

STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 ABC 08408

<p>NC Alcoholic Beverage Control Commission Petitioner,</p> <p>v.</p> <p>Summit Hospitality Group Limited T/A Residence Inn by Marriott Chapel Hill Respondent.</p>	<p><b>FINAL DECISION</b></p>
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This contested case hearing was heard before Administrative Law Judge Don Overby on December 20, 2016 in Raleigh, North Carolina.

**APPEARANCES**

For Petitioner: Missy P Welch, Assistant Counsel  
North Carolina Alcoholic Beverage Control Commission  
Raleigh, North Carolina

For Respondent: Glenn B. Lassiter, Jr.  
Attorney at Law

**ISSUES**

Whether Respondent sold malt beverages to Jacob Orbich on October 30, 2015 and Katelynn Newsome on April 8, 2016 in violation of N.C.G.S. 18B-302(a)(1); whether Respondent has a valid defense to such sales pursuant to N.C.G.S. 18B-302(d)(2) or otherwise; whether Petitioner has authority to request and impose a seventy-five (75) day suspension of Respondent's Malt Beverage, Unfortified Wine and Mixed Beverage Hotel ABC permits; and what if any punishment is appropriate under the facts and circumstances of this contested case?

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the

facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

### **FINDINGS OF FACT**

1. Respondent, Summit Hospitality Group LTD (hereinafter “Respondent”) holds Malt Beverage, Unfortified Wine and Mixed Beverage Hotel ABC permits for a business located at 101 Erwin Road, Chapel Hill, NC. Respondent’s business is a hotel and has held those permits since at least November 9, 2007.

2. The Respondent has no proven history whatsoever of selling alcoholic beverages to an underage person that intended to consume it, including those at issue herein, nor was there evidence presented that any person ever filed a complaint with the Petitioner or the Chapel Hill Police Department that such a sale had taken place.

3. Doyle Parrish is President-CEO of Respondent, a management company that manages 21 businesses of which 18 are hotels like Respondent.

4. Respondent has operated that business with various ABC permits since 1988 without any ABC violations for selling alcoholic beverages to an underage customer that intended to consume it on the Respondent’s premises.

5. Chapel Hill Police have conducted several alcohol compliance checks at Respondent’s establishment, not involving “sting” operations using underage buyers, and there have not been any violations. Respondent has received several commendations for compliance. Despite its perfect record of compliance and the lack of any complaint, Respondent was checked in “sting” operations at least 10 times between the summer of 2015 and the trial of this case.

6. Respondent has a zero-tolerance policy for alcohol sales to underage and dismisses all employees so cited. Respondent provides TIPS and other training to its employees including the two employees at issue to have committed offenses in this case.

7. Alcohol sales are a small percentage of Respondent’s overall business, constituting less than one percent of revenues, but are offered as a courtesy to Respondent’s guests at the hotel. A significant portion of Respondent’s business is from large groups and conventions and the alcohol sales are important for keeping that business.

8. An extremely small percentage of Respondent’s customers are around 21 years of age, while a very high percentage of Respondent’s customers are well over 21 years of age.

9. Chapel Hill Police Department conducts alcohol compliance checks at ABC licensed establishments to ensure underage consumption of alcohol is minimized and utilize “certified” underage buyers to ensure compliance at various establishments within Chapel Hill. (Tr 33: 6-9 & 12-15).

## I. VIOLATIONS.

10. There are two violations alleged:

- a. Respondent's employee Daniel Martinez sold a malt beverage to Jacob Orbich, a person less than 21 years of age, in violation of N.C.G.S. 18B-302(a)(1) on October 30, 2015; and
- b. Respondent's employee Emma Stapleton sold a malt beverage to Katelynn Newsome, a person less than 21 years of age, in violation of N.C.G.S. 18B-302(a)(1) on April 8, 2016.

