

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	8/29/2016
File #	2016-06654

RJR CHARITABLE HOLDINGS, LLC.,

Petitioner,

v.

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

DBPR Case No. 2014-030679

DOAH Case No.15-6624

Respondent,

PARTY LATINO CORP.,

Intervenor.

_____ /

FINAL ORDER

Pursuant to section 120.60(1), Florida Statutes (2015) and Rule 28-106.103 of the Florida Administrative Code, the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("the Division") files the following Final Order. This cause came before the Division for the purpose of considering the Recommended Order issued by Administrative Law Judge Robert E. Meale ("ALJ Meale") on May 31, 2016, in DOAH case number 15-6624, a copy of which is attached as Exhibit "A". The Department of Business and Professional Regulation ("Respondent") filed exceptions to the Recommended Order, to which no response was filed. RJR Charitable Holdings, LLC. ("RJR" or "Petitioner") and Party Latino Corp. ("Intervenor") also filed exceptions to the Recommended Order. Respondent filed a response to Petitioner's

exceptions. The filed exceptions and response are attached as composite Exhibit "B".

Background

On July 9, 2014, the Department issued a Notice of Intent to Deny License in DBPR case number 2014-030679, wherein RJR's application for license transfer was denied in accordance with the provisions of Chapter 561, Florida Statutes and Rule 61A-5.010, Florida Administrative Code. RJR petitioned the Respondent for a formal hearing regarding the July 9, 2014 Notice of Intent to Deny License. ALJ Meale convened a formal administrative hearing on February 19, 2016, and issued a Recommended Order on May 31, 2016, recommending the Division enter a final order denying RJR Charitable Holdings, LLC's application for a statutory transfer of license.

The Respondent, Petitioner and Intervenor filed exceptions to ALJ Meale's Recommended Order. Respondent filed a Response to Petitioner's exceptions. No responses were filed to Respondent's or Intervenor's Exceptions. After a complete review of the record in this matter, the Division rules as follows:

AGENCY STANDARD FOR REVIEW

Pursuant to Section 120.57(1)(1), Fla. Stat., the Division may not reject or modify findings of fact unless it first determines, from a review of the entire record, and states with particularity, that the findings of fact were not based on competent substantial evidence. "Competent substantial evidence is such evidence that is

'sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.'"

Comprehensive Medical Access, Inc. v. Office of Ins. Regulation, 983 So. 2d 45, 46 (Fla. 1st DCA 2008) (quoting DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957)).

Pursuant to Section 120.57(1)(1), Fla. Stat., when rejecting or modifying conclusions of law or interpretations of administrative rules, the Division must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rules and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

RULINGS ON RESPONDENT'S EXCEPTIONS

Exception #1

1. Respondent takes exception to the conclusions of law set forth in Paragraph #38 of page 20 in which ALJ Meale found:

Section 561.65(4) in no way addresses the attachment or creation of liens in alcoholic beverage licenses. Section 561.65(4) does not govern the terms and conditions of the attachment of such liens against licenses or the enforceability of such liens when the only parties involved are the debtor and the lienholder. Simply put, section 561.65(4) does not disturb the contractual undertakings of the debtor and creditor in the absence of third parties becoming involved with the collateral.

2. The Division rejects Respondent's Exception #1.

Exception #2

3. Respondent takes exception to the conclusions of law set forth in Paragraph #39 of page 21 in which ALJ Meale found:

Section 561.65(4) is a notice statute for third parties subsequently doing business with the debtor and taking actions with respect to the collateral. Obviously, the debtor and original lienholder do not require recordings under section 561.65(4) for notice of their original transaction. As a notice statute, section 561.65(4) provides the exclusive means for a lienholder to enforce its lien against an alcoholic beverage license, if the debtor conveys the license or to the extent that subsequent liens have been perfected against the license.

4. The Division rejects Respondent's Exception #2.

Exception #3

5. Respondent takes exception to the conclusions of law set forth in Paragraph #40 of page 21 in which ALJ Meale found:

A careless reading of section 561.65(4) gives precedence to the enforceability language over the reference to perfecting a lien. The effect of such a reading is needlessly to release an alcoholic beverage license from a security agreement, even in the absence of third parties subsequently having taken any action regarding the collateral. Three opinions supporting this misinterpretation of section 561.65(4) to varying degrees would confer windfalls upon debtors at the expense of creditors - an unlikely legislative intent.

6. The Division rejects Respondent's Exception #3.

RULINGS ON PETITIONER'S EXCEPTIONS

7. It appears that Petitioner's only exception is to the recommendation of ALJ Meale, that "Respondent deny the application of Petitioner for a statutory license."

8. Petitioner requests that DOAH [sic] "should uphold all of its factual findings and legal conclusions on the recommended order, but should reverse its recommendation as inconsistent with the plain meaning of those findings and conclusions."

9. The Division rejects Petitioner's Exception.

RULING ON INTERVENOR'S EXCEPTIONS

1. Intervenor filed exceptions to Paragraphs 18-22, 23, and 37-43 of ALJ Meale's Recommended Order.

2. Intervenor's exceptions do not meet the requirements of § 120.57(k), Fla. Stat., in that they do not "identify the clearly disputed portions of the recommended order by page number or paragraph."

3. The Division rejects Intervenor's exceptions.

FINDINGS OF FACT

4. ALJ Meale's Findings of Fact, as set forth in Exhibit "A" are approved, adopted and incorporated herein by reference. Those findings are supported by competent and substantial evidence.

CONCLUSIONS OF LAW

5. ALJ Meale's Conclusions of Law as set forth in Exhibit "A", are approved, adopted, and incorporated herein by reference.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. The Petitioner's application for a statutory transfer of license is DENIED.

2. This order shall become effective on the date of the filing with the Department's Agency Clerk.

DONE and ORDERED this 29TH day of August, 2016 in Tallahassee, Leon County, Florida.



KEN LAWSON, Secretary
Department of Business and
Professional Regulation

A large, stylized handwritten signature in black ink, appearing to read "Philpot".

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

Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to: (1) RJR Charitable Holdings, LLC, c/o Samuel A. Rupert, 3225 Franklin Avenue, Suite C-101, Coconut Grove, Florida 33133; (2) Party Latino Corp., c/o Louis J. Terminello, Greenspoon Marder, P.A., 600 Brickell Avenue, 36th Floor, Miami, Florida 33131; and by interoffice mail to: (3) Magdalena Ozarowski, Chief Attorney, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-2202 on this the 30th day of August, 2016.

Ronda L. Bryan, Agency Clerk



Brandon Nichols, Deputy Agency Clerk
Department of Business & Professional Regulation

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this Final Order may seek judicial review by filing an original Notice of Appeal with the Agency Clerk of the Department of Business and Professional Regulation at 2601 Blair Stone Road, Tallahassee, Florida 32399-2202 (agc.filing@myfloridalicense.com), and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and section 120.68, Florida Statutes.