STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO,	)	
Petitioner,	)	
vs.	)	Case No. 09-1121
FOX MARIANNE GUNN, d/b/a STARDUST LOUNGE,	)	
Respondent.	)	

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case by video conference on March 31, 2010, between sites in Tallahassee and Fort Myers, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings. The parties were represented as set forth below.

APPEARANCES

For Petitioner: Michael B. Golen, Esquire
Department of Business and Professional Regulation
1940 North Monroe Street, Suite 40
Tallahassee, Florida 32399-2022

For Respondent: David George Hutchison, Esquire
Post Office Box 1262
Key Largo, Florida 33037

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent failed to comply with the requirements of its license under the beverage law. Specifically, Respondent purportedly violated the actions set forth in two counts, as follows:

> Count I--Respondent failed to "provide the required service area, seating and equipment to serve 200 persons full course meals at tables at one time as required by its license. [S]ections 561.20(2)(A)(4), within Section 561.29(1)(A), Florida Statutes"; and
>
> Count II--Respondent failed to "provide at least 4,000 square feet of area dedicated to the operation of the restaurant as required by its license. [S]ections 561.20(2)(A)(4), within Section 561.29(1)(A), Florida Statutes."

Respondent has also raised the issue of whether Petitioner should be estopped from enforcement actions concerning the alleged violations.

PRELIMINARY STATEMENT

On or about September 10, 2007, Petitioner, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (the "Division"), issued an Administrative Action against Respondent, Fox Marianne Gunn, d/b/a Stardust Lounge. The Administrative Action notified Respondent that the

Division intended to revoke, suspend, annul, impose administrative fines, investigative costs and late penalties, or any combination of those authorized penalties. Respondent timely filed a request for hearing. The request for hearing was forwarded to the Division of Administrative Hearings so that a formal administrative hearing could be conducted. The hearing was held on the date set forth above, and both parties were in attendance.

At the final hearing, Petitioner called the following witnesses: Marianne Gunn Fox (referred to in the style of this case as Fox Marianne Gunn); and Debi Pender, deputy director for the Division.

Respondent called Marianne Gunn Fox; Patrick Roberts, a former law enforcement major for the Division; Glen Fox; and Michael Wheeler, Esquire, former attorney for the Division.

Petitioner's Exhibits A through F and Respondent Exhibit 1 were admitted into evidence by Order of the undersigned dated April 1, 2010. Official recognition was taken of Subsection 561.20(2), Florida Statutes (2009).

A transcript of the final hearing was ordered by the parties. The Transcript was filed at the Division of Administrative Hearings on May 3, 2010. By rule, parties were allowed ten days, i.e., up until May 13, 2010, to submit proposed recommended orders. However, the parties asked and

were given permission to file the proposed recommended order on a later date, i.e., May 28, 2010. Each party timely submitted a Proposed Recommended Order, and each was duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Division is the state agency responsible for, inter alia, issuing and monitoring licenses to businesses within the state relating to the sale of alcoholic beverages.

2. Respondent is the holder of an alcoholic beverage license, No. BEV46-261 Series 4-COP/SR (the "License"). An SR, or Special Restaurant, license is a unique kind of license which was issued by the Division prior to the establishment of quota licenses. Holders of SR licenses are allowed to sell beer, wine and liquor, package sales and sales by the drink on the premises. Quota licenses are issued based on a population ratio, i.e., no more than one license per 7,500 people in a given geographic area may exist.

3. When Respondent obtained its SR license in 1979 (by way of transfer from the original owner of that license), the existing statutes mandated that the License be housed in a building of not less than 4,000 square feet with room in the building to seat at least 200 people at any one time. The statutes also required that food be served at all times the establishment was open.

4. In 1979, when Respondent filed an application seeking to obtain the transfer of the SR license that had been issued in 1957, the application included an Affidavit from Marianne Gunn agreeing to a specific location (2704 Anderson Avenue, Fort Myers, Florida)[1] for the business, which was to be known as the Stardust Lounge. The Affidavit affirmed Marianne Gunn's agreement to maintain the premises with the necessary equipment and supplies to seat 200 people at any one time. The Affidavit affirmed that the building housing Stardust Lounge would be at least 4,000 square feet in size. The License was then transferred to Respondent by the Division.

5. Approximately one year after receiving the License and commencing operations, the Stardust Lounge burned down. Some undisclosed portion of the building remained, but no business could be operated on the site. It would have been difficult to rebuild the building under the then-current building codes. Further, the City of Fort Myers expressed its opposition to the existence of an alcoholic beverage establishment at that site.

