

STATE OF NORTH CAROLINA  
COUNTY OF SAMPSON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13ABC00002

<p>NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION, Petitioner,</p> <p>v.</p> <p>SOLEDAD LOPEZ DE AVILEZ T/A TIENDA AVILEZ, Respondent.</p>	<p>DECISION</p>
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NOW COMES the undersigned Administrative Law Judge, under North Carolina General Statute §150B-33(b)(10) and Office of Administrative Hearings Rule 26 NCAC 3.0114 and finds the following facts:

#### FINDINGS OF FACT

1. Petitioner filed a contested case Petition on January 2, 2013.
2. Chief Administrative Law Judge Julian Mann III (ALJ Mann) issued an “Order for Prehearing Statements” on January 16, 2013. Petitioner filed a Prehearing Statement on January 24, 2013.
3. Upon Motion of Petitioner, the matter was continued from the original hearing date of April 10, 2013, and reassigned to Administrative Law Judge Beecher R. Gray.
4. On April 15, 2013, a “Second Order for Prehearing Statements” was issued giving Respondent a new extended deadline of April 22, 2013 for filing of Respondent’s Prehearing Statement.
5. On May 13, 2013, Petitioner filed a Motion for Sanctions for failure of Respondent to file a Prehearing Statement.
6. As of the issuance of this Decision, Respondent has not submitted a Prehearing Statement.
7. Office of Administrative Hearings Rule 26 NCAC 03.0114(a) states in pertinent part:

If a party fails to ... comply with an interlocutory order of an administrative law judge, 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.

### **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. As Respondent failed to comply with two separate orders to file a Prehearing Statement, the allegations as set out in Petitioner's petition are deemed proved without further evidence.
3. Based upon the foregoing Conclusions of Law, Respondent violated the ABC laws as follows:
  - a. Respondent, Soledad De Avilez, did dispense a prescription drug without being licensed as a pharmacist, while on the licensed premises, on or about August 26, 2012, at 11:04 a.m. in violation of G.S. §90-85.3(f), §90-85.40(c) and §18B-1005(a)(3).
  - b. Respondent, Soledad De Avilez, allowed the consumption of alcoholic beverages between the hours of 2:30 a.m. and noon on Sunday [a violation of G.S. §18B-1004(c)], while upon the licensed premises, on or about August 26, 2012, at 11:04 a.m. in violation of G.S. §18B-1005(a)(1).
  - c. Respondent, Soledad De Avilez, 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 August 26, 2012, at 11:04 a.m. in violation of ABC Commission Rule 4 NCAC 2S.0520(c).
  - d. Respondent, Soledad De Avilez, possessed 28 containers of spirituous liquor not bearing mixed beverage tax stamps, while on the licensed premises, on or about August 26, 2012, at 11:04 a.m. in violation of G.S. §18B-1007(b)(4).

### **FINAL DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge grants Petitioner's Motion for Sanctions. The undersigned hereby orders a 75-day suspension of Respondent's ABC permits and \$500 monetary penalty, on dates to be imposed by the ABC Commission at a regularly-scheduled monthly meeting. If Respondent does not pay the \$500 by the date imposed, Respondent's ABC permits shall be suspended for an additional five days to begin immediately after the 75 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 the 27th day of August, 2013.

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Beecher R. Gray  
Administrative Law Judge