

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF RANDOLPH

12 ABC 07260

N.C. ALCOHOLIC)
BEVERAGE CONTROL)
COMMISSION)

Petitioner,)

v.)

Quick Quality, Inc.,)
T/A Rock Star Grill and Bar,)
Respondent.)

FINAL DECISION

THIS MATTER is before the undersigned J. Randall May, Administrative Law Judge, on the Petitioner’s Motion for Sanctions, based upon the Respondent’s failure to comply with an interlocutory order of the Administrative Law Judge. The undersigned having considered the entire procedural record finds that this case is ripe for disposition on the issue of whether sanctions should be imposed upon the Respondent pursuant to NCGS § 150B-33(b)(10) and 26 NCAC 3 .0115.

FINDINGS OF FACT

1. Petitioner filed a Petition on 14 August, 2012 and requested an administrative hearing to determine whether Respondent had violated the ABC laws.

2. On 17 August, 2012, the Honorable J. Randall May, Administrative Law Judge issued an Order for Prehearing Statements requiring each party to file such Prehearing Statement within 30 days of the date of the Order.

3. On 22 August, 2012, Petitioner filed a Prehearing Statement with the Office of Administrative Hearings. Petitioner sent a copy of its Prehearing Statement to the Respondent on the same date.

4. On 8 November, 2012, Petitioner filed a Motion for Sanctions for Respondent’s failure to file a Prehearing Statement as directed by the court in its Order of August 17, 2012.

5. On November 9, 2012, the undersigned Judge gave the Respondent 14 days to respond to the Sanctions Motion.

5. According to a review of the OAH Automated Case Tracking System, as of the issuance of this Order, Respondent has neither filed a Prehearing Statement with the Office of Administrative Hearings nor responded to Petitioner's Motion.

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. 26 NCAC 3 .0115(a) states in pertinent part:

If a party fails to comply with an interlocutory order....., the Administrative Law Judge may: (1) find the allegations of or issues set out in the Notice of Hearing or other pleading as true or deemed proved without further evidence.

3. NCGS §150B-33(b)(10) gives authority to the Administrative Law Judge to impose sanctions under Chapter 3 of Title 26 of the North Carolina Administrative Code.

FINAL DECISION

NOW THEREFORE, based on the foregoing and on upon consideration of the entire procedural record, the undersigned hereby finds the allegations and facts Petitioner has set out in its Notice of Alleged Violation, Asheboro Police Department report, Petition and Prehearing Statement as true and deemed proved without further evidence.

ORDER

The Respondent shall pay a \$750.00 penalty and Respondent's ABC permits shall be suspended for 30 days on dates to be set by the North Carolina Alcoholic Beverage Control Commission.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file 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. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the

Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §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 11th day of December 2012

J. Randall May
Administrative Law Judge