

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF ALCOHOLIC BEVERAGES )  
AND TOBACCO, )  
 )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 08-3110  
 )  
GN HOTEL AND RESTAURANT, INC., )  
d/b/a PINEAPPLE GRILLE, )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 25, 2008, by video teleconference, with the Petitioner appearing in West Palm Beach, Florida, and the Respondent appearing in Tallahassee, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Michael John Wheeler, Esquire  
Department of Business and  
Professional Regulation  
Northwood Center, Suite 40  
1940 North Monroe Street  
Tallahassee, Florida 32303

For Respondent: Ovide Paul, Owner  
GN Hotels & Restaurant, Inc.  
800 Palm Trail  
Delray Beach, Florida 33483

STATEMENT OF THE ISSUE

Whether the Respondent committed the violations alleged in the Administrative Action dated April 28, 2008, as amended by the Division at the final hearing, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

In an Administrative Action dated April 28, 2008, the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (Division"), charged GN Hotels & Restaurant, Inc., d/b/a Pineapple Grille (Pineapple Grille), as follows:

1. ON OR ABOUT 03/18/08, YOU, THE AFOREMENTIONED LICENSEE, HOLDING A LICENSE UNDER THE BEVERAGE LAW, OR YOUR AGENT(S), OFFICER(S), SERVANT(S), OR EMPLOYEE(S), TO WIT: GURPAL SINGH, DID UNLAWFULLY ON YOUR LICENSED PREMISES FAIL TO MAINTAIN SEPARATE RECORDS OF ALL PURCHASES AND GROSS RETAIL SALES OF FOOD AND NON-ALCOHOLIC BEVERAGES AND ALL PURCHASES AND GROSS RETAIL SALES OF [SIC] ON YOUR LICENSED PREMISES FOR A PERIOD OF 3 YEARS OR FAILED TO PRODUCE SUCH RECORDS TO THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO WITHIN 14 DAYS OF REQUEST FOR SUCH RECORDS, THIS ACT BEING CONTRARY TO AND IN VIOLATION OF 561.20(2)(a)(4) FSS/RULE 61A-3.0141(3)(A)1, FLORIDA ADMINISTRATIVE CODE. [sic] WITHIN 561.29(1)(A), FLORIDA STATUTES.

Ovide Paul, Vice President of the Pineapple Grille, disputed the facts alleged and requested a formal administrative hearing.

The Division transmitted the matter to the Division of

Administrative Hearings for the assignment of an administrative law judge. Pursuant to notice, the final hearing was held on August 25, 2008.

At the hearing, counsel for the Division stated that the subject records were provided to the Division on August 6, 2008, and that the sole factual issue be resolved in this administrative proceeding is whether the Pineapple Grille failed to timely produce the records requested by the Division and, if so, the penalty that should be imposed. The Division presented the testimony of Eric R. Scarborough, a special agent employed by the Division. The Pineapple Grille presented the testimony of Mr. Paul. Neither party offered any exhibits into evidence.

No transcript of the proceedings was filed with the Division. Both parties submitted proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Division is the state agency responsible for regulating the sale of alcoholic beverages in the State of Florida, and for investigating and imposing discipline on

persons holding licenses under Florida's Beverage Law.

See §§ 561.02 and 561.29, Fla. Stat.(2007).<sup>1</sup>

2. The Pineapple Grille, which is located in Delray Beach, Florida, is a restaurant that serves food and alcoholic beverages. It holds a special restaurant license under Florida's Beverage Law, having been issued license number 60-14514, Series 4COP.

3. On or about February 25, 2008, Eric Scarborough, a special agent with the Division, visited the Pineapple Grille to investigate a complaint from an anonymous source alleging that employees of the Pineapple Grille had been refilling call-brand bottles in the bar with lower-grade liquor. Special Agent Scarborough's investigation revealed that the complaint received from the anonymous source was completely without foundation.

4. During the visit on February 25, 2008, Special Agent Scarborough met with Renee Resemme, the manager and chef of the Pineapple Grille, and, as a matter of routine, served her with a notice requiring the Pineapple Grille to provide him with the previous six months' records of its sales and purchases of alcoholic and non-alcoholic beverages and food no later than March 3, 2008. Special Agent Scarborough requested these records as a matter of course because, under its license, the Pineapple Grille is required to have sales of food and non-alcoholic beverages comprise 51 percent of its gross revenue and

because the Pineapple Grille must purchase alcohol from authorized distributors.

5. Gurpal Singh and Ovide Paul are the owners of the Pineapple Grille. At the times material to this proceeding, Mr. Singh was the individual responsible for keeping the records of the business; Mr. Paul had been an owner of the business for only a short time before the notice was served and was not familiar with the manner in which the business's records were kept. At the time of Special Agent Scarborough's visit to the Pineapple Grille and for a significant period of time after the visit, Mr. Singh was in Seattle, Washington, on family business.

6. When he received the notice served on Ms. Rosemme, Mr. Paul contacted the Pineapple Grille's certified public accountant, who had possession of the business records requested by Special Agent Scarborough.

7. The certified public accountant told Mr. Paul that he was very busy, but he began gathering the records requested.

8. The records had not been provided to Special Agent Scarborough by March 18, 2008, so he made a return visit to the Pineapple Grille on that date. Mr. Paul met with Special Agent Scarborough, and he told Special Agent Scarborough that he was not in charge of the documents but that the certified public accountant was getting them together.

9. While the certified public accountant was trying to put the documents in order, the Division sent a letter requiring that records for the previous three years' sales of alcoholic and non-alcoholic beverages and food were to be produced. Upon receiving this letter, the certified public accountant wrote a letter to the Division requesting an extension of time to provide the records but there was no response to this request for an extension.