6. Some time after the fire, Respondent asked the Division to place the License in an inactive status (also known as placing a license in escrow). The request from Respondent asked that the License be placed in escrow for up to eight months. Respondent represented that it was in negotiation with the City of Fort Myers concerning a land swap to settle certain claims

Respondent had against the city. Respondent estimated the negotiations would go on for approximately two months. Respondent advised the Division that if negotiations were successful, it would allow the License to be cancelled upon transfer of the premises to the city. If the negotiations were not successful, Respondent estimated it would need at least six months to sell the property at a private sale. It was Respondent's intent that the License be "taken care of" along with the land deal. "That's what that was all about," Fox testified at final hearing.

7. Based upon Respondent's request, the Division apparently placed the License in escrow. There was no documentation presented at final hearing to substantiate this fact. However, the Division sent Respondent a bill each year to renew the License despite there being no physical site for operating a business by the licensee. Respondent dutifully paid the renewal fee each year.

8. Eighteen years after the License was placed in escrow, the State of Florida commenced condemnation proceedings relating to a portion of the premises where the Stardust Lounge had formerly existed.[2] During this nearly two-decade hiatus, Respondent continued to renew the License each year upon notice from the Division. Respondent's counsel sent a letter to the Division dated June 27, 2000, which said in pertinent part:

> We send you this letter at the request of our client, Mrs. Fox. . . . She has a liquor license in escrow with the Department.
>
> Due to the condemnation taking, she will not be able to utilize the license at this location and she has agreed that if this license can be moved to another location, it would not be an issue in the condemnation case.

9. The letter did not address the issue of Respondent's prior representation that the License would be cancelled within eight months of its May 21, 1982, letter, some 18 years earlier.

10. The Division responded to Respondent's counsel in a letter dated the very next day which stated in pertinent part:

> I am responding to the request of you and the licensee wanting to know if the liquor license that is held in the name of Marianne Gunn, DBA Stardust Lounge is movable. In the case of the property being taken by the state, the license may be moved one time and only one time. Providing that we have copies of all paperwork involved with the property condemnation taking.
>
> This license is not a moveable license unless in a case like this. The only thing that the licensee needs to understand is that it is changing location only one time.

11. The Division's letter did not mention the escrow status of the License, either. The inartfully worded request and nebulous response added to the confusion concerning the status of the License.

12. There is no evidence indicating whether any information concerning the condemnation was ever provided to the Division. Respondent could not say at final hearing when the condemnation actually occurred, how much land was taken, or how much was paid for the land. The License apparently remained in escrow at that time pending a move to some other location.

13. Marianne Gunn Fox testified that the reason for her negotiations with the City of Fort Myers in 1982 was partly because the city did not want the bar located at the site where it had burned down. She testified that she had received insurance proceeds from the fire and intended to rebuild the lounge, but the city objected. That was the only testimony given as to why the lounge was not rebuilt during the 18 years it remained in escrow. Glen Fox testified that the original site of the Stardust Lounge would not be acceptable for rebuilding the structure after the fire due to certain building code issues. Both Mr. and Mrs. Fox testified that there was insufficient land available to build on site after the property condemnation taking. Fox testified that she owned three lots at the corner of Martin Luther King Boulevard and Cranford Avenue. Those lots were 50-feet-wide by 150-feet-deep (for a presumed total lot size of 150-feet-wide by 150-feet-deep). Fox does not know the size of the lots after the condemnation proceeding.

14. It has long been the policy of the Division, pursuant to its interpretations of the Beverage Law set forth in statute, that SR licenses could not be moved from their original location. In 2005 or 2006, a licensee who was operating a business in American Beach filed a lawsuit against the Division seeking to move his SR license to a different location. As a result of the lawsuit, the Division changed its existing policy to allow for such a change. The new policy was posted on the Division's website for review by SR license holders. There is no evidence that SR license holders were notified about the change in policy by any other means. Respondent does not remember receiving any notice whatsoever regarding the change in policy.

15. Within four to six months, and as a result of further legal research by Division attorneys, the Division once again altered its policy concerning the transfer of SR licenses. The newly-revised policy established the current Division position, i.e., that no SR license could be moved for any reason. Further, the policy states that all licensed premises must be in continuous operation or else the license would be forfeited. Again, the Division posted the new policy on its website and notified all SR license holders by way of letters to their establishments (or, in the case of Respondent, to the last known address). It is unclear from the record whether the letter was

ever sent to or received by Respondent, although the Division obviously had Respondent's address because it sent renewal notices there each year.

