

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF ALCOHOLIC BEVERAGES)
AND TOBACCO,)
)
Petitioner,)
)
vs.) Case No. 09-6512
)
HUB BAR, INC., d/b/a THE HUB,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case on February 11, 2010, in Tampa, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings. Each of the parties was in attendance at the final hearing and each was 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: Joseph R. Fritz, Esquire
Joseph R. Fritz, P.A.
4204 North Nebraska Avenue
Tampa, Florida 33603

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent failed to pay tax surcharges, penalties and interest owed on the sale of alcoholic beverages, and, if so, the amount that is currently due and owing.

PRELIMINARY STATEMENT

On or about April 4, 2007, Petitioner, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("Department"), issued an administrative action against Respondent, Hub Bar, Inc., d/b/a The Hub. A request for formal administrative hearing was filed by Respondent in response to the administrative action and the action was forwarded to the Division of Administrative Hearings ("DOAH"). The matter was assigned Case No. 09-1120. The parties jointly moved for relinquishment of jurisdiction, and the case was remanded to the Department. On November 24, 2009, the Department filed a motion to re-open the file which had been closed by DOAH. The file was re-opened under the above-styled case number. A final hearing was held on the date set forth above, and both parties were in attendance.

At the final hearing, Petitioner called the following witnesses: Kelly Jewett, Tax Auditor III for the Department; and Julie Keenan, senior tax audit administrator for the

Department. Petitioner offered seven exhibits into evidence, each of which was admitted.

Respondent called two witnesses: Ferrell Melton and James Smith. Respondent did not offer any exhibits into evidence.

A transcript of the final hearing was ordered by the parties. The Transcript was filed at DOAH on March 4, 2010. By rule, the parties were allowed ten days, i.e., up until March 14, 2010, to submit proposed recommended orders. March 14, 2010, fell on a Sunday, so the proposed recommended orders were due on March 15, 2010. Petitioner timely submitted a Proposed Recommended Order, and it was duly considered in the preparation of this Recommended Order. On March 22, 2010, Respondent moved for an extension of time to file its proposed recommended order. Petitioner did not oppose the motion, and it was granted, giving Respondent until April 6, 2010, to file its proposed recommended order. Respondent's Proposed Recommended Order was filed at DOAH on April 5, 2010, and was duly-considered in the preparation of this Recommended Order. Respondent's Proposed Recommended Order did not contain citations to the final hearing transcript.

FINDINGS OF FACT

1. The Department is the state agency responsible for, inter alia, the licensing of establishments that sell alcoholic beverages. During the years 2000 to 2006, a statutory tax

surcharge existed on the sale of alcohol consumed on the premises of licensed establishments. The Department was responsible for ensuring that all such surcharges were paid by licensed establishments.

2. Respondent is a licensed purveyor of alcoholic beverages. Respondent's business, known as The Hub, has an area for consumption of alcoholic beverages and a separate, but attached, area for selling alcohol in sealed containers (i.e., in "package"). Alcohol served in package is not subject to the surcharge mentioned above. Alcoholic beverages are stored in five different areas of the establishment: in the bar, in the package store area, in a large storeroom, in a wine room, and in a walk-in cooler.

3. In September 2006, the Department conducted a tax surcharge audit of Respondent's business for the period July 1, 2003 through June 30, 2006 (the "Audit Period"). A surcharge audit is performed to ensure that an establishment has paid the entire tax surcharge owed for the sale of alcohol consumed on the premises. By letter dated September 25, 2006, the Department advised Respondent that it had been selected for the aforementioned audit. The letter included a questionnaire to be filled out by Respondent to provide the Department information to make the audit more accurate. Respondent was asked to

complete and mail the questionnaire on or before October 9, 2006.

