

Final Order No. BPR-2008-11104 Date: 12/31/2008
FILED

Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk

By: Sarah Wachman

**Department of Business and Professional Regulation
Division of Alcoholic Beverages and Tobacco
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1020**

FILED
2009 JAN -6 A 11:02
DIVISION OF
ADMINISTRATIVE
HEARINGS

**Department of Business and Professional Regulation
Division of Alcoholic Beverages and Tobacco
PETITIONER**

vs.

**Palladium West Corp.
d/b/a 41 West Restaurant and Lounge
RESPONDENT**

CASE NO. 2008-006829
DOAH NO. 08-4896
LICENSE NO. 51-02864
SERIES: 4COP

FINAL ORDER

This matter comes before me for final Agency Order.

The issue before me is whether and to what extent Respondent is subject to penalty pursuant to Section 561.29(1), Florida Statutes, and Rule 61A-3.0141, Florida Administrative Code. Whether Respondent's license is subject to revocation pursuant to Section 561.29, Florida Statutes.

PRELIMINARY STATEMENT

1. On April 3, 2008, the Division issued an administrative action against Respondent.
2. Respondent filed a timely request for hearing, citing disputed issues of fact. The Division forwarded the matter to the Division of Administrative Hearings for a formal hearing.
3. A formal hearing was conducted by Harry L. Hooper, Administrative Law Judge, on November 18, 2008. Respondent did not appear at the hearing.
4. A Recommended Order was issued by the Administrative Law Judge on November 19, 2008.

5. Exceptions to the Recommended Order were not received from either party.

FINDINGS OF FACT

6. A thorough review of the entire record of this matter reveals that the findings of fact contained in the recommended order are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law.

7. The Division hereby adopts and incorporates by reference the Findings of Fact as set forth in the Recommended Order.

CONCLUSIONS OF LAW

8. A thorough review of the entire record in this matter indicates that the Conclusions of Law contained in the Recommended Order are reasonable and correct interpretations of the law based on the Findings of Fact.

9. The Division hereby adopts and incorporates by reference the Conclusions of Law as set forth in the Recommended Order.

10. This Final Order is entered after a review of the complete record.

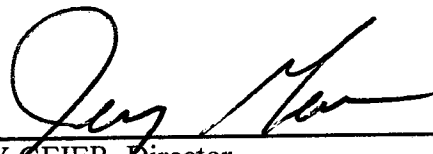
ORDER

Having fully considered the complete record of this case, the Recommended Order of the Administrative Law Judge, I hereby adopt the Recommended Order.

It is ORDERED that Respondent pay a civil penalty in the amount of \$2,500.00 and that license number 51-02864 be REVOKED effective January 30, 2009. Payment of the civil penalty must be received on or before January 30, 2009 and must be submitted to the District Enforcement Office located at 4100 Center Point Drive, #101, Fort Myers, Florida 33916.

DONE and ORDERED at Tallahassee, Florida, this 30 day of December, 2008.

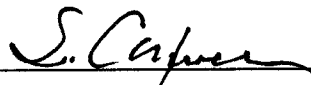




JERRY GEIER, Director
Division of Alcoholic Beverages and Tobacco

This *Order* of the Director of the Division of Alcoholic Beverages and Tobacco will become final unless judicial review is initiated within 30 days of the date of rendition. The rendition date is the date the *Order* is filed by the Agency Indexing Clerk. Judicial review may be commenced by filing an original *Notice of Appeal* with the Clerk of the Division of Alcoholic Beverages and Tobacco and a copy, accompanied by filing fees prescribed by law, with the appropriate District Court of Appeal, pursuant to Section 120.68, Florida Statutes and Rule 9.110, F.R.A.P. A transcript of the informal hearing may be obtained upon written request received no later than 60 days from the rendition date of this *Order*.

Mail Certification: This Final Order was sent by Certified Mail
7007 2680 0000 8953 2504 to:
Leonid Brenman
Palladium West Corp.
1110 Seawane Drive
Hewlett Harbor, NY 11557

By:  _____ Mail Date: 1/5/09

Additional copies mailed to:

District Enforcement/Licensing Office

Michael Wheeler

Assistant General Counsel

Department of Business and Professional Regulation

1940 North Monroe Street

Tallahassee, FL 32399

Ned Luczynski, General Counsel

Department of Business and Professional Regulation

1940 North Monroe Street

Tallahassee, FL 32399

Harry L. Hooper

Administrative Law Judge

The DeStoto

1230 Apalachee Parkway

Tallahassee, FL 32399-3060

State of Florida
Division of Administrative Hearings

Charlie Crist
Governor

Robert S. Cohen
Director and Chief Judge

Claudia Lladó
Clerk of the Division

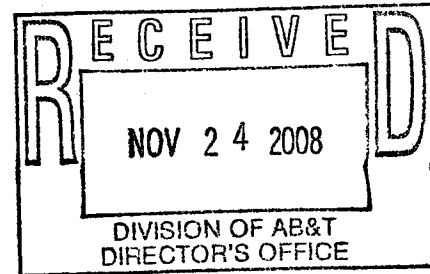


November 19, 2008

Harry L. Hooper
Deputy Chief
Administrative Law Judge

David W. Langham
Deputy Chief Judge
Judges of Compensation Claims

Cynthia Hill, Director
Division of Alcoholic Beverage
and Tobacco
Department of Business and
Professional Regulation
Northwood Center, Suite 40
1940 North Monroe Street
Tallahassee, Florida 32399-2202



Re: DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO vs. PALLADIUM
WEST CORP., d/b/a 41 WEST RESTAURANT, DOAH Case No. 08-4896

Dear Ms. Hill:

Enclosed is my Recommended Order in the referenced case. Copies of this letter will serve to notify the parties that my Recommended Order has been transmitted this date.