16. Some time after the change in policy, the Division determined that Respondent's license must be terminated or revoked. At that time, there were no premises associated with the License. The last time the License was in operation was 1979 or 1980, some 28 years prior to the Administrative Action being filed. The official address of the premises on the License during each of the renewal periods since 1980 had been "Escrow." That is, there was no site address associated with the License. There was obviously some address associated with the License, however, since Fox received annual billing statements from the Division.

17. In November 2007, the Division issued an Administrative Action against Respondent concerning the License. The Administrative Action alleged that Respondent had not complied with the requirements of the License, i.e., size of premises and on-going operations. The Division indicated that it would sanction the License, including, but not limited to, revocation. Respondent does not dispute the fact that it is not complying with the requirements for an active license, but maintains that its escrowed license is exempt from those requirements.

18. The License, despite being inactive for 28 years, is still apparently valid at this point in time (based on the Division's acceptance of Respondent's renewal payments each year). The License may have some monetary value, but there was no competent, substantial evidence presented at final hearing as to what the value might actually be. Marianne Gunn Fox testified that she did not know how much the License was worth, only that "nothing is worth as much as it used to be." Fox cannot remember how much she paid for the License when it was transferred to her. She cannot remember how much she asked for the License when she offered it for sale. She cannot remember how much was offered for the License as part of the condemnation sale. Fox does know that she paid an annual fee each year for renewal of the License. She does not know what the fee was each year, but "I paid whatever the state told me was due." (The Division testified that the annual fee was $1,820.00. Presuming 28 years of payments, the total paid to-date would be approximately $50,960.) When suggested to Fox by her counsel that the License was worth $300,000, she agreed with that amount, but could not substantiate why that amount was valid.

19. Fox testified that she would like a "reasonable time" to market the License for sale. She did not express what a reasonable time might be, but has not been able (or willing) to sell the License for over 28 years. Respondent put the License

"out for feelers" three or four years ago, but did not include an asking price for the License. About seven months ago, someone told Fox that the License was worth approximately $326,000, but there is no support for that estimate.

20. Patrick Roberts, former law enforcement major with the Division, opined that he would have handled Respondent's case differently had it come across his desk. He opined that the requirement for 4,000 square feet and seating for 200 people should only apply to an existing business, not one in escrow. Roberts agreed that only quota licenses are allowed escrow status by statute. Roberts did not express any opinion as to the requirement that a business be on-going at all times. Roberts agreed that an SR license should not be placed in escrow, but said he'd try to negotiate a settlement, rather than file an Administrative Action. He did concur that an Administrative Action might be necessary if all else failed. Roberts did not opine that an Administrative Action was improper, only that it wasn't his first choice of action.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2009).

22. The general rule is that the burden or proof (apart from statute) is on the party asserting the affirmative of an issue before an administrative tribunal. See Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977), citing Department of Agriculture and Consumer Services v. Strickland, 262 So. 2d 893 (Fla. 1st DCA 1972). The Division has the burden of proof in this matter.

23. The standard of proof for licensure revocation proceedings is clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). Inasmuch as the Administrative Action in this matter contemplates licensure revocation or suspension as a potential relief, the clear and convincing standard applies.

24. Clear and convincing evidence is an intermediate standard of proof which is more than the "preponderance of the evidence" standard used in most civil cases, but less than the "beyond a reasonable doubt" standard used in criminal cases. See State v. Graham, 240 So. 2d 486 (Fla. 2nd DCA 1970). Clear and convincing evidence has been defined as evidence which:

> Requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without

> hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983) (citations omitted).

25. Section 561.29, Florida Statutes (2009), states 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:
>
> (a) Violation by the licensee or his or her or its agents, officers, servants, or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state or of the United States, or violation of any municipal or county regulation in regard to the hours of sale, service, or consumption of alcoholic beverages or license requirements of special licenses issued under s. 561.20, or engaging in or permitting disorderly conduct on the licensed premises, or permitting another on the licensed premises to violate any of the laws of this state or of the United States. A conviction of the licensee or his or her or its agents, officers, servants, or employees in any criminal court of any violation as set forth in this paragraph shall not be considered in proceedings before the division for suspension or revocation of a license except as permitted by chapter 92 or the rules of evidence.
>
> * * *
>
> (h) Failure by the holder of any license under s. 561.20(1) to maintain the licensed premises in an active manner in which the

licensed premises are open for the bona fide sale of authorized alcoholic beverages during regular business hours of at least 6 hours a day for a period of 120 days or more during any 12-month period commencing 18 months after the acquisition of the license by the licensee, regardless of the date the license was originally issued. Every licensee must notify the division in writing of any period during which his or her license is inactive and place the physical license with the division to be held in an inactive status. The division may waive or extend the requirement of this section upon the finding of hardship, including the purchase of the license in order to transfer it to a newly constructed or remodeled location. However, during such closed period, the licensee shall make reasonable efforts toward restoring the license to active status. This paragraph shall apply to all annual license periods commencing on or after July 1, 1981, but shall not apply to licenses issued after September 30, 1988.

