

FINDINGS OF FACT

1. The Respondent holds On Premises Malt Beverage and Unfortified Wine permits issued by the Petitioner, the North Carolina ABC Commission (“Commission”). The Respondent’s business consists of a café and wine bar and employs ten persons.
2. Through testimony of North Carolina Alcohol Law Enforcement (“NCALE”) Agents Joyner, Lasater and Hill as well as the Respondent it was established that the Respondent had maintained living quarters and was living in two rooms (kitchen and bedroom) on the second floor of her business on August 6, 2012. The sole access to the living quarters is made through the interior staircase of the building. The building consists of a two-story bungalow-style house of considerable age. The staircase is open to the first floor of the house where the Respondent serves her clientele. The living quarters are separated from the second floor landing by two doors. In addition to the living quarters, several rooms on the second floor are used for storage, including storage of alcoholic beverages.
3. On August 6, 2012, during the initial permit inspection by NCALE, the Respondent was informed that Commission administrative rules prohibited the existing living arrangement. At that time Respondent received a written warning. (Petitioner’s Exhibit 1) Subsequently, Respondent requested a waiver of the rule from the Commission. Respondent’s request was denied, but the Commission’s permit director, Ann Johnson, extended Respondent’s temporary permits until September 21, 2012. (Petitioner’s Exhibit 2) During this period the living arrangements were allowed to continue giving the Respondent time to find a new residence. Respondent moved her living quarters out of the business shortly thereafter.
4. Respondent testified that due to having insufficient income she moved back into the business in January of 2013. (Respondent’s Exhibit 1)
5. The living arrangement was re-discovered during an inspection by NCALE on March 21, 2013. The inspection was prompted by a complaint that the Respondent was living on the premises. Respondent has been living on the licensed premises from January of 2013 through the date of this hearing.
6. Petitioner requested that NCALE not issue additional violations to the Respondent based upon the on-going living arrangement.

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. ABC Commission Administrative Rule 4 NCAC 2S.0102(e) states: General Restriction: Living Quarters. No permit for the possession, sale or consumption of alcoholic beverages shall be issued to any establishment when there are living quarters in or connected to his licensed premises.

3. NCGS § 18B-502 states, in pertinent part: (a) Authority – To procure evidence of violations of the ABC Law, alcohol law enforcement agents.....shall have the authority to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include viewing the entire premises and,

(b) Interference with Inspection – Refusal by a permittee.....to permit officers to enter the premises to make an inspection under subsection (a) shall be cause for revocation... It shall be a Class 2 misdemeanor for any person to resist or obstruct an officer attempting to make a lawful inspection under this section.
4. Existence of living quarters in or connected to the licensed premises creates a potential conflict between the Respondent's personal Fourth Amendment rights under the U.S. Constitution and the authority of alcohol law enforcement to make an administrative inspection without a search warrant.

DECISION

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

Respondent's (Permittee's) employee, Tara Fox established and maintained living quarters in or connected to the licensed premises on March 21, 2013, in violation of ABC Commission Administrative Rule 4 NCAC 2S.0102(e).

ORDER

The Respondent's ABC permits shall be suspended for 10 days and Respondent will pay a \$500.00 monetary penalty on dates to be determined by the Petitioner.

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 7th day of January, 2014

Julian Mann III
Chief Administrative Law Judge

A copy of the foregoing was mailed to:

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RESPONDENT

This 7th day of January, 2014.

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