

STATE OF NORTH CAROLINA  
COUNTY OF GASTON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 ABC 08988

N.C. ALCOHOLIC BEVERAGE )  
CONTROL COMMISSION )  
                                Petitioner, )  
  ) )  
                                v. )  
  ) )  
Fat Cats Grill and Oyster Bar, Inc., )  
T/A Fat Cats Grill and Oyster Bar, )  
                                Respondent. )  
  ) )

**FINAL DECISION  
ORDER FOR SANCTIONS**

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 5 October, 2012 and requested an administrative hearing to determine whether Respondent had violated the ABC laws.
2. On 11 October, 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 16 October, 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 28 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 October 11, 2012.
5. On 28 November, 2012, the Court issued a *Request for Response to Motion* giving the Respondent until December 10, 2012 to respond.
6. That as of the date of this Order, upon review of the OAH Automated Case Tracking System on 19 December, 2012, 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, NC ABC Commission Audit Division report, Petition and Prehearing Statement as true and deemed proved without further evidence.

## ORDER

The Respondent's Mixed Beverages Restaurant permit shall be suspended for one (1) year beginning on a date 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 19<sup>TH</sup> day of December 2012

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J. Randall May  
Administrative Law Judge