

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	10/5/2015
File #	2015-08273

REBCO ENTERPRISES, INC.,

Petitioner,

DABT CASE NO.: 2011-041192

DOAH CASE NO: 14-2486

LICENSE NO: 62-08383 4COP

vs.

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

Respondent.

FINAL ORDER

The above-styled matter has come before the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (“the Division”) for the purpose of considering Administrative Law Judge (“ALJ”) Lisa Shearer Nelson’s Recommended Order, a copy of which is attached hereto as Exhibit A. The Division of Alcoholic Beverages and Tobacco (“the Respondent”) did not file any Exceptions to the ALJ’s Recommended Order.

The issue before me is as follows: Whether Petitioner’s request to renew a lien against State of Florida Alcoholic Beverage License No. 62-08383 should be approved or denied. After a review of the complete record in this matter, the Division makes its determinations as follows.

PRELIMINARY STATEMENT

1. On or about August 17, 2011, Petitioner filed an Amended Request for Hearing with the Division, therein challenging Respondent’s July 25, 2011, and August 3, 2011, denials

of Petitioner's request to renew a lien recording against State of Florida Alcoholic Beverage License No. 62-08383.

2. On or about May 22, 2014, Respondent referred the matter to the Division of Administrative Hearings (DOAH), which subsequently assigned the matter to Judge F. Scott Boyd. The case was subsequently transferred to Administrative Law Judge Edward Bauer, and then to Administrative Law Judge Lisa Shearer Nelson.

3. On April 29, 2015, Administrative Law Judge Shearer Nelson conducted a formal administrative hearing in this matter.

4. On July 17, 2015, Administrative Law Judge Shearer Nelson issued her Recommended Order in this matter, thereby giving each party 15 days to submit written exceptions thereto.

5. On August 3, 2015, Respondent filed its Motion for Extension of Time, therein requesting the Division grant an additional 15 days in which either party may file exceptions.

6. On August 7, 2015, Petitioner filed its Response in Opposition to and/or Motion to Strike Respondent's Motion for Extension of Time.

7. As of this writing, neither party has filed exceptions.

As a preliminary matter, it is hereby ORDERED that Respondent's Motion for Extension of Time and Petitioner's Response in Opposition to and/or Motion to Strike Respondent's Motion for Extension of Time are DENIED as moot.

FINDINGS OF FACT

8. A thorough review of the entire record 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 law.

9. The foregoing in mind, the label assigned by the Administrative Law Judge to a finding of fact is not dispositive as to whether the statement is a finding of fact or conclusion of law. See Kinney v. Dept. of State, 501 So.2d 129, 132 (Fla. 5th DCA 1987). While the Division does not take exception to the Findings of Fact contained in the Recommended Order, it must submit a qualification to any conclusions of law contained therein.

10. As is well established in law, an alcoholic beverage license is a general intangible. Walling Enterprises, Inc. v. Mathias, 636 So. 2d 1294, 1296-97 (Fla. 1994), citing United States v. McGurn, 596 So.2d 1038, 1041 (Fla. 1992); In re Coed Shop, Inc., 435 F.Supp. 472, 473 (N.D. Fla. 1977), *aff'd*, 567 F.2d 1367 (5th Cir. 1978). Such a license is incorporeal property; it cannot be seen or handled, and it has no form or substance in that it can be said to exist in any one location. Essentially, it is a bundle of rights such as those inherent in a franchise, a copyright or an annuity. Mathias, 609 So. 2d 1323, 1332 (Fla. 5th DCA 1992) approved and remanded, 636 So. 2d 1294 (Fla. 1994).

11. Thus, an alcoholic beverage license is a legal fiction – a bundle of privileges identified by a license number. When the Division revokes a license, the associated rights cease to exist. Similarly, when the Division issues a new license through a quota drawing, it is a new, distinct and wholly separate legal fiction. As such, License No. 62-08383 has been neither ‘reissued’ nor ‘renamed’, and bears no connection to any active beverage license issued for use in Pinellas County. Therefore, Petitioner’s recourse can neither logically nor lawfully attach to a license other than License No. 62-08383.

12. As modified or qualified above, the Division hereby adopts and incorporates by reference the Findings of Fact as set forth in the Recommended Order.

CONCLUSIONS OF LAW

13. 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. While the Division does not take exception to the Conclusions of Law contained in the Recommended Order, the Division must restate its prior qualification.

14. As previously discussed, an alcoholic beverage license is a general intangible. Walling Enterprises, Inc. v. Mathias, 636 So. 2d 1294, 1296-97 (Fla. 1994), citing United States v. McGurn, 596 So.2d 1038, 1041 (Fla. 1992); In re Coed Shop, Inc., 435 F.Supp. 472, 473 (N.D. Fla. 1977), *aff'd*, 567 F.2d 1367 (5th Cir. 1978). Such a license is incorporeal property; it cannot be seen or handled, and it has no form or substance in that it can be said to exist in any one location. Essentially, it is a bundle of rights such as those inherent in a franchise, a copyright or an annuity. Mathias, 609 So. 2d 1323, 1332 (Fla. 5th DCA 1992) approved and remanded, 636 So. 2d 1294 (Fla. 1994).

15. Thus, an alcoholic beverage license is a legal fiction – a bundle of privileges identified by a license number. When the Division revokes a license, the associated rights cease to exist. Similarly, when the Division issues a new license through a quota drawing, it is a new, distinct and wholly separate legal fiction. As such, License No. 62-08383 has been neither ‘reissued’ nor ‘renamed’; and bears no connection to any active beverage license issued for use in Pinellas County. Therefore, Petitioner’s recourse can neither logically nor lawfully attach to a license other than License No. 62-08383.

16. As modified or qualified above, the Division hereby adopts and incorporates by reference the Findings of Fact as set forth in the Recommended Order.

ORDER

Having fully considered the complete record of this case, the Recommended Order of Administrative Law Judge Lisa Shearer Nelson, I hereby adopt the Recommended Order as modified or qualified herein.

It is hereby ORDERED that Respondent's lien be recorded on State of Florida Alcoholic Beverage License No. 62-08383.

DONE and ORDERED in Tallahassee, Florida this 29TH day of SEPTEMBER 2015.

A handwritten signature in black ink, appearing to read "Thomas R. Philpot".

Thomas R. Philpot, Director
Division of Alcoholic Beverages & Tobacco

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party substantially affected by this Final Order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the Notice, accompanied with the filing fee prescribed by law, with the Clerk of the appropriate District Court of Appeal within thirty days of rendition of this order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and Section 120.68, Florida Statutes (2015).

Respondent may petition the Director to amend this Final Order pursuant to Rule 61A-2.022(10), Florida Administrative Code. Petitions filed shall not stay any effective dates in this Order unless the Director authorizes the stay or amendment requested in the Petition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to the following addressee via US mail on this 6th day of October 2015:

* Maggie M. Schultz, Esquire
Rutledge Ecenia, P.A.
Post Office Box 551
Tallahassee, Florida 32302

By: Stephanie Copnell Mail Date: 10/6/15

* Copy also provided by e-mail

cc: Division of Admin. Hearings via e-file