As required by Subsection 120.57(1)(m), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order, along with any exceptions to the Recommended Order, within 15 days of its rendition.

Sincerely,

A handwritten signature in cursive script that reads "Harry L. Hooper".

HARRY L. HOOPER
Administrative Law Judge

HLH/lfs

cc: Ned Luczynski, General Counsel
Leonid Brenman
Michael John Wheeler, Esquire

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF ALCOHOLIC BEVERAGES)
AND TOBACCO,)

Petitioner,)

vs.)

Case No. 08-4896

PALLADIUM WEST CORP., d/b/a)
41 WEST RESTAURANT,)

Respondent.)
_____)

RECOMMENDED ORDER

This cause came on for formal hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on November 18, 2008, in Fort Myers, Florida.

APPEARANCES

For Petitioner: Michael John Wheeler, Esquire
Department of Business and
Professional Regulation
Northwood Center, Suite 40
1940 North Monroe Street
Tallahassee, Florida 32399-2202

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue is whether Respondent violated the Beverage Law.

PRELIMINARY STATEMENT

Petitioner, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (Division), issued an Administrative Action with regard to Respondent Palladium West Corporation (Palladium) on April 3, 2008. The Administrative Action listed sanctions that might be applied to the license of Palladium for violations of Subsection 561.17(1), Florida Statutes (2007), within Subsection 561.29(1)(a), Florida Statutes; Subsection 561.20(2)(a)4., Florida Statutes (2007), within Subsection 561.29(1)(a), Florida Statutes; and Florida Administrative Code Rule 61A-3.0141(3)(d) within Subsection 561.29(1)(a), Florida Statutes.

Palladium, through its agent Leonid Brenman, on July 20, 2008, demanded a hearing. The Division forwarded the complaint and allied papers to the Division of Administrative Hearings and it was set for hearing in Fort Myers, Florida, on November 18, 2008. Palladium was duly notified. At the appointed time and place, no one representing Palladium appeared. The Division, through counsel, appeared.

FINDINGS OF FACT

1. The Division is the state agency charged with supervising businesses licensed under the Beverage Law.

2. Palladium of 1110 Seawane Drive, Hewlett, New York, has a consumption on the premises license issued by the Division for

operations at 41 West Restaurant and Lounge in Bradenton, Florida.

3. Palladium, through its failure to pursue its demand, has admitted that no disputed facts exist with regard to the Administrative Action.

CONCLUSIONS OF LAW

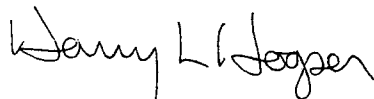
4. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Division take jurisdiction of the matter and enter such final order as it deems appropriate.

DONE AND ENTERED this 19th day of November, 2008, in Tallahassee, Leon County, Florida.



HARRY L. HOOPER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of November, 2008.

COPIES FURNISHED:

Leonid Brenman
Palladium West Corp.
1110 Seawane Drive
Hewlett Harbor, New York 11557

Michael John Wheeler, Esquire
Department of Business and
Professional Regulation
Northwood Center, Suite 40
1940 North Monroe Street
Tallahassee, Florida 32399-2202

Ned Luczynski, General Counsel
Department of Business and
Professional Regulation
Northwood Center, Suite 40
1940 North Monroe Street
Tallahassee, Florida 32399-2202

Cynthia Hill, Director
Division of Alcoholic Beverage
and Tobacco
Department of Business and
Professional Regulation
Northwood Center, Suite 40
1940 North Monroe Street
Tallahassee, Florida 32399-2202

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.

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RE: CASE NO. 2008006829

DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO
PETITIONER,

VS.

PALLADIUM WEST CORP

D/B/A 41 WEST RESTAURANT AND LOUNGE

LIC NO. BEV5102864 SERIES 4COP

RESPONDENT

ADMINISTRATIVE ACTION

COMES NOW, THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, HEREIN AFTER REFERRED TO AS "PETITIONER," AND FILES THIS ADMINISTRATIVE ACTION AGAINST **PALLADIUM WEST CORP** HEREIN

AFTER REFERRED TO AS "RESPONDENT," AND ALLEGES:

