

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
04 ABC 1553

NC ABC Commission,)
Petitioner)
)
v.)
)
JFD&G Enterprises, Inc.,)
T/A America's Grill,)
Respondent)

DECISION

This contested case was heard before Beryl E. Wade, Administrative Law Judge, in the Office of Administrative Hearings, on December 8, 2004, in Asheville, North Carolina.

APPEARANCES

For Petitioner: K. Renee Cowick, Esq.

ISSUES

1. Whether the Respondent's employee and corporate officer, Jarbas Ferreira DeAlmeida, concealed or otherwise failed to indicate truthfully and accurately the sale of alcoholic beverages on the licensed premises in reports required to be kept, on or about January 2002 to May 2004, in violation of ABC Commission Rule 4 NCAC 2S.0513(12).
2. Whether the Respondent's employee and corporate officer, Jarbas Ferreira DeAlmeida, made incomplete, inaccurate, false and misleading statements in reports required by ABC Commission Rules, on or about January 2002 to May 2004, in violation of ABC Commission Rule 4 NCAC 2S.0513(13).

FINDINGS OF FACT

The undersigned Administrative Law Judge finds the following facts:

1. Respondent holds Malt Beverage, Fortified Wine, Unfortified Wine and Mixed Beverage Restaurant permits since May 2002 at a business known as America's Grill located at 240 West Broad Street, Statesville, North Carolina 28677.
2. The Office of Administrative Hearings scheduled a hearing for this matter for December 8, 2004, in Asheville, North Carolina.

3. Both parties were served and received a Notice of Hearing by certified mail. Petitioner received Notice of Hearing on November 18, 2004. Respondent received Notice of Hearing on or before November 29, 2004.

4. Petitioner appeared through counsel, K. Renee Cowick, at the December 8, 2004 hearing.

5. Respondent failed to appear at the hearing.

6. On December 13, 2004, the Petitioner filed a Motion for Sanctions with the Office of Administrative Hearings for failure of the Respondent to appear at the December 8, 2004 administrative hearing.

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 Rule 26 NCAC 03 .0114(a) states in pertinent part:

If a party fails to appear at a hearing, 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 the Respondent failed to appear at the December 8, 2004 administrative hearing, the allegations as set out in the Petitioner's petition are deemed proved without further evidence.

4. Based on the foregoing Conclusions of Law, on from January 2002 to May 2004, the Respondent violated the ABC laws as follows:

Respondent's employee and corporate officer, Jarbas Ferreira DeAlmeida, concealed or otherwise failed to indicate truthfully and accurately the sale of alcoholic beverages on the licensed premises in reports required to be kept, on or about January 2002 to May 2004, in violation of ABC Commission Rule 4 NCAC 2S.0513(12).

Respondent's employee and corporate officer, Jarbas Ferreira DeAlmeida, made incomplete, inaccurate, false and misleading statements in reports required by ABC Commission Rules, on or about January 2002 to May 2004, in violation of ABC Commission Rule 4 NCAC 2S.0513(13).

DECISION

Based upon the foregoing Finding of Fact and Conclusions of Law, the undersigned Administrative Law Judge grants the Petitioner's Motion for Sanctions and recommends that the ABC Commission suspend the Respondent's ABC permits for ninety (90) days and assess a \$1,000.00 penalty.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearing, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with NCGS §150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. NCGS §150B-36(a).

The agency is required by NCGS §150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney on record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the NC Alcoholic Beverage Control Commission.

This is the 6th day of January, 2005.

Beryl E. Wade
Administrative Law Judge