

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 14, 2012**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on November 14, 2012, beginning at 10:00 AM. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

Chairman Guy introduced former Commissioner Mr. Ricky Wright of Wake Forest, North Carolina.

MINUTES OF OCTOBER 10, 2012

Chairman Guy asked for a motion to waive the reading of the minutes of the October 10, 2012 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the October 10, 2012 meeting. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the October 10, 2012 meeting. Commissioner Briggs made a motion to approve the minutes from the October 10, 2012 meeting. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Chairman Guy asked Commissioner Briggs if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Briggs stated that that he had found no conflicts of interest. Chairman Guy stated that he had found no conflicts of interest.

I. HEARING CASES – 66

Chief Counsel Fred Gregory stated Mr. Michael Carter, owner and general manager, was present to speak on behalf of hearing case #58, Syn Night Club. Mr. Carter stated he accepts responsibility for the violations and stated many changes had been made to prevent further occurrences. Special Agent Hill had noticed that security personnel were using their cellphones for texting while on the job. Mr. Carter stated a new head of security had been hired and additional undercover/plain clothes security employed for 18 and up nights. A new manager had also been hired. The staff completed ABC Commission training with Jane Humble. Furthermore, the business established a two-step identification checking process at the door and at the bar, as well as providing new bands and stamps. Mr. Carter stated they are maintaining an incident log and collecting fake identification to turn over to ALE. Mr. Carter asked for further consideration of the penalties. Assistant Counsel LoRita Pinnix stated the business has made great efforts to change their system.

Commissioner Briggs made a motion to reduce the penalty 25%. Motion passed.

Chief Counsel Gregory stated Mr. Arif Denk, the owner of hearing case #23, Troy Mezze Lounge, was present to speak on behalf of the business.

Mr. Denk stated the violations occurred after the staff had a party for his mother who had been visiting for six months and was preparing to leave. The party was held after hours and there was no bartender on

staff. Mr. Denk stated he told the servers not to mix the liquors. Mr. Denk stated the bottles found by the ABC Officer were left from this party and the employee responsible is no longer employed. Assistant Counsel Tim Morse stated there was an empty bottle not defaced as well as a bottle with no tax stamp. Mr. Morse stated an inspection of the receipts showed three bottles purchased were not purchased at the LBD location, indicating a violation.

After some discussion with Chairman Guy, Commissioner Briggs made a motion to remove the seven-day active suspension and the penalty to avoid suspension was to remain at \$3,500.00. Motion passed.

Chief Counsel Gregory stated attorney Jonathan Bridges was present to speak on behalf of hearing case #41, A J McMurphys. Mr. Bridgers stated that the business is a restaurant with a bar and does not dispute the violations. Three of the four employees involved in the violations have been terminated. The fourth employee was new at the time of the violation and has completed additional training. The manager has hired a door person to help prevent any further incidents. Ms. Pinnix stated this was a campaign managed by Pitt County ABC law enforcement and an underage purchaser was able to purchase alcohol four times within in an hour and her identification was never checked. Ms. Pinnix stated that the penalty was aggravated, therefore there is some flexibility.

Commissioner Briggs made a motion to reduce the penalty 25% based upon confirmation of training. Motion passed.

Chief Counsel Gregory stated Mr. Ryan Pilz and Mr. Robert Royster, owners of hearing cases #56, Ruckus Pizza Pasta and Spirits, were present to speak on behalf of their business.

Mr. Pilz stated this was a newly opened third location. Mr. Royster stated they have had no problems with underage drinking at their location near the college and it had been in business for nearly 15 years. Mr. Pilz stated this was an incident between two employees, where an employee that had worked for the business for several years, but was still underage, asked the bartender for a drink while not working. Both employees were immediately terminated. Ms. Pinnix stated this was a surveillance case and the agent witnessed the sale. Ms. Pinnix confirmed this was an incident between two employees and there is some flexibility in the penalty.

Commissioner Briggs made a motion to reduce the penalty 25% upon the completion of the ABC Commission's training class within 30 days. Motion passed.

Chief Counsel Gregory stated Mr. Nabil Algefni, the owner of hearing case #35, Safeway, was present to speak on behalf of the business.

Mr. Algefni stated that this was the business' first violation of this kind and the store was busy that day. Assistant Counsel Renee Cowick stated this was a surveillance case and the penalty was aggravated because the owner was involved in the violation. Ms. Cowick stated the penalty could be reduced to the usual \$1,200.00.

Commissioner Briggs made a motion to reduce the penalty to \$1,200.00 and then have a further reduction of 25% upon the completion of the ABC Commission's training class within 30 days. Motion passed.

Chief Counsel Gregory stated Ms. Bettie Taylor Brown, the owner of hearing case #24, Betties Mini Mart, was present to speak on behalf of the business.

Ms. Brown stated that this was a new business that had recently moved. Ms. Brown stated that she had made a mistake regarding her permits. Ms. Cowick stated that the officer confirmed this and that the permits had been corrected and recommended a written warning.

Commissioner Briggs made a motion to issue a written warning upon the completion of the ABC Commission's training class within 30 days. Motion passed.

Chief Counsel Gregory stated Mr. Dwayne Simmons, the owner of hearing case #21, Shark Bar, was present to speak on behalf of the business.

