

<p>NC ALCOHOLIC BEVERAGE CONTROL COMMISSION <i>Petitioner</i></p> <p>v.</p> <p>WACHDI KHAMIS AWAD T/A Brothers in the Hood <i>Respondent</i></p>	<p>FINAL DECISION</p>
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This contested case was heard before Donald W. Overby, Administrative Law Judge, Office of Administrative Hearings, on February 13, 2013, in Fayetteville, North Carolina.

APPEARANCES

For Petitioner: K. Renee Cowick, Esq.

ISSUES

Whether Respondent, Wachdi Khamis Awad, allowed the consumption of malt beverages while upon premises having only an Off Premise Malt Beverage permit, on or about June 30, 2012, at 11:09 PM, in violation of G.S. §18B-300(b).

FINDINGS OF FACT

The undersigned Administrative Law Judge finds the following facts:

1. Respondent holds Off Premise Malt Beverage and Off Premise Fortified Wine ABC permits since July 2010 at a business known as Brothers in the Hood located at 704-C Aberdeen Road, Laurinburg, North Carolina 28352.
2. The Office of Administrative Hearings originally scheduled a hearing for this matter for January 16, 2013, in Fayetteville, North Carolina. Both parties received the "Notice of Hearing" on December 17, 2012.
3. The Office of Administrative Hearings mailed an "Order of Continuance and Rescheduled Hearing" to both parties on January 10, 2013, setting the hearing for February 13, 2013.

4. Petitioner appeared through counsel, K. Renee Cowick, at the February 13, 2013, hearing.

5. Respondent failed to appear at the hearing.

6. On February 20, 2013, Petitioner filed a Motion for Sanctions with the Office of Administrative Hearings, for failure of Respondent to appear at the February 13, 2013, administrative hearing.

7. Respondent has not responded to Petitioner's Motion for Sanctions.

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. OAH Commission 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 Respondent failed to appear at the February 13, 2013, 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, Respondent violated the ABC laws as follows:

Respondent, Wachdi Khamis Awad, allowed the consumption of malt beverages while upon premises having only an Off Premise Malt Beverage permit, on or about June 30, 2012, at 11:09 PM, in violation of G.S. §18B-300(b).

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge grants the Petitioner's Motion for Sanctions. The undersigned hereby orders a 10-day suspension of Respondent's ABC permits and \$750 monetary penalty, on dates to be imposed by the ABC Commission at a regularly scheduled monthly meeting. If Respondent does not pay the \$750 by the date imposed, Respondent's ABC permits shall be suspended for an additional seven days to begin immediately after the 10-days ordered above.

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 is the 6th day of March, 2013.

Donald W. Overby
Administrative Law Judge