

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF ALCOHOLIC BEVERAGES )  
AND TOBACCO, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-1461  
 )  
SAUREL TALES, d/b/a MIAMI SHOP )  
NO. 4, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on July 6, 2009, by video teleconference between Miami and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Michael Golen, Esquire  
Kerrington Kiner, Law Clerk  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: Saurel Tales, pro se  
Miami Shop No. 4  
1024 Northwest 100th Street  
Miami, Florida 33150

STATEMENT OF THE ISSUE

Whether Petitioner proved by clear and convincing evidence that Respondent is guilty of the offense alleged in the Administrative Complaint dated November 19, 2008, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

Respondent, Saurel Tales, d/b/a Miami Shop No. 4 (Respondent), is licensed by Petitioner, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (Petitioner), to sell package sales of beer and wine without consumption on the premises. On November 19, 2008, Petitioner filed an Administrative Complaint alleging that Respondent possessed liquor on the licensed premises not authorized to be sold under Respondent's license. Petitioner alleged that Respondent violated ". . . section 562.02 within [sic] 561.29(1)(a), Florida Statutes." Unless otherwise noted, all statutory references are to Florida Statutes (2008).

Respondent timely requested a formal hearing to challenge the allegations in the Administrative Complaint. Thereafter, the matter was referred to DOAH and this proceeding followed.

At the formal hearing, the Division presented the testimony of Special Agent Alain Rodriguez and Investigation Specialist Rachel Devero-Byrd, both of whom are employed by Petitioner. Petitioner offered six sequentially-numbered Exhibits, each of

which was admitted into evidence. Respondent did not present any testimony or any exhibit. At the request of Petitioner, official recognition was taken of Sections 561.29(1)(a) and 562.02 Florida Statutes.

A Transcript of the proceeding, consisting of one volume, was filed on August 4, 2009. Petitioner timely filed a Proposed Recommended Order, which has been duly-considered by the undersigned in the preparation of this Order. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. Petitioner is the agency of the State of Florida that regulates the sale of alcoholic beverages.

2. At all times relevant to this proceeding, Respondent has been licensed to sell package sales of beer and wine without consumption on the premises. Respondent's license also authorizes Respondent to sell tobacco products. Respondent's license does not permit him to sell liquor. Respondent's license number is 23-27577, Series 2-APS.

3. Investigator Rachel Devero-Byrd and Agent Alain Rodriguez are appropriately trained and experienced investigators employed by Petitioner. Ms. Devero-Byrd routinely performs inspections of premises licensed by Petitioner. Agent

Rodriguez routinely investigates administrative and/or criminal complaints against licensees.

4. On October 21, 2008, Ms. Devero-Byrd came to Respondent's store to conduct a routine investigation of the licensed premises. Respondent's place of business was targeted for an investigation because it had been three or more years since the last investigation of his licensed premises.

5. During the investigation, Ms. Devero-Byrd noticed several bottles containing liquor under the cash register area of the counter. On October 21, 2008, Respondent had in his possession on the licensed premises one sealed 750 milliliter bottle of Blackwell Fine Jamaican Rum, one sealed 750 milliliter bottle of Rhum Barbancourt, one sealed 750 milliliter bottle of Carlo Smirnoff Distilled Vodka, and one unsealed 750 milliliter bottle of Appleton Estate Jamaican Rum. Three of the bottles contained rum. The other bottle contained vodka. All four bottles contained alcoholic beverages not authorized by law to be sold by Respondent.

6. In response to Ms. Devero-Byrd's request for assistance, Agent Rodriguez was sent to Respondent's licensed premises. Agent Rodriguez secured the bottles of liquor, placed them in an evidence bag, took the bottles to the Miami area office, and delivered the sealed evidence bag to the evidence

custodian. Agent Rodriguez retrieved the bottles of liquor and had physical possession of them at the formal hearing.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

8. In this disciplinary proceeding, the Division has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Inquiry Concerning a Judge, 645 So.2d 398 (Fla. 1994); and Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So.2d 112 (Fla. 1st DCA 1989). The following statement has been repeatedly cited in discussions of the clear and convincing evidence standard:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence 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 the firm belief of (sic) 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).

9. Section 562.02, Florida Statutes, provides as follows:

It is unlawful for a licensee under the Beverage Law or his or her agent to have in his or her possession, or permit anyone else to have in his or her possession, at or in the place of business of such licensee, alcoholic beverages not authorized by law to be sold by such licensee.

10. Section 561.29(1)(a), Florida Statutes, provides, in relevant part, as follows:

(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 . . .

11. Petitioner established by clear and convincing evidence that Respondent violated the provisions of Section 562.02, Florida Statutes. Petitioner should penalize Respondent's license pursuant to Section 561.29(1)(a), Florida Statutes.

12. In its Proposed Recommended Order, Petitioner seeks an administrative fine against Respondent in the amount of \$1,000.00. Florida Administrative Code Rule 61A-2.022 sets forth penalty guidelines applicable to this case. The

undersigned adopts Petitioner's recommended penalty because it is consistent with the guideline for a first violation of Section 562.02, Florida Statutes. There are no aggravating or mitigating factors to be considered in determining the appropriate penalty.

13. Ms. Devero and Agent Rodriguez observed empty liquor bottles in the same area as the liquor bottles described above were found. The charges set forth in the Administrative Complaint do not contain allegations pertaining to the empty bottles. The undersigned has given no consideration to the testimony relating to empty bottles observed at the licensed premises.

#### RECOMMENDATION

Based on the foregoing findings of fact and conclusions of Law, it is RECOMMENDED that Petitioner enter a final order that adopts the Findings of Fact and Conclusions of Law set forth herein. It is, further, RECOMMENDED that the Final Order impose an administrative fine against Respondent in the amount of \$1,000.00.

DONE AND ENTERED this 25th of August, 2009, in Tallahassee,  
Leon County, Florida.



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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of August, 2009.

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.