11. On or about October 30, 2015, Chapel Hill Police Department Officer Debbie Hilliard conducted an alcohol compliance check at Respondent's location, using Jacob Orbich to make a purchase. (Tr 16:13-16)

12. At approximately 10:30 pm, Jacob Orbich, a certified underage buyer for the Chapel Hill Police Department, entered Respondent's location and approached the bar. He asked Respondent's employee, Daniel Martinez, for a Bud Light. Mr. Martinez asked Jacob for his identification, looked it over and subsequently served the beer to Jacob. (Tr 65:12-15)

13. Officer Debbie Hilliard followed Jacob into Respondent's location and stood approximately fifteen feet from the bar and observed Mr. Martinez sell the malt beverage to Jacob. (Tr 18:10-14) Such close proximity could lead an observer to believe Jacob was with her. Officer Hilliard appears to have been at least old enough to have been his mother or other responsible person.

14. Jacob's date of birth is July 11, 1997, making him 18 years old on October 30, 2015. (Tr 62:5-6; 72:23-24:P Ex 1)

15. Prior to Jacob entering Respondent's location, Officer Hilliard did not personally search or observe Jacob being searched. Jacob stated that he was searched by an officer prior to going to the establishment. Jacob was not searched after making the purchase.

16. After the purchase, Officer Hilliard did look at Jacob's own state issued North Carolina driver's license. The license shows Jacob will turn twenty-one years old on July 11, 2018 and is highlighted in red next to Jacob's picture. Also, highlighted on the driver's license is the date he turns eighteen. Across the top of the license in large letters it states "Full Provisional License." (Tr 21:9-10; 73:18-22, Pet. Ex 1)

17. At the time of the purchase, Jacob's size and facial hair gave him the appearance of someone who possibly could have been of sufficient age to purchase alcohol legally. Mr. Martinez states that he misread the age on the driver's license and sincerely believed that Mr. Orbich was of sufficient age.

18. Employees at businesses other than Residence Inn made sales to Mr. Orbich during his “sting” operations that same evening after checking his identification, some indicia of Mr. Orbich appearing of sufficient age.

19. Daniel Martinez was charged with selling malt beverage to a person less than twenty-one years old. He subsequently admitted guilt in order to participate in a deferred prosecution program where the criminal charge could be dismissed. (Tr 120:6-13)

20. Petitioner previously filed a Petition with OAH against Respondent concerning the October 30, 2015 charge involving Jacob Orbich, being designated as 16 ABC 226. That contested case was dismissed on May 9, 2016 pursuant to N.C.G.S. 1A-1, Rule 41(b) prior to filing this case. (Rsp. Ex. 15)

21. On or about April 8, 2016, Chapel Hill Police Officer Jeremy Sauer conducted an alcohol “sting” compliance check at Respondent’s location, using Katelynn Newsome to make a purchase. (Tr 78:2-5)

22. At approximately 4:15 pm, Katelynn Newsome, a certified underage buyer for the Chapel Hill Police Department, entered Respondent’s location and walked to the bar area which was closed. Katelynn was instructed by the bartender that she could retrieve a beer from the cooler and pay for it at the front desk. She did as instructed, picking up a bottle of Blue Moon beer, and walking to the front desk to purchase it.

23. Respondent’s employee, Emma Stapleton, asked Katelynn for her identification, looked at it and stated, “Happy late birthday.” Ms. Stapleton returned the ID and completed the sale of the malt beverage to Katelynn. (Tr 104-105) Ms. Stapleton was working at the front desk check in counter and not at the bar.

24. At the time of the purchase, Katelynn had the physical appearance of someone who could possibly be of sufficient age to purchase alcohol legally. Ms. Stapleton misread Katelynn’s birthday on the driver’s license, thinking she had turned sufficient age approximately one month prior. Katelynn’s date of birth is March 6, 1998, making her eighteen years old on April 8, 2016. (Tr 99:2; 104:15)

25. Officer Sauer followed Katelynn into Respondent’s location and was approximately thirty feet away from the front counter when he observed Katelynn put the beer on the counter, hand Ms. Stapleton her ID, and pay for the beer. (Tr 80-82) Officer Sauer was obviously of sufficient age to purchase alcohol, although would not have been of the appearance to have been a parent.

26. Officer Sauer did not know if Katelynn had been “trained” or “certified.” He did not know if Katelynn had been searched. Katelynn confirmed that she was not searched before

going into the hotel. There is no evidence that she was searched after going into the hotel. Officer Sauer personally did not see her identification and/or driver's license.

