

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13ABC14197

<p>NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION, Petitioner,</p> <p>v.</p> <p>Ola Celestine Morris T/A Nitty Gritty Soul Café, 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 finds the following facts:

FINDINGS OF FACT

1. Petitioner filed a Petition on or about June 24, 2013.
2. Administrative Law Judge Beecher R. Gray issued an Order for Prehearing Statements on July 9, 2013. Petitioner filed a Prehearing Statement on July 15, 2013.
3. On August 23, 2013, a Second Order for Prehearing Statements was issued giving Respondent a deadline of September 6, 2013.
4. On September 11, 2013, Petitioner filed a Motion for Sanctions for failure of Respondent to file a Prehearing Statement.
5. As of the issuance of this Decision, Respondent has not submitted a Prehearing Statement.

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. 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.

3. 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.
4. Based on the foregoing Conclusions of Law, Respondent violated the ABC laws as follows:
 - a. The location occupied by Respondent no longer is suitable to hold ABC permits and the operation of the business with an ABC permit at that location is detrimental to the neighborhood under G.S. §18B-904(e) because of shootings, drug use, and interference with law enforcement, occurring on or about February and March 2013.
 - b. Respondent's employee, Bernard Hall, performed services on the licensed premises while or after having consumed alcoholic beverages, on or about February 15, 2013, at 9:43 PM, in violation of ABC Commission Rule 4 NCAC 2S.0212(a)(3).
 - c. Respondent, Ola Morris, failed to superintend in person or through a manager the business for which a permit was issued, on or about February 16, 2013, at 1:47 AM, in violation of G.S. §18B-1005(b).
 - d. Respondent, Ola Morris, failed to superintend in person or through a manager the business for which a permit was issued, on or about February 18, 2013, at 10:30 AM, in violation of G.S. §18B-1005(b).
 - e. Respondent's employee, Tim Bess, Sr., interfered with or failed to cooperate with John Porter, an officer engaged in the performance of his duties, on or about February 18, 2013, at 10:30 AM, in violation of ABC Commission Rule 4 NCAC 2S.0213.

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 revocation of Respondent's ABC permits on a date to be imposed by the ABC Commission at a regularly scheduled monthly meeting.

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 03.0102, 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 9th day of October, 2013.

Beecher R. Gray
Administrative Law Judge