

ABC contested case dockets involving Summary Suspensions of ABC permits

With respect to ABC dockets found on the OAH website in which a Final Decision was rendered by an ALJ, from 2007 to the present, the following dockets involved the ABC Commission issuing a Summary Suspension of an ABC permittee's license(s):

07 ABC 00163. Judge Overby. The ABC Commission issued an Order of Summary Suspension on January 17, 2007. Prior to December of 2016, Respondent Permittee had not been cited for any ABC violations. Respondent had received commendatory letters in 2005 and 2006 as a safe seller of tobacco products, an age restricted product. The contested case was filed on January 29, 2007. The case was originally set for hearing on May 29, 2007.

On February 26, 2007, Respondent filed a Motion to Stay or Dissolve Summary Suspension. On March 1, 2007, a hearing on this motion was held before Judge Overby, who thereafter withheld a ruling on the motion and scheduled an expedited hearing for March 12, 2007. This hearing was held as scheduled and Judge Overby ruled on April 18, 2007 that the Order of Summary Suspension had been properly issued.

07 ABC 00305. Judge Webster. Respondent's ABC permits were summarily suspended on February 23, 2007. The ABC Commission filed a petition to revoke permits on March 1, 2007. Respondent filed a Motion for TRO and Motion for Preliminary Injunction on March 26, 2007, accompanied with numerous affidavits and other attachments. An Order for Preliminary Injunction issued April 12, 2007. An Order denying Respondent's Motion for Summary Judgment issued August 7, 2007. A Settlement Agreement and Petitioner's Notice of Voluntary Dismissal were filed August 9, 2007.

07 ABC 01532. Judge Gray. An ex parte summary suspension of Respondent's ABC permits was issued by the ABC Commission on September 14, 2007. On September 18, 2007, the ABC Commission filed its contested case seeking revocation. On November 6, 2007, Respondent filed a motion to dissolve the summary suspension. Following a contested hearing on November 15, 2007, Judge Gray entered an order allowing the motion and required the ABC Commission to immediately reinstate Respondent's ABC permits. The hearing on the merits was held on June 13, 2008, which resulted in a decision which concluded that the Petitioner had failed to prove its case by a preponderance of the evidence and allowed Respondent's Rule 41(b) motion to dismiss.

10 ABC 00153. Judge Gray. On January 7, 2010, the ABC Commission entered an ex parte summary suspension of Respondent's ABC permits. An evidentiary hearing commenced on April 8, 2010. After the Petitioner rested its case, the Respondent moved for an involuntary dismissal under Rule 41(b) for lack of substantial evidence.

On May 6, 2010, Respondent filed a motion for preliminary injunction to stay the summary suspension of its license pending the ALJ's decision. Following oral arguments, a preliminary injunction was issued on May 12, 2010.

On June 25, 2010, ALJ Gray rendered his Decision which allowed Respondent's motion to dismiss the petition, finding that the petition seeking to revoke the Respondent's ABC permits was not supported by a preponderance of evidence. The decision contains a specific finding of fact that there was no evidence of exigent circumstances described in the Order of Summary Suspension.

10 ABC 02659. Judge Lassiter. Respondent delivered a letter to Petitioner summarily revoking Petitioner's temporary ABC permits on May 6, 2010. On May 28, 2010, Petitioner filed a motion for a TRO and Preliminary Injunction. On June 2, 2010, after conducting a hearing by telephone, Judge Lassiter entered an order denying the motion. In the final decision, it was noted that the ALJ lacked authority to overrule the ABC Commission's discretionary authority via statute to summarily revoke temporary ABC permits without complying with the provisions of Chapter 150B.

10 ABC 07025. Judge Mann. Contested case was heard March 2, 2011. Finding of Fact 24 states that Respondent's ABC permits were summarily suspended by the ABC Commission in October of 2010; however, there is no indication that a motion for a preliminary injunction to stay the summary suspension was filed prior to the hearing on the merits. The Decision concluded that the location occupied by the Petitioner was no longer suitable to hold ABC permits and ordered the ABC Commission to revoke Respondent's ABC permits.

13 ABC 18939. Judge Overby. Petition filed on November 5, 2013 by Permittee indicates that the ABC Commission summarily suspended the license of Petitioner. There are no docket entries indicating that a motion for preliminary injunction and stay of the summary suspension was filed. A February 7, 2014 motion to continue indicated that a tentative settlement agreement had been reached. The case was eventually dismissed for mootness on February 19, 2015 based on an Offer in Compromise that had been ratified on September 17, 2014.

14 ABC 03686. Judge Ward. All of the Petitioner's ABC permits were summarily suspended by an Order dated April 11, 2014, based on a finding that "the public health, safety, or welfare requires emergency action". There is no indication that a motion for a preliminary injunction to stay the summary suspension was filed prior to a hearing on the merits, which took place on August 19th, 27th, and 28th, 2014 in Elizabeth City.

On December 23, 2014, Judge Ward issued his Final Decision concluding that the preponderance of the evidence did not show that the operation of Petitioner's permitted sited was detrimental to its neighborhood; did not show that Petitioner knowingly allowed disorderly conduct; did not show that the Petitioner failed to superintend its business; and that the Respondent erred in suspending the ABC permits under misapprehension of material facts; and ordered that the Petitioner's ABC permits be restored.

In a separate Memorandum of Decision (per 26 NCAC 03 .0127(c)(8)), Judge Ward elaborated that the Commission had made its decision under the misapprehension of allegations not borne out by the evidence; that counsel for the Commission might have been correct when she argued that a new applicant today would not receive the permits Petitioner held, but that is not this case

(which involves one of the neighborhood's oldest businesses with permits dating to 1950); and that the law, **and due deference to the Commission's authority and expertise** (emphasis added), confines the ALJ's consideration to the evidence presented.

14 ABC 08696. Judge Overby. Petition filed by Permittee on November 7, 2014 indicates that Petitioner's permit was summarily suspended. There are no docket entries indicating that a motion for a preliminary injunction and stay of summary suspension was filed. Order granting ABC Commission's Motion to Dismiss issued February 16, 2015.

15 ABC 05753. Judge May. Order of Summary Suspension issued August 4, 2015. Petition filed by ABC Commission August 7, 2015 requesting revocation of Respondent's ABC permits. No filing of petition to stay summary suspension. Order granting Petitioner's Motion for Sanctions and revoking permits issued December 7, 2015.

16 ABC 00796. Judge Ward. Petitioner Permittee filed a Motion for Temporary Restraining Order and Preliminary Injunction on January 20, 2016. Respondent ABC Commission filed a Motion to Dismiss on March 16, 2016. On April 4, 2016, Judge Ward granted the ABC Commission's Motion to Dismiss. No ruling was ever made on the Petitioner's Motion for TRO.

16 ABC 03310. Judge Ward. Petitioner's Temporary ABC Permit was revoked by Respondent ABC Commission on March 4, 2016. Petitioner Permittee filed a petition for a contested case hearing on March 31, 2016. Petitioner filed a Motion to Stay Revocation on April 25, 2016. On April 28, 2016, Judge Ward issued an Order Denying Motion to Stay Revocation in which he specifically held that the Petitioner had not shown a likelihood of success and that, consequently, Petitioner's Motion for a Temporary Restraining Order or "Stay", contrary to the ABC Commission's denial of Petitioner's application for permits and the termination of the Petitioner's Temporary Permit, must be denied. Judge Ward issued a Final Decision on November 14, 2016 upholding the ABC Commission's decision to deny the Petitioner's application for ABC permits.