27. According to Katelynn, she had her state issued North Carolina driver's license, a \$20.00 bill, and her cell phone with her on entering Respondent's business on April 8, 2016. Her date of birth is listed at the bottom of the license and shows she will turn twenty-one years old on March 6, 2019. The date is highlighted in red and is located next to Katelynn's picture. Just as with Jacob's driver's license, Katelynn's license also had the date that she turned eighteen highlighted, and it bore the line in large type "Full Provisional License." (Tr 103:19-25; 104:1-5; 106:1-9; P Ex. 4)

28. Employees at businesses other than Residence Inn made sales to Katelynn during her "sting" operations that same evening after checking her identification, some indicia of Katelynn appearing of sufficient age.

29. Ms. Stapleton was charged with and subsequently admitted guilt to selling a malt beverage to a person less than twenty-one years old. With the admission she entered a criminal court diversion program, where she completed a B.A.R.S class to have the criminal charge dismissed. (Tr 133-134)

30. Both allegations arose as the result of "sting" operations where Mr. Orbich and Ms. Newsome were employed by the Chapel Hill Police Department to attempt supervised alcohol purchases at various retailers, including Respondent's business.

31. "Sting" operations were intensified by the police department after a tragic accident caused by an underage intoxicated driver in the summer of 2015 on Interstate 85 claimed three innocent lives.

32. The Chapel Hill Police Department has guidelines for its "sting" operation. In this contested case, there was a lack of detail presented by the officers as to the specifics of those guidelines. There was no evidence presented as to how the targets of the "sting" operations were selected.

33. "Certified" underage buyers are trained on how to participate in compliance checks. A Chapel Hill police officer also explains to underage buyers what to wear, how to act and what to do when asked for their driver's licenses. (Tr 100-102; 62-63:1-4)

34. Part of the certification training includes visiting the local malls and asking patrons their opinions about the buyers' ages. There is no evidence about the accuracy of the age-guessing by the mall patrons, in particular to Mr. Orbich or Ms. Newsome. ALE guidelines requires the training officers to tell the mall patrons that these young people are going to participate in underage purchasing of alcohol campaigns, which would be an inference to the participating mall patrons that the young people are not of sufficient age.

35. Chapel Hill Police Department follows its own guidelines when conducting alcohol compliance checks. (Tr 50:9-12) ALE has a set of guidelines which are the only statewide organization that has such guidelines, but local law enforcement agencies are not under any compulsion to follow those statewide guidelines. The Chapel Hill Police Department does not follow the State Alcohol Law Enforcement guidelines for undercover “sting” operations.

36. The Petitioner has not established any uniform guidelines or recommendations for law enforcement to utilize across the state in conducting “sting” operations.

37. According to Respondent’s expert witness, Attorney William Potter, the Chapel Hill Police Department unreasonably used some procedures in its “sting” operations procedures that would not have been in accord with the ALE recommended procedures. Among procedures used in these cases are:

- a. Neither underage person utilized in the “sting” operations had a physical appearance that was consistent with their true age.
- b. Neither underage person utilized in the “sting” operations had a physical appearance of a person that would have clearly been under the legal age to purchase alcohol. The physical appearance of a person is a primary tool used by both law enforcement and sellers to determine the age of a person. There is not sufficient evidence to speculate how these two underage persons would have fared by being “age verified” under the NC ALE guidelines.
- c. The attendant circumstances may also be important; e.g. if they are with an older person such as a parent. In each “sting” operation in this contested case, each underage was accompanied by a police officer instead of entering the business alone. The police officer remained in close proximity and was of obvious sufficient age to purchase alcohol.

38. Each “sting” underage presented his and her own current drivers’ license to the Respondent’s employee.

39. The stated purpose of the sting operations was to deter alcohol sales to underage buyers in Chapel Hill and to “ensure compliance.”

