

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	4/18/2017
File #	2017-03094

GLOBAL HOOKAH DISTRIBUTORS, INC.

Petitioner,

DOAH Case No. 15-6901

v.

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

Respondent.

FINAL ORDER

Pursuant to section 120.57(1)(k), Florida Statutes (2016), the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (“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 Bruce McKibben on October 20, 2016, in DOAH case number 15-6901, 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 Global Hookah (“Petitioner”) filed a response and those exceptions and response are attached as composite Exhibit “B”.

Background

On September 15, 2015, the Division filed a Notice of Decision and Final Assessment against Petitioner alleging that Respondent was due \$516,481.53 from Petitioner for unpaid taxes on Other Tobacco Products. Petitioner, in compliance with section 72.011, Florida Statutes, timely filed a petition for Chapter 120 hearing for a determination of whether the tax was due.

Respondent filed a notice declaring its intent to advocate a revised lowered assessment totaling \$241,818.77 on August 5, 2016.

ALJ McKibben convened a formal administrative hearing on August 19, 2016 for the amended administrative complaint.

ALJ McKibben issued a Recommended Order on October 20, 2016, recommending the Division enter a final order dismissing the assessment against Petitioner and recommending that no award of attorney's fees or costs be awarded.

The Respondent filed exceptions to ALJ McKibben's Recommended Order and Petitioner filed a response. 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)(l), Florida Statutes, 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)(l), Florida Statutes, 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.

Pursuant to Section 120.57(1)(e)3., Florida Statutes, an ALJ's determination regarding an unadopted rule shall not be rejected by the Division unless it first determines from a review of the complete record, and states with particularity that such determination is clearly erroneous and does not comply with essential requirements of law.

RULINGS ON RESPONDENT'S EXCEPTIONS TO THE FINDINGS OF FACT

Exception #1

1. The Respondent takes exception to the findings of fact set forth in the portion of paragraph #1 on pages 3 and 4 of the Recommended Order in which ALJ McKibben found that North Carolina is the "situs for the corporation."

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

Exception #2

3. The Respondent takes exception to the findings of fact set forth in the portion of paragraph #2 on page 4 and 5 of the Recommended Order in which ALJ McKibben found, "Petitioner's only connection to the state [of Florida] is the sale and delivery (by unaffiliated carriers) of the products it sells."

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

Exception #3

5. The Respondent takes exception to the findings of fact set forth in the portion of paragraph #18 of the Recommended Order in which ALJ McKibben found that the Respondent "presented no competent evidence as to the basis for the prices Fantasia charges Global Hookah for products."

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

Exception #4

7. The Petitioner takes exception to the conclusion of law set forth in paragraph #24, 25, and 31 of the Recommended Order in which ALJ McKibben found that the assessment of taxes and surcharges against Petitioner was erroneous and incorrect.

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

FINDINGS OF FACT

9. ALJ McKibben'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

10. ALJ McKibben'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 assessment is hereby dismissed.
2. This order shall become effective on the date of the filing with the Department's Agency Clerk.

(SIGNATURE APPEARS ON FOLLOWING PAGE)

DONE and ORDERED this 17th day of April, 2017.



MATILDE MILLER, Interim Secretary
Department of Business and
Professional Regulation

A handwritten signature in black ink, appearing to read "Thomas Philpot", written over a horizontal line.

Thomas 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. and Electronic Mail to: Gerald J. Donnini at 100 SE Third Ave., Suite 2202, Fort Lauderdale, FL 33394 and Bruce McKibben, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399 on this 18th day of April, 2017.

Ronda L. Bryan, Agency Clerk

A handwritten signature in black ink, appearing to read "Brandon M. Nichols", written over a horizontal line.

Brandon Nichols, Deputy Agency Clerk
Department of Business and 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.