Mr. Simmons stated he made a mistake and used poor judgment. Mr. Simmons stated his business was a private club that was only open a few nights a week. Mr. Simmons stated he had gone to the ABC Store to purchase liquor for a private event to be held in a residence. An ABC officer familiar with Mr. Simmons saw Mr. Simmons at the ABC Store and followed him to his business. Mr. Simmons stated he had also purchased paper goods for his business and was delivering them to the business. The box of liquor was for the assistant manager to take for the other event. Mr. Simmons stated previous violations were due to accounting issues and audit reports.

Assistant Counsel Tim Morse stated the ABC law enforcement officers witnessed Mr. Simmons carry the box of liquor into the business and found six liquor bottles that had not been defaced.

Chairman Guy made a motion to reduce the penalty 25%. Motion passed.

Chief Counsel Gregory stated Mr. Bill Bartholomew, the owner of hearing case #50, Longbranch of Raleigh, was present to speak on behalf of the business.

Mr. Bartholomew stated that the violation report was received by the business on August 31, 2012 regarding missing financial reports. On September 10, 2012, the completed financial reports were emailed to the audit division. The person responsible for the financial reports had been ill and in the hospital. Mr. Bartholomew stated that the business requires all employees to take the ABC training twice a year.

Ms. Pinnix stated that the reports were filed quickly after the notice was sent and considering the factors of the situation, there is room for consideration of the penalty.

Commissioner Briggs made a motion to reduce the penalty by 25%. Motion passed.

Chief Counsel Gregory stated Mr. Joel Freeman, general manager of the location and Mr. Jim Brown district manager of hearing case #25, Carolina Ale House, were present to speak on behalf of the business.

Mr. Brown stated the employee acted on his own to purchase liquor for the business disregarding a properly placed order for the same liquor. This employee is no longer employed at this location. Mr. Brown stated all managers took the ABC Commission training and all employees have training twice a year. Ms. Cowick stated that an employee picked up the alcohol, rather than an emergency order that had been placed. The ABC Store employee recognized the employee and notified law enforcement. Chief Counsel Gregory stated it was appropriate to waive the active suspension and reduce the penalty.

Commissioner Briggs made a motion to waive the active suspension and reduce the penalty to \$3,000.00 with the confirmation of training. Motion passed.

Chief Counsel Gregory requested the Commission revisit hearing case #23, Mr. Arif Denk, the owner of Troy Mezze Lounge, asked that the Commission adjust the penalty dates of the Final Agency Decision for compliance with the December ABC Commission meeting.

Commissioner Briggs made a motion to adjust the penalty dates. Motion passed

II. OTHER BUSINESS – EXEMPTION REQUEST

Chief Counsel Gregory stated Ms. Libba Thompson was present to ask for an exemption.

Ms. Thompson stated that she was a part-owner of a gift shop in Lincolnton and a part-owner of Vesuvius Vineyards in Iron Station. The vineyard has an industry permit but does not produce wine and is used as an event venue. Ms. Thompson asked for an exemption so she can sell wine in the gift shop.

Chairman Guy made a motion to grant an exemption for Ms. Thompson's gift shop on the condition that the vineyard does not produce wine. If the vineyard were to produce wine in the future, the shop would not be able to sell the vineyard's wine. Motion passed.

III. OTHER BUSINESS – ABC STORE LOCATION – PITT COUNTY ABC BOARD

Administrator Michael Herring stated on October 11, 2012, the ABC Commission received a letter from Theresa Campbell, General Manager for the Pitt County ABC Board requesting approval to open a new ABC store in Greenville.

On October 15, ALE Special Agent Matt Knight began an investigation and found that the Pitt County ABC Board plans to purchase property and construct an ABC store at the intersection of Arlington Boulevard and Fire Tower Road. The property did not have an assigned address at the time of the investigation, but is located directly beside a CVS Pharmacy located at 1895 East Fire Tower Road in Greenville. There is also a Wendy's restaurant and a Bojangles' restaurant facing the proposed site.

The proposed location and property is owned by RTMC Properties, LLC. The purchase price is still being negotiated between the parties, but would include RTMC Properties purchasing a nearby Pitt County ABC store property located at 337 East Arlington Boulevard. The investigation found no financial conflict of interest between the ABC Board members and RTMC Properties.

Projected sales at this new location are approximately \$4 million. In addition to closing the ABC store at 337 East Arlington Boulevard, the ABC Board plans to close another nearby store located at 4125-H Old Tar Road in Winterville, North Carolina.

The nearest church is located .3 tenths of a mile from the proposed site. The nearest school is located .4 tenths of a mile from the property. Notice of intent to open an ABC store at the site was properly posted on October 10, 2012.

Mr. Herring stated the investigation found the public to be generally in support of the location. The ABC Commission has received no objections and recommended approval of the location.

Commissioner Briggs made a motion to approve the location. Motion Passed.

Commissioner Briggs made a motion to approve the remaining offers in compromise, with the exception of the previously ratified cases. Motion Passed.

With no further business, the meeting adjourned.

A.D. "Zander" GUY, JR., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

Caroline Y. Washburn, Legal Division