4. Respondent did not respond to the September 25, 2006, letter as requested. Therefore, an initial desk audit was performed by the Department. A desk audit utilizes information from the department's database in lieu of records and information received directly from a licensee. The Department's database included reports from major alcohol distributors concerning deliveries made to Respondent during the Audit Period. The sale and delivery of alcoholic beverages is reported by distributors to the Department in the form of gallons of alcohol delivered. The report does not list sizes of bottles, numbers of bottles, or brand names. The tax surcharge is based solely on gallons sold.

5. The initial desk audit was completed on or about November 16, 2006. The audit found an unpaid surcharge amount of \$33,817.34, plus reporting penalties and interest of \$183.02; and underpayment penalties and interest of \$23,755.98, for a total liability of \$57,810.34. Pursuant to its normal operating procedures, the Department sent a letter by certified mail advising Respondent of the audit findings. The letter also gave Respondent the right to waive the underpayment penalties and interest by paying the remaining balance within 30 days. The letter further provided Respondent the right to make any

corrections to errors which it believed to exist within the audit. The letter then asked Respondent to produce certain records so that the audit findings could be confirmed.

6. The desk audit performed by the Department established the number of gallons of beer, wine and liquor delivered to Respondent by major distributors during the audit period. The primary beer distributors were Pep Distributing and JJ Taylor; the primary liquor distributors were Southern, National, and Premiere. Adjustments to the gallonage (as it is referred to by the Department) were made for spillage, alcohol used for cooking, and other reasons. The desk audit revealed that 2.25 gallons of draft beer, 38,340.90 gallons of other beer, 721.19 gallons of wine, and 10,498.34 gallons of liquor had been delivered to The Hub during the Audit Period.

7. Meanwhile, Respondent had been making some tax surcharge payments on a regular basis during the Audit Period. The surcharge payment was mailed in using a printed form supplied by the Department. On the form, a business could elect to pay the surcharge based on its sales or based on its purchases of alcohol. Respondent chose to pay using the sales method, i.e., payments were made on the amount of alcohol sold for consumption on its premises.

8. The Department determined that despite the surcharge payments made by Respondent during the Audit Period, Respondent

had underpaid by the sum of \$33,871.34. The basis for this finding was that of the 10,000 (plus or minus) gallons of alcohol purchased during the Audit Period, there was proof of consumption on the premises for only about 2,075 gallons. Because The Hub had a 4-COP license (meaning it is allowed to sell alcohol for consumption on the premises), the remainder of the alcohol was presumed to have been consumed without a surcharge being paid. Interest in the amount of \$183.02 was assessed, along with underpayment penalties and interest of \$23,755.98, for a total statutory liability of \$57,810.34, pursuant to the desk audit.

9. By letter dated November 16, 2006, the Department notified Respondent of its findings and conclusions from the desk audit. The letter was sent to The Hub via certified mail and signed for on November 17, 2006, by Jeannie Robinson, an employee (bartender) of Respondent.

10. On or about December 6, 2006, Respondent (through the person of Scott Imrich, a manager of the establishment) contacted the Department and provided answers to the questionnaire that had been sent out with the November 16, 2006, letter to Respondent. The questionnaire contained two pertinent pieces of information: 1) The Hub did not have any draft beer; the draft beer indicated in the distributors' reports was actually a certain kind and size of canned beer that Respondent

did not know how to classify, so they placed it in the draft beer column; and 2) The Hub also had a package store and 24-to-25 percent of The Hub's "total sales" were made in the package store. That is, Respondent was saying that the package sales were not subject to the surcharge.

11. Imrich did not specify whether his comments about percentage of sales in the package store were meant to reflect total dollar amounts or total gallons sold. His letter simply stated: "We are currently looking at a 24-25% rate (over the three year audited period) in total beer (container), liquor, and wine sales from our package store, from our total sales." The Department interpreted that statement to mean 25 percent of total gallons sold. Respondent's witnesses at final hearing said that Imrich meant 25 percent of the total dollar amounts of sales. Imrich did not appear at final hearing to clarify what he actually meant. The current owner of The Hub, who was a bartender during the Audit Period, estimated that approximately 30 percent of revenues were generated in the package store at that time, but could not provide any estimation as to percentage of gallons sold.