(i) Failure of any licensee issued a new or transfer license after September 30, 1988, under s. 561.20(1) to maintain the licensed premises in an active manner in which the licensed premises are open for business to the public for the bona fide retail sale of authorized alcoholic beverages during regular and reasonable business hours for at least 8 hours a day for a period of 210 days or more during any 12-month period commencing 6 months after the acquisition of the license by the licensee. It is the intent of this act that for purposes of compliance with this paragraph, a licensee shall operate the licensed premises in a manner so as to maximize sales and tax revenues thereon; this includes maintaining a reasonable inventory of merchandise, including authorized alcoholic beverages, and the use of good business practices to achieve the

> intent of this law. Any attempt by a licensee to circumvent the intent of this law shall be grounds for revocation or suspension of the alcoholic beverage license. The division may, upon written request of the licensee, give a written waiver of this requirement for a period not to exceed 12 months in cases where the licensee demonstrates that the licensed premises has been physically destroyed through no fault of the licensee, when the licensee has suffered an incapacitating illness or injury which is likely to be prolonged, or when the licensed premises has been prohibited from making sales as a result of any action of any court of competent jurisdiction. Any waiver given pursuant to this subsection may be continued upon subsequent written request showing that substantial progress has been made toward restoring the licensed premises to a condition suitable for the resumption of sales or toward allowing for a court having jurisdiction over the premises to release said jurisdiction, or that an incapacitating illness or injury continues to exist. However, in no event may the waivers necessitated by any one occurrence cumulatively total more than 24 months. Every licensee shall notify the division in writing of any period during which his or her license is inactive and place the physical license with the division to be held in an inactive status.

26. Section 561.20, Florida Statutes (2009), referred to within Section 561.29, Florida Statutes, states:

> (1) No license under s. 565.02(1)(a)-(f), inclusive, shall be issued so that the number of such licenses within the limits of the territory of any county exceeds one such license to each 7,500 residents within such county. Regardless of the number of quota licenses issued prior to October 1, 2000, on and after that date, a new license under

s. 565.02(1)(a)-(f), inclusive, shall be issued for each population increase of 7,500 residents above the number of residents who resided in the county according to the April 1, 1999, Florida Estimate of Population as published by the Bureau of Economic and Business Research at the University of Florida, and thereafter, based on the last regular population estimate prepared pursuant to s. 186.901, for such county. Such population estimates shall be the basis for annual license issuance regardless of any local acts to the contrary. However, such limitation shall not prohibit the issuance of at least three licenses in any county that may approve the sale of intoxicating liquors in such county.

(2)(a) No such limitation of the number of licenses as herein provided shall henceforth prohibit the issuance of a special license to:

* * *

4. Any 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; however, no restaurant granted a special license on or after January 1, 1958, pursuant to general or special law shall operate as a package store, nor shall intoxicating beverages be sold under such license after the hours of serving food have elapsed; or

* * *

5. . . . [H]owever, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on

the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under the provisions of this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under the provisions of this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser

> of such facility or the transfer of such license pursuant to law. . . .

27. Respondent's SR license was issued in 1957. The law that existed as of that time required an SR licensed establishment to be a "bona fide restaurant containing all necessary equipment and supplies for serving full course meals regularly and having accommodations at all times for service of two hundred or more patrons at tables and occupying more than four thousand square feet of space." § 561.20(2), Fla. Stat. (1957).

28. The Division has proven by clear and convincing evidence that the licensed premises has not been open for business the requisite number of days and does not have a four thousand-square-foot establishment seating two hundred or more patrons.[3] There is no dispute as to that matter because Respondent freely admits that its business has not been in operation for 28 years. Respondent has, however, continued to pay an annual fee to the Division each year with the understanding that it was maintaining an inactive (escrowed) license.

29. There was a period of time (2005-2006) in which the Division had a policy contrary to the provisions of Subsection 561.20(5)(a), Florida Statutes. During that period of time, the Division allowed an SR license to exist, even if there were no

existing premises meeting the statutory requirements. The Division would allow such a license to be placed "in escrow" pending a change in circumstances.

