquotank County, North Carolina.
2. On December 15, 2000, ALE Agents J. Pierce and B. Lanier entered Respondent's business located at 440-446 North Hughes Boulevard, Elizabeth City, Pasquotank County, North Carolina as part of an undercover operation. Neither Agent Pierce nor Agent Lanier is a member of Headlights.
3. Respondent's employee, Tobie Turley, asked the agents if they were members of the club. Both agents stated that they were not members. Turley asked the agents if they were staying in a local hotel. When the agents produced a key from a local hotel they were allowed to enter Respondent's business. Respondent presented no evidence to contradict this.
4. On December 15, 2000 at approximately 11:10 p.m., Alcohol Law Enforcement Agents G.W. Basnett and J.K. Jones were located in the parking lot of Respondent's business. Agents Basnett and Jones were on the property as cover agents for Agents Pierce and Lanier.

5. While waiting for the agents inside the business, Agents Basnett and Jones observed Johnnie Franklin, the manager of Respondent's business, walk out of the business and urinate near a dumpster on the licensed premises.

6. On February 24, 2001 at approximately 11:49 p.m., Alcohol Law Enforcement Agent Glenn Branch entered Respondent's business located at 440-446 North Hughes Boulevard, Elizabeth City, Pasquotank County, North Carolina, in an undercover capacity. Agent Branch is not and has never been a member of Headlights.

7. As Agent Branch entered the business, Respondent's employee, Richard Earl Hollowell, Jr., asked Agent Branch if he was a member of the private club. When Agent Branch said no, Hollowell asked Agent Branch if he had a room key from a local hotel. When Agent Branch produced his hotel room key, he was allowed to enter the private club. When Agent Branch checked into his hotel earlier, he had not been told of any arrangement between the hotel and Respondent's business. Respondent presented no evidence to contradict this.

8. Once inside Respondent's business, Agent Branch observed Respondent's employee, Summer Jackson, a dancer at the business, consuming a malt beverage. Jackson finished the beer and went into the audience around the stage and began to perform table dances for customers inside the business.

9. When Jackson was interviewed by an agent later that evening, she was clearing tables in the business. The employee admitted that she had been consuming alcoholic beverages. Respondent presented no evidence to contradict this.

10. On April 15, 2001, Lisa Anne Miller and Wesley Edward Wood, persons under 21 years of age, entered Respondent's business located at 440-446 North Hughes Boulevard, Elizabeth City, Pasquotank County, North Carolina. Both consumed malt beverages while inside the business. Respondent presented evidence that Miller presented a fictitious identification to gain entry into the business that evening and that Wood had presented a fictitious identification to apply for membership to Headlights. Petitioner has failed to prove this violation by a preponderance of the evidence.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearing has jurisdiction in this matter.
2. 4 NCAC 2S.0215(b) provides that no permittee or his employees shall allow any person to use the yards or grounds of the licensed premises as a toilet.

3. 4 NCAC 2S.0233 provides that no permittee or his employees shall knowingly allow a person under the age of 21 to possess or consume any alcoholic beverages on the licensed premises.

4. 4 NCAC 2S.0233(b) provides that it shall be the duty of the permittee and his employees to determine the age of any person consuming alcoholic beverages on the licensed premises.

5. 4 NCAC 2S.0107(a) provides in pertinent part that use of a private club facility shall not be open to the general public but shall be limited to members of the private club and their guests. Additionally, 4 NCAC 2S.0234(b) prohibits a private club employee from admitting patrons as "house" guests.

6. 4 NCAC 2S.0212(a) provides in pertinent part that no permittee or his employees shall consume alcoholic beverages on the licensed premises except when the employee shall be off duty for the remainder of that day or night during which he consumes alcoholic beverages.

7. Pursuant to N.C.G.S. 150B-34(a) and based upon a preponderance of the evidence, on December 15, 2000 at 11:10 p.m., Respondent's employee allowed the yards or grounds of the licensed premises to be used as a toilet by urinating on the grounds in violation of ABC Commission Rule 4 NCAC 2S .0215(b).

8. Pursuant to N.C.G.S. 150B-34(a) and based upon a preponderance of the evidence on April 15, 2001 at 12:33 a.m., Respondent's employee did not allowed a person under the age of 21 to possess or consume alcoholic beverages on the licensed premises in violation of ABC Commission Rule 4 NCAC 2S. 0233.

9. Pursuant to N.C.G.S. 150B-34(a) and based upon a preponderance of the evidence, on April 15, 2001 at 12:33 a.m., the Respondent's employee did not fail to determine the age of a person consuming or possession alcoholic beverages on the licensed premises in violation of ABC Commission Rule 4 NCAC 2S. 0233(b).

10. Pursuant to N.C.G.S. 150B-34(a) and based upon a preponderance of the evidence, on December 15, 2000 at 11:10 p.m., Respondent's employee allowed the licensed premises to be open to the general public by failing to limit the use of the private club to members and their guests in violation of ABC Commission Rule 4 NCAC 2S. 0107(a).

11. Pursuant to N.C.G.S. 150B-34(a) and based upon a preponderance of the evidence, on February 24, 2001 at 11:49 p.m., Respondent's employee allowed the licensed premises to be open to the general public by failing to limit the use of the private club to members and their guests in violation of ABC Commission Rule 4 NCAC 2S. 0107(a).

12. Pursuant to N.C.G.S. 150B-34(a) and based upon a preponderance of the evidence, on February 24, 2001 at 11:49 p.m., Respondent's employee performed services while or after

consuming alcoholic beverages on the licensed premises in violation of ABC Commission Rule 4 NCAC 2S. 0212(a).

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby recommended that the Alcoholic Beverage Control Commission find that Respondent violated the following: ABC Commission Rule 4 NCAC 2S. 0215(b) as charged on December 15, 2000, ABC Commission Rule 4 NCAC 2S. 0107(a) as charged on December 15, 2000 and February 24, 2001, ABC Commission Rule 4 NCAC 2S. 0212(a) as charged on February 24, 2001 and issue a fine against Respondent or suspend its ABC permits, or both, in the sound discretion of the Commission.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearing, 6714 Mail Service Center, Raleigh, NC 27699-6417, in accordance with North Carolina General Statute 150B-36(b).

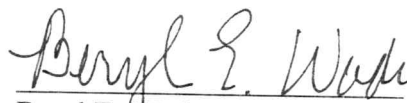
NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and the present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36b to serve a copy of the final agency decision on all parties and to furnish a copy to the parties' attorney on record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the N.C. Alcoholic Beverage Control Commission.

This is the 28th day of June, 2002.


Beryl E. Wade
Administrative Law Judge