12. After receipt of Imrich's letter, the Department revised its audit findings. A credit was given to Respondent for package sales. (Respondent was also given credit for spillage amounting to five percent of beer and wine.) Beer

gallage was reduced from 36,423 gallons to 27,319.91 gallons. Wine gallage actually increased, but that was due to Respondent's identifying one distributor (Johnson Brothers) that the Department had not previously considered. Respondent's wine inventory went from 721 gallons to 997 gallons, minus the 25 percent allowance, for a total of 816.7 gallons.¹ Liquor gallage was also affected by Johnson Brothers deliveries, but liquor went from 9,448.55 gallons to 7,163.77 gallons.

13. The adjustments referred to above reduced the amount of the surcharge to \$22,915.48 and reduced the reporting penalties to \$121.68. The underpayment penalties and interest calculation was reduced to \$16,036.81 for a total statutory liability of \$39,073.97. A letter advising Respondent of the revised audit was mailed on December 20, 2006, and again advised that prompt payment could reduce the total amount owed. James Smith, who was a primary owner of The Hub at that time, was notified about the audits, but Smith told his manager, Imrich, to handle the situation. Imrich apparently failed to do so.

14. When no response to the revised audit findings was received by the auditors for the Department, the matter was referred to the Department's Enforcement Division for further action. The Enforcement Division then conducted a visit to The Hub to advise Respondent as to the existing determination of money owed. That visit was made on March 6, 2007. A form

memorializing the visit was filled out and signed by Kelly Primo, a bartender at The Hub. Respondent was given 14 days to respond to the Department or else an administrative action would be filed to collect the outstanding tax surcharge charges.

15. Imrich thereafter provided cash register tapes (called Z Tapes) to the Department. The Z Tapes were purported, by Imrich, to establish the amount of alcohol actually sold for consumption on the premises. There were thousands of Z Tapes (two tapes per day from the bar during the Audit Period) provided to the Department. Imrich also provided cash register receipts from the package store portion of the establishment. The Z Tapes distinguished purchases for beer versus wine versus liquor. The package store receipts did not identify what kind of alcohol was purchased, only the dollar amount of the purchase. It is, therefore, impossible to ascertain from the cash register receipts how many gallons of alcoholic beverage were sold in the package store. If the Z Tapes are correct and if they reflect all sales during the audit period, then one might extrapolate--using a one ounce per drink assumption--the total gallonage sold at the bar. However, the Z Tapes were not introduced into evidence and cannot be relied upon to make a finding herein. Respondent did prepare some general summaries of the Z Tapes, but no competent evidence was presented to give

those summaries any credibility. Thus, they also cannot be relied upon to make a finding herein.

16. The Z Tapes purportedly indicate that 2,075 gallons of alcoholic beverages were sold in the bar portion of the establishment during the Audit Period. There is no disagreement by the Department that at least 2,075 gallons were sold at the bar. Ferrell Melton, who was a bartender during the Audit Period but has since become an owner of The Hub, estimated that approximately 70 percent of the Respondent's revenues generated during the Audit Period were from the bar sales. There was no documentary evidence to support his estimation.

17. Based upon the Z Tapes and further conversations with Respondent, the Department agreed to give Respondent the benefit of the doubt. An allowance for sales in the package store was then increased to 40 percent (from 25 percent) of total sales for purposes of calculating the surcharge.²

18. The 40-percent revision reduced the surcharge to \$16,646.78; the reporting penalties and interest were reduced to \$88.02; the underpayment penalties and interest were reduced to \$11,630.98, for a total statutory liability of \$28,365.78 (as compared to \$57,810.34 in the original audit, a 50-percent reduction). A letter dated June 13, 2007, was sent to Respondent setting forth the revised amounts.