40. As in this instance, this hotel has done practically everything to ensure such sales do not occur, and indeed has not had any violations during normal compliance checks. Using sting operations in hotel bars and restaurants such as the ones in this contested case is closely akin to shooting over a baited field. The results are that one bartender at a time is sanctioned and the hotel is punished. The underage is not affected. It would seem that more deterrence of underage sales would be obtained from enforcement at bars and restaurants closer to the university, at sporting events and concerts than at hotels. There is not any evidence of comparative numbers of such other enforcement efforts. The rhetorical question then becomes how genuine is the effort to stem the ever-present problem of underage consumption of alcohol, and to what effect? Is the deterrence

aimed at sales or consumption? Are there diligent efforts to enforce the sales to and consumption by underage persons in the areas where they are more likely to occur?

41. In order for sting operations to serve the purposes of deterring only sales as here, they should reasonably resemble actual transactions the seller would encounter in the market.

42. These two sting operations were not consistent with the type of actual transactions a seller might encounter in the market, as described in detail by the experience of Ms. Stapleton, which was not refuted. Obviously, they did not resemble actual transactions at Respondent's business since there had never been any other violations over many years.

43. All criminal charges against both Mr. Martinez and Ms. Stapleton were dismissed after successful completion of deferred prosecution agreements.

## **II. THE PROCESS**

44. After an alleged violation has occurred, the Petitioner Commission will send the permittee a Notice of Violation along with an Offer of Compromise. In practice, the evidence shows that the Offer of Compromise is a one-way street, with very little negotiation. The Offer of Compromise does not come from the permittee. If the permittee agrees to accept the offer, then the permittee must agree to waive any rights he or she may have to a hearing. Permittee cannot have a hearing before the Commission to even seek a variation from the guidelines without first having accepted the offer and waived rights to a hearing.

45. The decision to accept the offer may be primarily a business decision for the permittee to make, and is not necessarily controlled by whether facts actually support the violation. Under this system, the permittee's best hope of getting a reduced punishment may be to accept the offer and gamble with the Commission. If the permittee gets to the Commission for consideration but does not like that decision either, then he is without any recourse because the only way to get before the Commission is by waiving one's rights. That process avoids the permittee being allowed to challenge in OAH.

46. There are no written and properly promulgated rules or procedures as to how one might avail themselves of the process generally, or more particularly how a permittee might avail themselves of an appeal to OAH.

47. If the permittee does not accept the offer, then the Commission is the petitioner before OAH as is allowed in N.C.G.S. 150B. Under the process established by the Commission, the only method for a permittee to get a hearing with OAH is by rejecting the offer. There is no process for the permittee to otherwise directly appeal to OAH. Rejecting the offer has its own set of pitfalls.

48. On or about June 20, 2016, Respondent received from Petitioner a Notice of Alleged Violation and Proposed Stipulation and Offer in Compromise. The Notice alleged

Respondent's employees sold malt beverages to persons less than twenty-one years old in violation of N.C.G.S. § 18B-302(a)(1) on October 30, 2015 and April 8, 2016. (R Ex. 22)

49. The proposed offer stated, "Permittee's ABC permits shall be suspended for 60 days beginning April 4, 2016. The last 45 days of such suspension may be avoided upon the permittee's payment of a penalty of \$5,000.00 on or before March 31, 2016. (Tr 169:11-12)

50. On or about August 23, 2016, Petitioner filed a Petition and requested a monetary penalty of \$1,000.00 and a seventy-five (75) day suspension of Respondent's ABC permits. (Tr 169: 14-23; R Ex. 23)

51. The practice of grossly increasing the penalty sought from OAH by the Commission if the permittee does not accept the offer of compromise is punitive for the permittee's exercising a right to a hearing, it is coercive and has a chilling effect on the permittee's exercising that right.

### **III. GUIDELINES**

52. The ABC General Guidelines for Offers in Compromise Negotiation ("hereinafter ABC General Guidelines" or "Guidelines") is a grid of proposed penalties for some of the ABC violations. It sets out possible penalties that can be imposed for an ABC violation based on the type of offense, whether it is first, second, third or fourth offense. The proposed penalty increases for subsequent violations of the same offense within a three- year period. (Tr. 189:2-13) The Guidelines are somewhat akin to misdemeanor and felony sentencing grids in form.

53. The evidence tends to show that the Guidelines are not used solely by staff internally as a guide for negotiating settlements or in the prosecution of cases. They are statements of general applicability, meaning that those guidelines are applied to the general public to whom applicable outside the agency. They are not promulgated rules.