30. It is the position of the Division that the inactive or escrowed license status provided Respondent is contrary to the Division's current interpretation of statutes. That is, the current position of the Division is that SR licenses must comply with the space requirements for all licensees as set forth in the statutes. An agency may change its interpretation of statutes when it feels a prior interpretation is erroneous. While there is scant case law to that effect, this concept has been upheld by the Division of Administrative Hearings. See, e.g., Florida Wine and Spirits, LLC, d/b/a Total Wine & More v. Department of Business and Professional Regulation, Case No. 07-1857RX (DOAH July 20, 2007). In that case, the Administrative Law Judge found that "[a]n agency has the right to change its mind for any reason, so long as its decision comports with Chapter 120, Florida Statutes." Citing to Agency for Health Care Administration v. Florida Coalition of Professional Laboratory Organizations, 718 So. 2d 869 (Fla. 1st DCA 1998), aff'd per curium, 990 So. 2d 1063 (Fla. 1st DCA 2008), the Administrative Law Judge reasoned that as long as the current interpretation was reasonable and based on statutory authority, it could stand.

31. In an analogous holding, the United States Supreme Court reviewed a case wherein the Environmental Protection Agency ("EPA") had revised its own interpretation of statutes. Chemical Manufacturers Association, et al, v. Natural Resources Defense Council, Inc., et al., 407 U.S. 116, 105 S. Ct. 1102, 84 L. Ed. 2d 90 (1985). In that case, the appellant argued that the EPA's prior interpretation (which was consistent with the appellant's interpretation) was more accurate. The Court held, "We do not sit to judge the relative wisdom of competing statutory interpretations. Here EPA's construction, fairly understood, is not inconsistent with the language, goals, or operation of the [relevant law at issue]. Nor does the administration of EPA's regulation undermine the will of Congress." EPA's interpretation of the statute was deemed proper.

32. Similarly, the current interpretation of Subsection 561.29(1), Florida Statutes (2009), by the Division is consistent with the language, goals and operation of Chapter 561, Florida Statutes (2009), the Florida Beverage Law. Even though the Division interpreted the statute differently for a period of time, its current interpretation is not unreasonable on its face.

33. Respondent argues that the Division is estopped from taking its license because Respondent has detrimentally relied

upon the Division's promise to allow the License to remain inactive. Equitable estoppel is appropriate against a state agency in certain instances. The aggrieved party must show a good faith reliance on some act or omission of the government and a substantial change in position which would result in a highly inequitable or unjust result. City of Jacksonville v. Harold Coffield and Windsong Place, LLC, 18 So. 3d 589 (Fla. 1st DCA 2009).

34. In the present case, there are two possible actions by the Division for which equitable estoppel might apply: (1) The June 28, 2000, letter indicating that Respondent's license might be moved one time; and (2) The annual renewal of Respondent's license despite the absence of a physical location. As to the first action, Respondent failed to meet her own responsibility in that regard. Despite directions to provide the Division with "all paperwork involved with the property condemnation taking," Respondent never did so. In fact, there is no evidence that Respondent ever provided any documentation at all concerning the condemnation proceeding. Thus, the Division was unable to determine whether its offer to allow Respondent to move the License was ever accepted by Respondent. As to the annual renewal, that did not result in an unjust result for Respondent. To the contrary, the renewals gave Respondent many additional opportunities to place her license into active status and

recommence operations or, in the alternative, to sell the License.

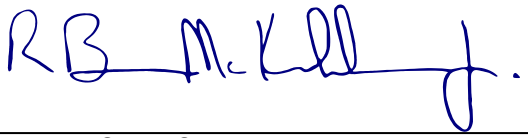
35. Respondent did not directly raise the issue of whether its annual payments should be returned. Those payments were mentioned in Respondent's attempts to value the License, but they were not addressed as separate damages. However, if the payments should not have been made because the License was not properly in escrow, then it seems that repayment of those annual fees ought to be considered, at least for the period of time that Respondent was not on notice as to the invalidity of the escrow status.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Petitioner, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, revoking Respondent, Fox Marianne Gunn, d/b/a Stardust Lounge's, License No. BEV46-261 Series 4-COP/SR.

DONE AND ENTERED this 11th day of June, 2010, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of June, 2010.

ENDNOTES

[1/] Reading between the lines, as no testimony on this issue was presented during final hearing, it appears that Anderson Avenue was subsequently renamed Martin Luther King Boulevard.

[2/] The condemnation proceeding by the State of Florida was not associated with the Division and had nothing to do with the License. It was apparently simply a land acquisition matter relating to expansion of an existing roadway.

[3/] Whether the space requirements of the 1957 version of statutes or the requirements that exist currently are applied, Respondent obviously does not satisfy them.

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.