Converting Dollar Sales to Gallons

19. The package store area constituted a small portion of the entire establishment. There was a door connecting the package store to the bar area, but it was kept locked at all times relevant to this dispute. A sign on the door advised potential customers to ask the bartender for assistance when items needed to be purchased from the package store. When asked, the bartender would leave the bar area, unlock the package store, and ring up the purchase on the cash register located in the package store. The door would then be re-locked until another customer asked for assistance. The package store sold beer, wine and liquor. The liquor in the package store was sold in several bottle sizes: 50 ml, 100 ml, 200 ml, 375 ml, and 1.75 liters. By way of example, Respondent provided an inventory for the week ending May 6, 2007, which showed the following numbers of bottles of liquor in each size:

- 50 ml--1844 bottles (24.3566 gallons)
- 100 ml--48 bottles (1.26802 gallons)
- 200 ml--1766 bottles (93.3055 gallons)
- 375 ml--925 bottles (91.6346 gallons)
- 1.75 liters--150 bottles (69.3750 gallons)
- Total for these bottles: 433.09 gallons
- 750 ml--773 bottles (153.153 gallons)

- Liters--743 bottles (196.279 gallons)
- Total for these bottles: 349.432 gallons

The beer inventory was 773 12-ounce bottles (522 gallons) and 743 16-ounce bottles (196.279 gallons). The wine inventory was 666 bottles (131.953 gallons).

20. Gallonage Theory: The larger size bottles were used in the bar area. Thus, a considerably larger number of bottles would have to be sold in the package area to generate 8,000 gallons of liquor. It is difficult to imagine how the small package store, using a bartender as its cashier on an intermittent basis, could generate enough sales of smaller bottles to sell four times as much alcohol as the bar area. Presumably some wine and beer was also sold in the package store.

21. Revenue Theory: A 33-ounce (one liter) bottle of liquor would sell in the package store for a set price. The price of \$10.00, although not realistic, was used at final hearing by way of example. That same 33-ounce bottle would generate far more if sold by the drink in the bar area. For example, at \$3.00 per drink containing one ounce of alcohol, the bottle would provide \$99.00 in revenue at the bar versus \$10.00 if sold in the package area. Thus, alcohol sold in the bar area would definitely generate more revenue than package alcohol.

22. Respondent did not have any record as to how many gallons were sold in the package store, but maintains that all liquor, except for what was sold in the bar area, would have been package store sales. For the Audit Period (per findings in the second revised audit), 10,584.32 gallons were purchased, and Respondent paid tax on 2,075.55 gallons. Thus 8,508.77 gallons were presumed to have been sold as package. If, as Respondent asserts, liquor sold in the bar generates ten times as much per ounce more than liquor sold in package, than at a theoretical \$1.00 per gallon, the package store would generate \$8,508.77 and the bar would generate \$20,755.50 (2,075.55 gallons times \$10.00).

23. Respondent's primary representative, who had been a bartender at The Hub for 20 years before recently purchasing it, estimates that 60 percent of The Hub's revenue currently comes from sales at the bar area. During the Audit Period, he believes approximately 70 percent of the revenue was generated in the bar area. There is no documentary support for the witness's estimation, and the witness's confusion concerning the facts does not make the testimony very credible.

24. Using the theoretical amounts set forth in paragraph 23 above, \$8,508.77 (package) plus \$20,755.50 (bar), equates to \$29,264.27. Seventy percent of that figure equals \$20,484.98, i.e., very close to the amount that the 2,075 gallons of liquor

might generate in the bar on a per-drink basis. Using the prior manager's figure of 75 percent of sales (if revenues is what he meant) being from the bar, that would equate to \$21,948 of sales from the bar.

25. Thus, theoretically, Respondent's position could be feasible. However, Respondent simply failed to provide competent, substantial evidence to support its theory. The unsubstantiated hearsay as to what Imrich meant or how much alcohol Imrich sold through the package store is insufficient to make a conclusive finding. So, too, is the general assertion by Respondent as to demographics in the area, type of clientele, etc.