54. There is little evidence that the punishment from the Guidelines is negotiable. The Guidelines themselves state that the penalties may vary no more than 10% (+/-). There is no evidence of discretion to deviate from the Guidelines and if so, exercised by whom. There is also a provision which states that the penalties may be exceeded beyond the guideline amounts based on severity, but does not mention any mitigating factors.

55. There is little if any evidence that any consideration is given to mitigating circumstances in the guidelines, but more that the guidelines are rigidly enforced for the most part. There is no evidence that either the punishment in the Offer of Compromise or the punishment sought in the petition have any relevance to these particular facts and circumstances.

56. There is no evidence of how the Guidelines are created or by whom. Of concern is the origin of the specific punishments; how are they derived, what are they based upon. If there is not data to support the assessed punishments, then the very numbers and punishments themselves may be arbitrary and capricious.

57. Petitioner has been consistent in using the ABC General Guidelines to determine an appropriate penalty for the violation. (Tr 189:2-13; 228: 22-24) The Guidelines are not published for the public to view. They are not found on Petitioner's website.

58. According to Respondent's expert witness, Attorney William Potter, Petitioner's process of sending out a Notice of Alleged Violations and Proposed Stipulation and Offer in Compromise as well as using the ABC General Guidelines is the procedural process that Petitioner has had in place for a long time. Mr. Potter also stated the process is a starting point and he has had success in settling cases for lower penalties. (Tr 86:21-22; 238:5-8)

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings ("OAH") has jurisdiction of the parties and the cause. N.C. Gen. Stat. 18B-906(a) and 150B-23.

2. It shall be unlawful for any person to sell malt beverages or unfortified wine to anyone less than 21 years old. N.C. Gen. Stat. 18B-302(a)(1). "A violation of either a statute or a regulation is sufficient to support the suspension of a license". *C'est Bon, Inc. v. North Carolina Bd. of Alcoholic Control*, 279 N.C. 140 (1971).

3. A permittee shall be responsible for the actions of all employees for the business for which a permit is issued. N.C. Gen. Stat. 18B-1003(b).

4. N.C. Gen. Stat. 18B-104(a) establishes the penalties for violations of the ABC laws. It states that

(a) For any violations of the ABC laws, the Commission may take any of the following actions against a permittee:

- (1) Suspend the permittee's permit for a specified period of time not longer than three years;
- (2) Revoke the permittee's permit;
- (3) Fine the permittee up to five hundred dollars (\$500.00) for the first violation, up to seven hundred fifty dollars (\$750.00) for the second violation, and up to one thousand dollars (\$1,000) for the third violation; or
- (4) Suspend the permittee's permit under subdivision (1) and impose a fine under subdivision (3).

5. N.C. Gen. Stat. 18B-104(b) recognizes the potential for compromise. It states "In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the permittee an offer in compromise to pay a penalty of not more than five thousand

dollars (\$5,000). The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case.” (Emphasis added)

6. The language of the statute indicates that the offer of compromise should come from the permittee, not the Commission. While it does not forgo the Commission initiating the compromise, the language is indicative of a process of negotiation and in which the Commission may assess higher monetary penalties than set forth in subsection (a) ostensibly in exchange for not suspending or revoking a permit.

7. It is also noted that the language of N.C. Gen. Stat. 18B-104 is permissive by using the word “may,” indicative of the fact that the provisions set out are not necessarily limitations.

8. “‘Rule’ means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of any agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule.” (Emphasis added) N.C. Gen. Stat. 150B-2(8a).

9. The term does not include “(g) Statements that set forth criteria or guidelines to be used by the staff of an agency in...settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.” (Emphasis added) N.C. Gen. Stat. 150B-2(8a).

10. When reading subsection (g) *in pari materia* with the entirety of N.C. Gen. Stat. 150B-2(8a), and especially the exemptions from rule making, it is clear that (g) is intended to apply to guidelines within the agency and not those of “general applicability.” The circumstances in which ABC’s Guidelines are in play are only for assessing punitive values for Permittees who have alleged to have violated the ABC laws. As applied, the Guidelines are thus specifically for the purpose of “general applicability,” and are subject to rule-making. If the Guidelines were used internally and were suggestive as suggested by Petitioner, and a starting place for negotiations and not so rigidly enforced, in the nature of an Assistant District Attorney negotiating a plea bargain, then they might fit within N.C. Gen. Stat. 150B-2(8a)(g).

