
NC Alcoholic Beverage Control Commission,)	
Petitioner)	
)	
v.)	FINAL DECISION
)	
Bobby Warren Joyner,)	
T/A Hillsdale Club,)	
Respondent)	

This contested case was heard before Donald W. Overby, Administrative Law Judge, Office of Administrative Hearings, on October 17, 2012, in Greenville, North Carolina.

APPEARANCES

For Petitioner: K. Renee Cowick, Esq.

ISSUES

1. Whether Respondent, Bobby Warren Joyner, failed to superintend in person or through a manager the business for which a permit was issued (to wit, patrons consuming marijuana in the back room that employees were not monitoring, bottle of spirituous liquor brought into premises), on or about May 12, 2012, at 1:50 AM, in violation of G.S. §18B-1005(b).
2. Whether Respondent’s employee, Alexander Clemmons, failed to destroy immediately the unconsumed portion of an alcoholic beverage left by a customer, while upon the licensed premises, on or about May 12, 2012, at 1:50 AM, in violation of ABC Commission Rule 4 NCAC 2S.0229.
3. Whether Respondent’s employee, Alexander Clemmons, knowingly allowed violations of the controlled substance statutes to occur upon the licensed premises (to wit, odor of marijuana inside the premises), on or about May 12, 2012, at 1:50 AM, in violation of G.S. §18B-1005(a)(3).

FINDINGS OF FACT

The undersigned Administrative Law Judge finds the following facts:

1. Respondent holds a permanent Malt Beverage permit issued in March 1991 for a business known as Hillsdale Club located at Route 15 Hillsdale Community, Greenville, North Carolina.

2. The Office of Administrative Hearings scheduled a hearing for this matter for October 17, 2012, in Greenville, North Carolina.

3. The Office of Administrative Hearings mailed Notices of Hearing to both parties on September 18, 2012.

4. Petitioner appeared through counsel, K. Renee Cowick, at the October 17, 2012, hearing.

5. Respondent failed to appear at the hearing.

6. On November 5, 2012, the Petitioner filed a Motion for Sanctions with the Office of Administrative Hearings, for failure of the Respondent to appear at the October 17, 2012, administrative hearing.

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. Office of Administrative Hearings Rule 26 NCAC 03 .0114(a) states in pertinent part:

If a party fails to appear at a hearing ..., the Administrative Law Judge may:

(1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed proved without further evidence.

3. As the Respondent failed to appear at the October 17, 2012, administrative hearing, the allegations as set out in the Petitioner's petition are deemed proved without further evidence.

4. Based on the foregoing Conclusions of Law, the Respondent violated the ABC laws as follows:

a. Respondent, Bobby Warren Joyner, failed to superintend in person or through a manager the business for which a permit was issued (to wit, patrons consuming marijuana in the back room that employees were not monitoring, bottle of spirituous liquor brought into premises), on or about May 12, 2012, at 1:50 AM, in violation of G.S. §18B-1005(b).

b. Respondent's employee, Alexander Clemmons, failed to destroy immediately the unconsumed portion of an alcoholic beverage left by a customer, while upon the licensed premises, on or about May 12, 2012, at 1:50 AM, in violation of ABC Commission Rule 4 NCAC 2S.0229.

- c. Respondent's employee, Alexander Clemmons, knowingly allowed violations of the controlled substance statutes to occur upon the licensed premises (to wit, odor of marijuana inside the premises), on or about May 12, 2012, at 1:50 AM, in violation of G.S. §18B-1005(a)(3).

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge grants the Petitioner's Motion for Sanctions and imposes a 60-day suspension of Respondent's ABC permits and a monetary penalty of \$1,000.00, on dates to be determined at a regularly scheduled monthly meeting of the ABC Commission.

NOTICE AND ORDER

Under G.S. 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order. Under G.S. 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 6th day of November, 2012.

Donald W. Overby
Administrative Law Judge