26. None of the evidence at final hearing could establish a definitive relationship between the gallonage sold and the revenue received. None of the Z Tapes or cash register receipts were offered into evidence to establish such a relationship. There were apparently no records as to the number of bottles sold in the package store. Rather, the tapes from the package store show only a dollar amount; the gallonage per dollar cannot be ascertained from the tapes. (Mr. Smith did take an inventory each day when he was working at The Hub, but he would throw away his inventory sheet each day. Besides, Mr. Smith was not working full-time at the establishment during the Audit Period.)

27. Respondent's record-keeping for its alcohol sales is inconsistent. For the bar area of its establishment, Respondent's cash register tapes identify whether each purchase is beer, wine or liquor. In the package store, the cash register receipts show only a dollar amount, without identifying what was sold.

CONCLUSIONS OF LAW

28. DOAH 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).

29. For the time period at issue in this proceeding, a surcharge on alcoholic beverages existed pursuant to Section 561.501, Florida Statutes (2006)³, which provided:

561.501 Surcharge on sale of alcoholic beverages for consumption on the premises; penalty.--

(1) Notwithstanding s. 561.50 or any other provision of the Beverage Law, a surcharge of 3.34 cents is imposed upon each ounce of liquor and each 4 ounces of wine, a surcharge of 2 cents is imposed on each 12 ounces of cider, and a surcharge of 1.34 cents is imposed on each 12 ounces of beer sold at retail for consumption on premises licensed by the division as an alcoholic beverage vendor. However, the surcharges imposed under this subsection need not be paid upon such beverages when they are sold by an organization that is licensed by the division under s. 561.422 or s. 565.02(4) as an alcoholic beverage vendor and that is determined by the Internal Revenue Service to be currently exempt from federal income

tax under s. 501(c)(3), (4), (5), (6), (7), (8), or (19) of the Internal Revenue Code of 1986, as amended.

(2) The vendor shall report and remit payments to the division each month by the 15th of the month following the month in which the surcharges are imposed. For purposes of compensating the retailer for the keeping of prescribed records and the proper accounting and remitting of surcharges imposed under this section, the retailer shall be allowed to deduct from the payment due the state 1 percent of the amount of the surcharge due. Retail records shall be kept on the quantities of all liquor, wine, and beer purchased, inventories, and sales. However, a collection allowance is not allowed on any collections that are not timely remitted. If by the 20th of the month following the month in which the surcharges are imposed, reports and remittances are not made, the division shall assess a late penalty in the amount of 10 percent of the amount due per month for each 30 days, or fraction thereof, after the 20th of the month, not to exceed a total penalty of 50 percent, in the aggregate, of any unpaid surcharges. The division shall establish, by rule, the required reporting, collection, and accounting procedures. Records must be maintained for 3 years. Failure to accurately and timely remit surcharges imposed under this section is a violation of the Beverage Law.

(3)(a) The division may compromise a taxpayer's liability for the surcharge imposed by this section upon the grounds of doubt as to liability for or collectability of such tax. A taxpayer's liability for penalties as prescribed by this section may be settled or compromised if the division finds that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. The

division shall maintain records of all compromises, and the records must state the basis for the compromise.

(b) The division may enter into agreements for scheduling payments of taxes, interest, and penalties prescribed in this section.

(c) The division shall establish by rule guidelines and procedures for administering this section.

(4) If any vendor fails to remit the surcharge, or any portion thereof, by the 20th of the month following the month in which the surcharges are imposed, there shall be added to the amount due interest at the rate of 1 percent per month of the amount due from the date due until paid. Interest on the delinquent tax shall be calculated beginning on the 21st day of the month following the month for which the surcharge is due.

(5) All penalties and interest imposed by this section are payable to and collectible by the division in the same manner as if they were a part of the tax imposed. The division may settle or compromise any such interest or penalty under paragraph (3)(a).

30. Florida Administrative Code Rule 61A-4.063 required every vendor of alcoholic beverages licensed in this state to select a method of calculating the surcharge. Vendors had the option to select the purchase method or the sales method. The purchase method required the vendor to multiply the units of all alcoholic beverages purchased each month by the applicable surcharge rate. The sales method required the vendor to determine the amount of alcoholic beverages sold during the

month, using their sales records (or any other method approved in writing by the Department). Respondent chose to use the sales method for calculating its surcharge payments.

