

**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	12/2/2015
File #	2015-10024

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

Petitioner,

DABT CASE NO.: 2013-043600
DOAH CASE NO: 14-3471
LICENSE NO: 39-05470 RTPD

vs.

THOMPSON AND COMPANY OF TAMPA,
INC., D/B/A THOMPSON CIGARS,

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") D.R. Alexander's Recommended Order, a copy of which is attached hereto as Exhibit A. The Division of Alcoholic Beverages and Tobacco's ("the Respondent") Exceptions to the ALJ's Recommended Order are attached hereto as Exhibit B, and Respondent's Responses are attached as Exhibit C.

The issues before the Division are as follows: (1) Whether or not Respondent violated Section 210.161, Florida Statutes, and if such violation did occur, what penalty would be appropriately imposed; (2) Whether or not Respondent violated Section 569.003, Florida Statutes, and if such violation did occur, what penalty would be appropriately imposed. After a review of the complete record in this matter, the Division makes its determinations as follow.

PRELIMINARY STATEMENT

1. On May 6, 2014, Petitioner issued an administrative action against Respondent. Count I of the Administrative Complaint charges Respondent with a violation of Section 210.161, Florida Statutes, as Respondent allegedly failed to produce records as requested by Petitioner. Count II of the Administrative Complaint charges Respondent with a violation of Section 569.003, Florida Statutes, as Respondent allegedly failed to submit a sworn application for a retail tobacco permit, therein disclosing all financially interested parties.

2. On or about May 30, 2014, Respondent filed its Answer to Administrative Complaint and Request for Formal Administrative Hearing.

3. On July 23, 2014, Petitioner referred this matter to the Division of Administrative Hearings (DOAH), which subsequently assigned the matter to Administrative Law Judge D. R. Alexander for the conduct of a formal hearing.

4. On March 10, 2015, Administrative Law Judge Alexander conducted a formal administrative hearing in this matter.

5. On May 29, 2015, Administrative Law Judge Alexander issued his Recommended Order in this matter, thereby giving each party 15 days to submit written exceptions thereto.

6. On June 15, 2015 Petitioner filed its Motion for Extension of Time, therein requesting the Division grant an additional 15 days in which either party may file exceptions.

7. On June 30, 2015, Petitioner filed its Exceptions to Recommended Order.

8. On July 10, 2015, Respondent filed its Motion to Strike Exceptions Or, in the Alternative, Response to Exceptions.

As a preliminary matter, it is hereby ORDERED that Petitioner's Motion for Extension of Time is GRANTED and Respondent's Motion to Strike Exceptions is DENIED.

FINDINGS OF FACT

9. 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.

10. 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 Kimney v. Dept. of State, 501 So.2d 129, 132 (Fla. 5th DCA 1987).

11. In consideration of Petitioner's Exceptions, Nos. 1 and 2, the Division hereby finds these exceptions to be as or more reasonable than those conclusions of law contained in Paragraphs 12, 13 and 18 of the Recommended Order. As such, the Division hereby adopts and incorporates by reference Petitioner's Exceptions, Nos. 1 and 2.

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

CONCLUSIONS OF LAW

13. In consideration of Petitioner's Exceptions, Nos. 3, 4, 5, 6, 7, 8, 9 and 10, the Division hereby finds these exceptions to be as or more reasonable than those conclusions of law contained in Paragraphs 21, 22, 24, 25, 26, 27, 28 and 29 of the Recommended Order. As such, the Division hereby adopts and incorporates by reference Petitioner's Exceptions, Nos. 3, 4, 5, 6, 7, 8, 9 and 10.

14. A thorough review of the entire record indicates that the remaining Conclusions of Law contained in the Recommended Order are reasonable and correct interpretations of the law based on the Findings of Fact. As modified or qualified herein, the Division hereby adopts and incorporates by reference the Conclusions of Law set forth in the Recommended order.

15. 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 Administrative Law Judge D. R. Alexander, Petitioner's Exceptions to Recommended Order and Respondent's Responses to Exceptions, I hereby adopt the Recommended Order as modified or qualified herein.

It is hereby ORDERED that Counts I and II of Petitioner's Administrative Complaint are dismissed with prejudice.

DONE and ORDERED in Tallahassee, Florida this 24TH day of NOVEMBER 2015.




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. Petitioners 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 4th day of December 2015:

Jeffrey Shannon
Buchanan, Ingersoll & Rooney PC
Fowler White Boggs
501 E. Kennedy Blvd.
Suite 1700
Tampa, Florida 33602
Telephone: (813) 228-7411
jeffrey.shannon@bipc.com

Rex D. Ware
Buchanan, Ingersoll & Rooney PC
Fowler White Boggs
101 N. Monroe Street
Suite 1090
Tallahassee, Florida 32301
Telephone: (850) 681-0411
rex.ware@bipc.com

By:

Stephanie Corp

Mail Date:

12/4/15

Copy to DOAH via E-File