

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13ABC11401

<p>NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION, Petitioner,</p> <p>v.</p> <p>Grandmas Pizza LLC T/A Grandmas Pizza, Respondent.</p>	<p>FINAL 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 makes the following:

FINDINGS OF FACT

1. Petitioner filed a Petition on or about April 18, 2013.
2. Administrative Law Judge Beecher R. Gray issued an “Order for Prehearing Statements” on May 3, 2013. Petitioner filed a Prehearing Statement on May 7, 2013. Respondent did not file a Prehearing Statement as ordered.
3. On June 6, 2013, a Second Order for Prehearing Statements was issued giving Respondent a deadline of June 17, 2013 for the filing of its Prehearing Statement.
4. On July 24, 2013, Petitioner filed a Motion for Sanctions for Respondent’s failure to file a Prehearing Statement, which enables Petitioner and the presiding Administrative Law Judge to prepare for a hearing.
5. As of the issuance of this Final Decision, Respondent has not submitted a Prehearing Statement as twice ordered. 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.

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

Respondent's employee, Salah El-Ehmeada, possessed a controlled substance or other illegal drug in violation of Chapter 90 of the North Carolina General Statutes (to wit, marijuana), while on the licensed premises, on or about January 11, 2013, at 3:30 PM, in violation of ABC Commission Rule 4 NCAC 2S.0208.

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 12-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 penalty by the date imposed, Respondent's ABC permits shall be suspended for an additional five days to begin immediately after the 12-day suspension 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 13th day of September, 2013.

Beecher R. Gray
Administrative Law Judge