
NC Alcoholic Beverage Control Commission,)
Petitioner)
)
v.)
)
Quick Quality, Inc.,)
T/A Rock Star Grill and Bar,)
Respondent)

DECISION

This contested case was heard before J. Randall May, Administrative Law Judge, Office of Administrative Hearings, on May 3, 2012, in High Point, North Carolina.

APPEARANCES

For Petitioner: K. Renee Cowick, Esq.
NC Alcoholic Beverage Control Commission
Raleigh, NC

For Respondent: Jaswinder Taya
Owner / Corporate Officer

ISSUES

1. Whether Respondent's employee, Jennifer Parrish, allowed Daniel Trabert, an intoxicated person, to consume alcoholic beverages while upon the licensed premises, on or about August 5, 2011, at 9:24 PM, in violation of ABC Commission Rule 4 NCAC 2S.0206.

2. Whether Respondent's employee, Rebecca Sisk, sold a malt beverage to Chelsea Hayes, a person less than 21 years old, while on the licensed premises, on or about March 11, 2011, at 8:25 PM, in violation of G.S. §18B-302(a)(1).

3. Whether Respondent's employee and corporate officer, Jaswinder Taya, failed to maintain on the premises, available for inspection or audit for three years, all records including original invoices related to alcoholic beverages and mixed beverages, on or about March 3, 2011, at 8:16 PM, in violation of ABC Commission Rule 4 NCAC 2S.0520(c).

4. Whether Respondent's employee and corporate officer, Jaswinder Taya, did own more than one licensed retail establishment and transferred alcoholic beverages between establishments without getting prior approval in writing from the ABC Commission, on or about March 3, 2011, at 8:16 PM, in violation of ABC Commission Rule 4 NCAC 2S.0236.

5. Whether Respondent's employee, David Gregor, possessed empty containers of spirituous liquor purchased for resale in mixed beverages bearing mixed beverage tax stamps which had not been permanently defaced, while upon the licensed premises, on or about March 3, 2011, at 8:16 PM, in violation of ABC Commission Rule 4 NCAC 2S.0513(9).

6. Whether Respondent's employee and corporate officer, Jaswinder Taya, an on-premise permittee, failed to separate, store and provide for the collection for recycling of all recyclable beverage containers of all beverages sold at retail on the premises, on or about October 20, 2010, at 11:04 AM, in violation of G.S. §18B-1006.1.

7. Whether Respondent's employee, Abraham Rodriguez / Mateo Jesus, possessed an empty container of spirituous liquor purchased for resale in mixed beverages bearing a mixed beverage tax stamp which had not been permanently defaced, while upon the licensed premises, on or about October 20, 2010, at 11:04 AM, in violation of ABC Commission Rule 4 NCAC 2S.0513(9).

FINDINGS OF FACT

The undersigned Administrative Law Judge finds the following facts:

1. Respondent has held ABC permits issued by Petitioner since 2009 for an establishment located at 242 South Fayetteville Street, Asheboro, North Carolina.

2. Issue Number 2, as stated above, is voluntarily dismissed by Petitioner.

3. Issue Number 3, as stated above, is voluntarily dismissed by Petitioner.

4. Issue Number 7, as stated above, has been settled by agreement between the parties.

5. Asheboro Police Department ABC Detective Brenda McMasters ("Det. McMasters") has been employed with the Asheboro Police Department for 13 years and has been the designated ABC Officer since April 2010.

6. On October 20, 2010, Det. McMasters entered Respondent's establishment at approximately 11:04 AM to conduct an inspection. Det. McMasters did not observe any recycling bins and saw several malt beverage bottles in a trash can that also held paper trash and plastic. An unidentified female employee stated they did not have a recycling plan beyond throwing everything in the dumpster.

7. On March 3, 2011, at approximately 8:16 PM, Det. McMasters entered Respondent's establishment to conduct an inspection. Respondent's employee David Gregor ("Mr. Gregor") was present during the inspection. Det. McMasters did not see any malt beverages in storage at the establishment.

8. When questioned, Mr. Gregor stated that malt beverage deliveries were made at Quick Quality (which is also owned by Respondent's corporation) at 316 South Fayetteville

Street and malt beverages are brought to Respondent's establishment as needed. March 3, 2011 was Mr. Gregor's first day as manager of Respondent's establishment.

