

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF ALCOHOLIC BEVERAGES )  
AND TOBACCO, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-1791  
 )  
JON PHILLIP GUSTAFSON )  
d/b/a JON'S BAR and GRILL, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

An administrative hearing was conducted in this proceeding on June 17, 1998, in Orlando, Florida, before Daniel Manry, Administrative Law Judge, Division of Administrative Hearings. The parties, witnesses, and court reporter attended the hearing in Orlando. The undersigned participated by videoconference from Tallahassee, Florida.

APPEARANCES

For the Petitioner: George G. Lewis  
Assistant General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1007

For the Respondent: Jon Phillip Gustafson, pro se  
956 Lake Ashby Road  
New Smyrna, Florida 32069

STATEMENT OF THE ISSUE

The issue presented is whether Respondent failed to maintain separate records of purchases and gross sales of all alcoholic and non-alcoholic beverages and food in violation of Section 561.20, Florida Statutes, and Florida Administrative Code Rule 61A-3.0141, and if so, what penalty, if any, is appropriate. (All Chapter and Section references are to Florida Statutes (1997) unless otherwise stated. Unless otherwise stated, all references to rules are to rules promulgated in the Florida Administrative Code in effect of the date of this Recommended Order).

#### PRELIMINARY STATEMENT

Petitioner filed an Administrative Action against Respondent on August 12, 1997. Respondent timely requested an administrative hearing.

At the hearing, Petitioner presented the testimony of one witness and offered two exhibits for admission in evidence. Respondent testified on his own behalf, called no other witnesses, and submitted one exhibit for admission in evidence. The identity of one witness and exhibits, and any rulings regarding each, are set forth in the record of the hearing. Neither party requested a transcript.

Petitioner timely filed its proposed recommended order ("PRO") on June 27, 1998. Respondent did not file a PRO.

#### FINDINGS OF FACT

1. Respondent holds license number 69-02639, series 4COP SRX. An SRX license authorizes Respondent to sell alcoholic beverages on the premises of Jon's Bar & Grill, located at 2485 N. Highway 17-92, Lake Monroe, Florida ("the licensed premises").

2. Persons issued "SRX" licenses must meet certain statutory requirements to ensure that they are operating bona fide restaurants. Among other requirements, Respondent must maintain separate records of all purchases and gross sales of all alcoholic and non-alcoholic beverages and food. Respondent's license application specifically informed Respondent that he must meet the specific requirements of this type of license.

3. On March 17, 1997, Petitioner's Special Agent Richard Hurlburt met with Respondent for the purpose of conducting an SRX inspection to determine Respondent's compliance with SRX license requirements. An SRX inspection includes an audit of the licensee's records to determine the percentage of gross revenue derived from the sale of food and non-alcoholic beverages.

4. Respondent was unable to produce the records he is statutorily required to maintain. Agent Hurlburt issued a notice to produce records relating to the operation of the restaurant.

5. On August 12, 1997, Petitioner issued a notice of administrative complaint against Respondent for failure to maintain separate records of all purchases and gross sales for non-alcoholic and alcoholic beverages and food in violation of

Section 561.20. Respondent has not produced the records he is statutorily required to maintain.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the subject matter and parties in this proceeding. The parties were duly notified for the administrative hearing.

7. The burden of proof is on Petitioner. Petitioner must show. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

8. In relevant part, Section 561.20(2)(a)4, provides that Respondent must derive:

. . . 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. . . .

9. Rule 61A-3.0141 provides in relevant part:

(3)(a) At least 51 percent of total gross revenues must come from retail sale on the licensed premises of food and non-alcoholic beverages. . . .

1. Qualifying restaurants must maintain separate records of all purchases and gross retail sales of food and non-alcoholic beverages and all purchases and gross retail sales of alcoholic beverages.

2. The records required in subparagraph (3)(a)1. of this rule must be maintained on the premises, or other designated place approved in writing by the division for a period of 3 years and shall be made available within 14 days upon demand by an officer of the division. . . .

3. Since the burden is on the holder of the special restaurant license to demonstrate compliance with the requirements for the license, the records

required to be kept shall be legible,  
clear, and in the English language.

10. Petitioner satisfied its burden of proof. Petitioner showed by clear and convincing evidence that Respondent violated Section 561.20(2)(a)4, and Rule 61A-3.0141 by failing to maintain separate records for purchases and gross retail sales of food and non-alcoholic beverages and purchases and gross retail sales of alcoholic beverages.

11. Section 561.29, provides in relevant part:

(1) The division is given full power and authority to revoke or suspend the license of any person holding a license under the Beverage Law, when it is determined or found by the division upon sufficient case appearing of:

[a] Violation . . . of any . . . license requirements of special licenses issued under Section 561.20. . . .

11. Florida Administrative Code R.61A-2.022 provides the penalty guidelines for violations, Rule 61A-2.022 provides that for a violation of section 561.20 failure to meet the minimum qualifications of a special license the penalty is:

. . . a 1,000 civil penalty and revocation of the license without prejudice to obtain any other type license, but with prejudice to obtain the same type of special license for 5 years.

RECOMMENDATION

Based on the forgoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Petitioner enter a final order imposing a \$1,000 civil penalty against Respondent and revoking alcoholic beverage license no. 69-02639, series 4COP SRX, without prejudice to obtain any other type license, but with prejudice to obtain another SRX special license for 5 years from date of the Final Order.

DONE AND ENTERED this 6th day of August, 1998, in  
Tallahassee, Leon county, Tallahassee, Florida.

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DANIEL MANRY  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of August, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions

within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.