31. The general rule is that the burden of 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). In the instant action, the Department has the initial burden of proof.

32. 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 potential relief, the clear and convincing standard applies.

33. 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).

34. The Department has proven by clear and convincing evidence that 10,584.32 gallons of alcohol were delivered to Respondent during the Audit Period. The evidence is equally clear that a surcharge was paid by Respondent for only about one-fourth of that amount (2,075 gallons). The evidence also clearly establishes that an undisclosed amount of alcohol was sold by Respondent in the package store portion of its licensed premises.

35. Respondent also has a burden of proof in this matter. Florida Administrative Code Rule 61A-4.063(4)(c) states:

If the vendor chooses the sales method, the vendor will bear the burden of proof that the method accurately reflects actual sales. If the vendor uses the purchases method, the vendor will bear the burden of proof that purchases are accurately recorded.

36. Respondent chose the sales method of reporting. It has the burden, therefore, to show that sales are accurately reflected. Respondent's business records generally reflect that

2,075 gallons of alcohol were sold in the bar area. There is no dispute that insofar as the bar's Z Tapes reflect the sale of 2,075 gallons of liquor during the Audit Period, Respondent paid the required surcharge on that amount. The substantial amount of alcohol which Respondent maintains was sold in the package store area of its business is not accurately or precisely established. Without determining precisely how much alcohol (by volume) was sold in package, it is impossible to determine whether Respondent accurately reflected all of its sales from the bar. Respondent did not meet its burden of proof in this matter.

37. The package store area was a small portion of the overall establishment. In order to make a sale from the package store, the bartender had to leave the bar, unlock the package store, ring up the sale, lock the package store and return to the bar. It is difficult to conceive that under such an arrangement, the establishment would sell 75 percent more alcohol (by volume) in the package store than at the bar. And since Respondent could not accurately account for its sales in the package store, it is proper for the Department to presume that some of the missing alcohol was consumed on the premises (based on the type of license held by Respondent).

38. Florida Administrative Code Rule 61A-2.022 sets forth penalty guidelines to be used when a licensee violates any of

the provisions of statutes governing the sale of alcoholic beverages. Penalty guidelines for violations of Section 561.501, Florida Statutes (2006), are set forth in a table incorporated by reference to Florida Administrative Code Rule 61A-2.022. The table states that for a first offense the following penalty should be assessed:

Corrective action and 25 percent of total late surcharge principal payments if licensee is current with surcharge reports and payments, and did not willfully neglect compliance with surcharge law based on a written statement of mitigation.

39. The evidence supports the fact that Respondent was "current" with surcharge reports and payments inasmuch as such reports and payments are no longer required as of the date of final hearing due to the repeal of Section 561.501, Florida Statutes. Further, Respondent's explanation to the Department concerning the existence of a package store at The Hub constitutes a written statement of mitigation.

40. The late surcharge principal payments (only) amount to \$16,646.78 as set forth in the final version of the audit. Twenty-five percent of that amount is \$4,161.69.

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:

1. Upholding the Department's assessment of a surcharge in the amount of \$16,646.78; surcharge interest in the amount of \$88.02; and surcharge penalties in the amount of \$11,3630.98, for a total liability of \$28,365.78; and

2. Assessing a penalty in the amount of \$4,161.69.

DONE AND ENTERED this 15th day of April, 2010, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of April, 2010.

ENDNOTES

^{1/} Seventy-five percent of 997 is actually 747.75 gallons. However, that calculation has no significance as to the decision herein.

^{2/} Actually, the 40-percent reduction only applied to the smaller sized bottles of liquor sold by The Hub. There was a 25-percent reduction for the larger size bottles, because some

of the larger bottles were used behind the bar for making drinks.

^{3/} Section 561.501, Florida Statutes, was repealed on July 1, 2008.

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.