9. Det. McMasters also observed two empty spirituous liquor bottles on a shelf under the bar whose tax stamps had not been defaced. Mr. Gregor testified that a waitress had just emptied the bottles by pouring drinks for two patrons, and he observed that the patrons' glasses were full.

10. On August 5, 2011, at approximately 9:24 PM, Det. McMasters entered Respondent's establishment to conduct an inspection. Det. McMasters observed a white male patron ("Mr. Trabert") leaning and swaying while drinking from a plastic cup. Mr. Trabert was unsteady on his feet, had red, glassy eyes, his speech was slurred and his shirt was not buttoned correctly. Det. McMasters concluded that Mr. Trabert was intoxicated.

11. Det. McMasters requested Asheboro Police Department Master Sergeant Robert Lee Brown, Jr. ("M. Sgt. Brown") to respond to the scene. M. Sgt. Brown observed that Mr. Trabert's shirt was buttoned incorrectly, that his eyes were large and glassy, and that he was having problems standing. M. Sgt. Brown concluded that Mr. Trabert was intoxicated.

12. M. Sgt. Brown requested that Master Police Officer Clarkston Cox ("M. Officer Cox") respond to the scene to administer an Alco-sensor test on Mr. Trabert. M. Officer Cox is a certified chemical analyst and is certified to administer both field sobriety tests and the Alco-sensor. M. Officer Cox observed a strong odor of alcohol about Mr. Trabert's person, that he had difficulty maintaining his balance and that his eyes were glassy and bloodshot.

13. Det. McMasters questioned the bartender, Respondent's employee, Jennifer Parrish ("Ms. Parrish"). Ms. Parrish stated that Mr. Trabert was drinking a Captain Morgan and Coke mixed beverage and that it was the last drink Mr. Trabert would be served.

14. Respondent's owner and corporate officer, Jaswinder Taya ("Mr. Taya") was not present at the establishment during the events of October 20, 2010, March 3, 2011, or August 5, 2011. Mr. Taya called no witnesses on behalf of Respondent's establishment beyond himself.

CONCLUSIONS OF LAW

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

1. The Office of Administrative Hearings has jurisdiction in this matter.
2. Petitioner has demonstrated by a preponderance of the evidence that Respondent's employee, Jennifer Parrish, allowed Daniel Trabert, an intoxicated person, to consume alcoholic beverages while upon the licensed premises, on August 5, 2011, in violation of ABC Commission Rule 4 NCAC 2S.0206.

3. The allegation of “Respondent’s employee, Rebecca Sisk, sold a malt beverage to Chelsea Hayes, a person less than 21 years old, on March 11, 2011” is dismissed by Petitioner.

4. The allegation of “Respondent’s employee and corporate officer, Jaswinder Taya, failed to maintain on the premises, available for inspection or audit for three years, all records including original invoices relating to alcoholic beverages” is dismissed by Petitioner.

5. Petitioner has demonstrated by a preponderance of the evidence that Respondent’s employee and corporate officer, Jaswinder Taya, did own more than one licensed retail establishment and transferred alcoholic beverages between establishments without getting prior approval in writing from the ABC Commission, on or about March 3, 2011, in violation of ABC Commission Rule 4 NCAC 2S.0236.

6. Petitioner did not demonstrate by a preponderance of the evidence that David Gregor possessed empty spirituous liquor containers with tax stamps not defaced on March 3, 2011.

7. Petitioner has demonstrated by a preponderance of the evidence that Respondent’s employee and corporate officer, Jaswinder Taya, an on-premise permittee, failed to separate, store and provide for the collection for recycling of all recyclable beverage containers of all beverages sold at retail on the premises, on October 20, 2010, in violation of G.S. §18B-1006.1.

DECISION

Based upon the foregoing, FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned Administrative Law Judge recommends that the Respondent’s ABC permits be suspended for a period of 30-days (on dates to be determined at a regularly scheduled monthly ABC Commission meeting) and a monetary penalty of \$1,000.00 be imposed.

ORDER

It is hereby ordered that the agency serve a copy of the Final Agency Decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with G.S. §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 to 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-36(b) to serve a copy of the final 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 NC Alcoholic Beverage Control Commission.

This is the 5th day of July 2012.

J. Randall May
Administrative Law Judge