11. Petitioner is not exempt from rule-making as evidenced by Title 14B Chapter 15B of the North Carolina Administrative Code, titled Alcohol Beverage Control Commission. In particular and pertinent to assessing punishment, there are already rules applying to Administrative Fines (14B NCAC 15B .1104) and Offer in Compromise (14B NCAC 15B .1105).

12. Daniel Martinez sold a malt beverage to Jacob Orbich on October 30, 2015. Emma Stapleton sold a malt beverage to Katelynn Newsome on April 8, 2016. In each instance, there were indicia that indicated that each of the underage purchasers were of sufficient age. However, in each case the underage purchaser presented his or her own North Carolina driver’s license with clear indications of their real age, as well as warnings to anyone who looks at the license of when the person turns 18 and 21 years of age. The Respondent’s clerks and bartenders have a duty to

see what is there to be seen. Neither of the sales qualify as a defense under N.C.G.S. 18B-302(d)(2).

13. The methods used by Chapel Hill Police in these sting operations did not amount to entrapment.

14. As set forth in the findings of Fact above, there are a number of ways in which the process used by the Commission are troubling; specifically: the process currently in use wherein the permittees are required to waive their right to a hearing at OAH without any further recourse available, thus circumventing OAH; the method in which the Guidelines are used; the fact that mitigation does not seem to be built into the process; the origins of the punishments in the Guidelines; the potential for selective enforcement by some law enforcement agencies; the lack of properly promulgated rules to establish the process after an alleged violation; the coercive nature and chilling effect of the Commission in seeking a substantially increased punishment against a permittee exercising his right to come to OAH for a hearing; and the fact that there is no avenue for a permittee to access OAH individually.

15. While all the matters listed in Conclusion Thirteen above are of concern and may prospectively be problematic in the Commission's conduct of business, they are not controlling in reaching the decision herein.

16. In this contested case, Respondent did not accept the Offer of Compromise. The Petitioner Commission initiated the contested case petition as provided in N.C. Gen. Stat. § 150B-23. There was no error of law or procedure.

17. There is no question that Respondent's two employees sold alcohol to underage purchasers. Those two underage purchasers presented their own individual valid driver's licenses with the warnings. The sellers had a duty to see what was there to be seen. The findings of the violations are substantiated.

18. The Commission has the statutory authority to assess penalties, as well as to negotiate settlement with the permittees. Once the matter is petitioned to OAH, then it is up to the presiding Administrative Law Judge to assess the appropriate punishment based upon the facts and circumstances of the particular contested case.

### **FINAL DECISION**

BASED UPON the foregoing Findings of Facts and Conclusions of Law, and in accordance with N.C. Gen. Stat. § 18B-104(a) and having considered the severity of the offenses and all matters in mitigation, the undersigned hereby ORDERS that Petitioner impose a \$5000.00 monetary penalty and forty-five days (45) suspension of Respondent's ABC permits, all but 3 days of which are stay. The 3-day active suspension shall be on consecutive days within 60 days of entry of this Order on dates determined by Respondent and communicated to Petitioner at least 30 days in advance.

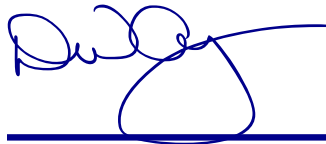
## NOTICE

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

Under the provisions of N.C. Gen. Stat. § 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 residing aggrieved by the administrative decision resides, or in the case of a person residing outside of 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. Gen. Stat. 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 of 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 3rd day of July, 2017.



Donald W Overby  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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NC ABC Commission  
[missy.welch@abc.nc.gov](mailto:missy.welch@abc.nc.gov) (served electronically July 3, 2017)  
Attorney For Petitioner

Glenn B Lassiter  
Attorney At Law  
PO Box 1460  
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Attorney For Respondent

This the 3rd day of July, 2017.



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