

EXHIBITS

Petitioner's exhibits 1-2 were introduced and admitted.

FINDINGS OF FACT

1. The Respondent holds Off Premises Malt Beverage permits issued by the Petitioner, the North Carolina ABC Commission.
2. On May 2, 2013, Pitt County ABC Officer Chad Roeder and NCALE Agent Russell King conducted a surveillance check of the Respondent's business. During surveillance, the officers observed Wallace Roe Benfield (hereinafter "Benfield") enter the Campus Store, go to the beer cooler, remove an 18-pack of Budweiser beer and then go to the checkout counter.
3. Further, the officers observed the Respondent's employee, Charles Tyler Evans (hereinafter "Evans"), wait upon Benfield. Shortly thereafter, Benfield left the Campus Store with the beer, entered a truck and then drove to his parent's home a short distance from the business. The officers conducted a traffic stop in Benfield's driveway.
4. During the traffic stop, Benfield was found to be in possession of the 18-pack of Budweiser beer and a valid North Carolina Driver License. In addition, Benfield revealed he possessed a fraudulent driver license showing him to be of legal age to purchase alcoholic beverages on the date of the offense. Mr. Benfield testified that he did not have to show any identification in order to purchase beer on May 2, 2013. Benfield also testified that the clerk did not ask him his age.
5. Respondent's employee, Evans, admitted to selling the Budweiser to Benfield. Evans also admitted that he neither asked Benfield for identification nor asked his age during the sale. The officers reviewed the store video of the transaction. This video confirmed Evans did not check for identification. Evans had seen Benfield in the Campus Store on previous occasions. Benfield had purchased beer at the business before May 2, 2013, and he had used an identification showing him to be of legal age on some of the previous purchases.
6. Benfield had been in the Campus Store on numerous occasions prior to the date of offense. On those occasions, he bought alcohol, gas, and other purchases not involving alcohol. No testimony was given as to the number of times that proof of age was required by the Respondent's employee(s) prior to making an alcohol sale to Benfield.
7. No testimony was given as to the type(s) of fraudulent identification used by Benfield prior to May 2, 2013. No testimony was given about the photograph or the physical description given on the fraudulent identification used by Benfield prior to May 2, 2013. No testimony was given as to whether the descriptive information and photograph on the identification reasonably described Benfield.

8. No evidence was admitted of other facts that would have reasonably indicated to Mr. Evans at the time of sale that Benfield was at least the required age to purchase alcohol.
9. Evans relied upon his previous check(s) of Benfield's identification to make the sale to Benfield on May 2, 2013.
10. Benfield was 20 years old on May 2, 2013.
11. Officer Roeder confiscated the Budweiser beer purchased by Benfield. The Budweiser was labelled by Roeder and the beer was kept in the secured custody of Pitt County ABC Law Enforcement until the hearing. A picture of the confiscated beer was introduced and admitted into evidence as Petitioner's exhibit #1. Pitt County ABC Law Enforcement retained possession of the confiscated beer.

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 personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter.
2. N.C.G.S. § 18B-302 (a) (1) states "[i]t shall be unlawful for any person to sell malt beverages to anyone less than 21 years old[.]"
3. The Petitioner bears the burden to prove each element of the offense by a preponderance of the evidence.
4. N.C.G.S. § 18B-302 (d) provides an affirmative defense to a violation of subsection (a). The Respondent ("Seller") bears the burden of proving a defense, also by a preponderance of the evidence.

DECISION

NOW THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned rules as follows:

1. Respondent's (Permittee's) employee, Charles Tyler Evans, sold a malt beverage to Wallace Roe Benfield, a person less than 21 years old, while on the licensed premises, on or about May 2, 2013, at 9:51 PM in violation of N.C.G.S. §18B-302 (a) (1).
2. Respondent failed to establish a defense under N.C.G.S. § 18B-302 (d) (1), (2) or (3) to the violation of subsection (a).

ORDER

The Respondent's ABC permits shall be suspended for 12 days and Respondent will pay a \$500.00 monetary penalty on dates to be determined by the Petitioner.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 10th day of January, 2014

Craig Croom
Administrative Law Judge