10. The records were produced to the Division on August 6, 2008. During the five months in which Mr. Paul and the certified public accountant were working to get the records together, Mr. Paul made a number of telephone calls to Special Agent Scarborough's office to explain the delay in producing the records. Mr. Paul left his name and telephone number on the voice mail system whenever he telephoned, but he received no response from the Division.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2008).

12. Because the Division seeks to suspend or revoke the license of the Pineapple Grille to sell alcoholic beverages and/or to impose an administrative fine or other penalties, it

has the burden of proving by clear and convincing evidence that the Pineapple Grille committed the violation charged in the Administrative Action, as amended by the Division at the final hearing in this matter. Department of Banking & Finance, Division of Securities & Investor Protection v. Osbourne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

13. The Pineapple Grille's license to sell alcoholic beverages was issued pursuant to Section 561.20(2)(a)4., Florida Statutes, which provides in pertinent part that an alcoholic beverage license may be issued to "[a]ny restaurant having 2,500 square feet of service area and equipped to serve 150 persons full course meals at tables at one time, and deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages."

14. Section 561.29, Florida Statutes, provides in pertinent 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 cause appearing of:

\* \* \*

(j) Failure of any licensee issued a license under s. 561.20(1) to maintain records of all monthly sales and all monthly purchases of alcoholic beverages and to

produce such records for inspection by any division employee within 10 days of written request therefor.

15. Florida Administrative Code Rule 61A-3.0141(3)(a)2. requires that persons holding special restaurant licenses such as that held by the Pineapple Grille must produce records of purchases and sales of alcoholic and non-alcoholic beverages and food within 14 days of the date the records are requested.

16. Based on the findings of fact herein and in accordance with the issue as set forth by the Division at the final hearing, the Pineapple Grille failed to provide the previous six months' records of purchases and sales of alcoholic and non-alcoholic and food within either 10 or 14 days of the date Special Agent Scarborough served the notice to produce such records on Ms. Rosemme. The Department has, therefore, proven by clear and convincing evidence that the Pineapple Grille violated Section 561.29(1)(j), Florida Statutes, and Florida Administrative Code Rule 61A-3.0141(3)(a)2., by failing to provide copies of the requested records within the time specified in the statute and/or rule.

17. Florida Administrative Code Rule 61A-2.022 provides that all businesses issued alcoholic beverage licenses by the Division "are subject to discipline (warnings, corrective action, civil penalties, suspensions, revocations, reimbursement of cost, and forfeiture)," and the rule "sets forth the penalty



guidelines that shall be imposed upon alcoholic beverage licensee and permittees who are supervised by the division" for violations of Florida's Beverage Law. Fla. Admin. Code R. 61A-2.022(1) and (2). The table incorporated into Florida Administrative Code Rule 61A-2.022 provides for revocation of a person's alcoholic beverage license for "failure to maintain and produce records of monthly sales and purchases of alcoholic beverages," identified as a violation of Section 561.29(1)(j), Florida Statutes.

18. Pursuant to the above-stated penalty guideline, the Division has recommended the penalty of revocation of the Pineapple Grille's license to sell alcoholic beverages. This penalty is too severe under the circumstances of this case. First, it is uncontroverted that the Pineapple Grille did maintain and produce the required records, and the only portion of Section 561.29(j), Florida Statutes, or Florida Administrative Code Rule 61A-3.0141(3)(a)2. that Pineapple Grille violated was the provision that the records be produced within 10 days/14 days of the date of the request. Second, based on the findings of fact herein, Mr. Paul attempted to contact the Division and explain the delay in producing the records but was unable to get a response from the Division to the messages he left on the Division's voice mail system. Third, the Division expanded its request to include records for

the previous three years and then failed to respond to the written request for an extension of time submitted by the Pineapple Grille's certified public accountant.

19. The Division has the discretion to impose a lesser penalty than revocation in this case. In Section 561.29(3), Florida Statutes, the Division is given the discretion to "impose a civil penalty against a licensee for any violation mentioned in the Beverage Law, or any rule issued pursuant thereto, not to exceed \$1,000 for violations arising out of a single transaction." In Section 561.29(3), Florida Statutes, the Division is given the discretion to "compromise any alleged violations of the Beverage Law, by accepting from the licensee involved an amount not to exceed \$1,000 for violations arising out of a single transaction." In Section 561.29(3), Florida Statutes, the Division is given the discretion to "suspend the imposition of any penalty conditioned upon terms the division should in its discretion deem appropriate."

20. The table incorporated into Florida Administrative Code Rule 61A-2.022 provides for revocation of a person's alcoholic beverage license only for the "failure to maintain and produce" the records requested from the Pineapple Grille. Because the Pineapple Grille did maintain and produce the records, revocation of its license to sell alcoholic beverages would be an abuse of the Division's discretion. Based on

consideration of the facts as found herein and of the range of penalties set forth in the table incorporated into Florida Administrative Code Rule 61A-2.022 for various violations of Florida's Beverage Law, it is concluded that the appropriate penalty in this case would be the imposition of an administrative fine in the amount of \$500.00.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, enter a final order finding that GN Hotels & Restaurant, Inc., d/b/a Pineapple Grille, violated Section 561.29(j), Florida Statutes, by failing to produce records of the purchase and sales of alcoholic and non-alcoholic beverages and food within 10 days of the request for such records and imposing an administrative fine in the amount of \$500.00.

DONE AND ENTERED this 30th day of September, 2008, in  
Tallahassee, Leon County, Florida.



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PATRICIA M. HART  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of September, 2008.

ENDNOTE

<sup>1/</sup> All references to the Florida Statutes are to the 2007  
edition unless otherwise noted.

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.