1. PETITIONER IS THE STATE AGENCY CHARGED WITH SUPERVISING BUSINESSES LICENSED UNDER THE FLORIDA BEVERAGE, TOBACCO AND TAX, AND TOBACCO PRODUCTS PERMIT LAWS PURSUANT TO SECTIONS 559.061, 561.07, 561.15, 561.19, 561.29, 561.501, 210.15, 210.16, 210.45, 210.50, 569.003, AND 569.006, FLORIDA STATUTES.
2. RESPONDENT IS, AND HAS BEEN AT ALL TIMES MATERIAL HERETO, THE HOLDER OF A VALID LICENSE/PERMIT, ISSUED IN THE STATE OF FLORIDA, BY THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO. RESPONDENT'S LAST KNOWN MAILING ADDRESS IS AS FOLLOWS:

**PALLADIUM WEST CORP
1110 SEAWANE DRIVE
HEWLETT, NY 11557**

AND THE DIVISION HAS NOT BEEN NOTIFIED OF ANY OTHER DESIGNATED PERSON OR ADDRESS FOR THE SERVICE OF PROCESS AND NOTICES AUTHORIZED BY RULE 61A-2.012, FLORIDA ADMINISTRATIVE CODE.

3. PETITIONER INTENDS TO REVOKE; SUSPEND; ANNUL; IMPOSE ADMINISTRATIVE FINES, INVESTIGATIVE COSTS, AND LATE PENALTIES; OR ANY COMBINATION OF THESE AUTHORIZED PENALTIES. THIS INTENDED ACTION IS BASED ON THE BELOW DESCRIBED FACTS OR CONDUCT.

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RE: CASE NO. 2008006829

DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

VS.

PALLADIUM WEST CORP

D/B/A 41 WEST RESTAURANT AND LOUNGE

LIC NO. BEV5102864

YOU, PALLADIUM WEST CORP, D/B/A 41 WEST RESTAURANT AND LOUNGE, ARE CHARGED WITH THE FOLLOWING COUNT(S):

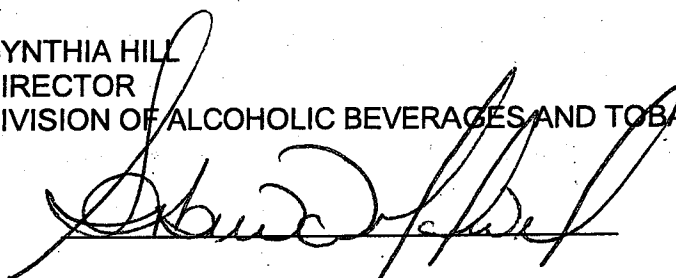
1. ON OR ABOUT 11/ 01/ 2007, YOU, THE AFOREMENTIONED LICENSEE, OR YOUR AGENT(S), OFFICER(S), SERVANT(S), OR EMPLOYEE(S), TO WIT: LEONID BRENNAN, FAILED TO SUBMIT TO THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, A SWORN APPLICATION, BEFORE SUCH PERSON WHO HAS A DIRECT OR INDIRECT FINANCIAL INTEREST IN THE LICENSE, ENGAGED IN THE BUSINESS OF MANUFACTURING, BOTTLING, DISTRIBUTING, SELLING, OR IN ANY WAY DEALING IN ALCOHOLIC BEVERAGES ON YOUR PREMISES LICENSED UNDER THE BEVERAGE LAW, THIS ACT BEING CONTRARY TO AND IN VIOLATION OF SECTION 561.17(1), WITHIN 561.29(1)(A), FLORIDA STATUTES.

2. ON OR ABOUT 02/15/2008, 02/23/2008 AND 03/08/2008, YOU, THE AFOREMENTIONED LICENSEE, HOLDING A LICENSE UNDER THE BEVERAGE LAW, DID FAIL TO PROVIDE THE REQUIRED SERVICE AREA, SEATING, AND EQUIPMENT TO SERVE 150 PERSONS FULL COURSE MEALS AT TABLES AT ONE TIME AS REQUIRED TO QUALIFY FOR YOUR LICENSE, THIS ACT BEING CONTRARY TO AND IN VIOLATION OF SECTION 561.20(2)(A)4, WITHIN 561.29(1)(A), FLORIDA STATUTES.

3. ON OR ABOUT 02/15/2008 AND 02/23/2008, YOU, THE AFOREMENTIONED LICENSEE, HOLDING A LICENSE UNDER THE BEVERAGE LAW, OR YOUR AGENT(S), OFFICER(S), SERVANT(S), OR EMPLOYEE(S), TO WIT: MANAGER JEAN KOUAYARA, DID UNLAWFULLY ON YOUR LICENSED PREMISES, FAIL TO DISCONTINUE THE SALE OF ALCOHOLIC BEVERAGES WHEN THE SERVICE OF FULL COURSE MEALS HAD BEEN DISCONTINUED, THIS ACT BEING CONTRARY TO AND IN VIOLATION OF RULE 61A-3.0141(3)(D), FLORIDA ADMINISTRATIVE CODE. WITHIN 561.29(1)(A), FLORIDA STATUTES.

SIGNED THIS APRIL 3, 2008

CYNTHIA HILL
DIRECTOR
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO



EXPLANATION OF SERVICE:

DATE SERVED _____

RECEIVED BY _____
PERSONAL

4100 CENTER POINT DR., #101
FT. MYERS, FL 33916

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