

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

<b>FILED</b>	
<small>Department of Business and Professional Regulation</small>	
<small>Deputy Agency Clerk</small>	
<small>CLERK</small>	Brandon Nichols
<small>Date</small>	1/23/2019
<small>File #</small>	2019-00462

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Petitioner,

v.

CELTIC MANAGEMENT CONCEPTS, LLC,  
d/b/a CONNOLLY'S PUB

Respondent.

DBPR CASE NO. 2017-048872  
DOAH CASE NO. 18-3101

2019 JAN 24 PM 1:24  
DIVISION OF  
ADMINISTRATIVE HEARINGS

FILED

**FINAL ORDER**

Pursuant to section 120.57(1), Florida Statutes, 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 Hetal Desai (Judge Desai) on September 25, 2018, in DOAH case number 18-3101, a copy of which is attached as Exhibit A. The Department of Business and Professional Regulation (Petitioner or Department) filed exceptions to the Recommended Order, which are attached as Exhibit B. Celtic Management Concepts, LLC, d/b/a Connolly's Pub (Respondent or CMC) did not file exceptions, nor a response to Petitioner's exceptions.

**Background**

On November 9, 2017, Petitioner filed a one count Administrative Complaint against Respondent for a violation of section 561.29(1)(a), Florida Statutes, through violations of sections 212.14 and 212.15, Florida Statutes, which is attached as Exhibit C. Respondent filed a

Request for Formal Hearing on December 19, 2017, which is attached as Exhibit D. Petitioner referred the matter to DOAH on June 15, 2018. A formal administrative hearing was held on August 10, 2018, and Judge Desai issued a Recommended Order on September 25, 2018. Petitioner filed exceptions to the Recommended Order on October 18, 2018. Petitioner's exceptions were due to be filed by October 10, 2018. However, Hurricane Michael forced state office closures in Tallahassee until October 15, 2018. Petitioner's exceptions state that the filing date was attributable to the disruption caused by Hurricane Michael. Due to the extenuating circumstances, the Division deems Petitioner's exceptions to be timely filed. Respondent did not file exceptions or respond to Petitioner'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)(I), 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 or that the proceedings on which the findings were based did not comply with the essential requirements of law. "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)(I), 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 conclusions of law or interpretations of

administrative rules and must make a finding that its substituted conclusion of law or interpretation of an administrative rule is as or more reasonable than that which was rejected.

Section 120.57(1)(l), Florida Statutes, provides that an “agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.” *See also, Florida Real Estate Comm. v. Webb*, 367 So. 2d 201 (Fla. 1978); *Crim. Justice Stds. & Training Comm. v. Bradley*, 596 So. 2d 661 (Fla. 1992).

#### RULINGS ON PETITIONER’S EXCEPTIONS

##### Exception to Findings of Fact Paragraph Two

1. Petitioner takes exception to the finding of fact set forth in Paragraph Two in which Judge Desai found, “CMC was required by chapter 212, Florida Statutes, to remit to DOR the taxes associated with alcoholic beverages sold pursuant to its License. It failed to do so.”

2. Upon review of the record, the Division grants Petitioner’s Exception to Paragraph Two because the finding that the taxes due to be remitted to DOR were taxes associated with alcoholic beverage sales is not based on competent substantial evidence.

3. Findings of Fact Paragraph Two is modified as follows, “CMC was required by chapter 212, Florida Statutes, to remit taxes to DOR. It failed to do so.”

##### Exception to Findings of Fact Paragraph Four

4. Petitioner takes exception to the finding of fact set forth in Paragraph Four in which Judge Desai found, in part, that “Mr. Nolan knew or should have known as of May 23, 2017 (the date of the tax warrant) that it had an outstanding tax obligation ... CMC’s conduct of

ignoring notices of past due taxes and failing to address the delinquency in a more timely manner was intentional.”

5. The Division rejects Petitioner’s Exception to Paragraph Four as the finding is based on competent substantial evidence.

Exception to Findings of Fact Paragraph Five

6. Petitioner takes exception to the finding of fact set forth in Paragraph Five in which Judge Desai found, “CMC established, however, it has recently taken steps to become fully compliant. It entered into a Stipulation Agreement, Form DR-68, with DOR on August 6, 2018. The Stipulation Agreement provides that CMC will make three payments beginning August 27, 2018, and ending October 25, 2018. In total, CMC will pay \$35,721.35; this is more than the amount of the 2017 tax warrant.”

7. The record shows that the Stipulation Agreement was not provided to DOAH or the Petitioner prior to the hearing, the Petitioner objected to it being entered into evidence, Judge Desai did not accept it into evidence, and it is not included as an Exhibit in the official transcript of the hearing.

8. Nonetheless, following the hearing during which the Stipulation Agreement was excluded as evidence, Respondent attached an uncertified copy purporting to be the Stipulation Agreement to his Proposed Recommended Order.

9. Judge Desai in her Recommended Order then states that the Stipulation Agreement is admitted into evidence as Respondent’s Exhibit 1. The Stipulation Agreement was never properly admitted into evidence, and Judge Desai’s reliance on it as an exhibit does not comply with the essential requirements of law.

10. Respondent testified that he entered into a Stipulation Agreement with DOR, but did not testify about the terms of the agreement to the level of specificity found in Judge Desai's finding of fact.

11. Therefore, upon review of the record, the Division grants Petitioner's exception and Findings of Fact Paragraph Five is modified as follows, "CMC established, however, that it has recently taken steps to become fully compliant through a stipulation agreement with DOR."

Exception to Conclusion of Law Paragraph Thirteen

12. Petitioner takes exception to the conclusion of law set forth in Paragraph Thirteen in which Judge Desai found, "Florida Administrative Code Rule 61A-2.022 provides the penalty guideline for the first violation of chapter 212 by an alcoholic beverage license holder is "Corrective action and satisfaction of debt to DOR, or approved payment plan." Here, CMC has entered into such an approved payment plan with DOR."

13. Petitioner takes exception to Paragraph Thirteen on two grounds. First, Petitioner takes exception to Paragraph Thirteen on the grounds that the findings of fact in the Recommended Order do not establish that this is Respondent's first violation occurrence. The Division rejects this exception.

14. Petitioner also takes exception to the inclusion of the statement, "Here, CMC has entered into such an approved payment plan with DOR." Upon review of the record, the Division grants this exception to Conclusion of Law Paragraph Thirteen.

15. As previously discussed in paragraphs seven and eight, the agreement, the existence of which was only briefly addressed in testimony, was not entered into evidence, and the record does not establish that the Stipulation Agreement is they type of approved plan contemplated by Rule 61A-2.022, Florida Administrative Code.

16. A more reasonable conclusion of law and interpretation than that of the Recommended Order is that “The stipulation agreement entered into by CMC with DOR may, upon Department review, satisfy the penalty requirements of Rule 61A-2.022, Florida Administrative Code.” Paragraph Thirteen is therefore modified accordingly.

Exception to Recommendation Paragraph Two

17. Petitioner takes exception to Recommendation Paragraph Two in which Judge Desai recommends “Requiring Respondent to comply with the terms of the Stipulation Agreement it entered into with the Department of Revenue dated August 6, 2018.”

18. The Division grants Petitioner’s exception to Recommendation Paragraph Two.

19. After carefully reviewing the complete record, the undersigned has determined there are compelling reasons to reject Judge Desai’s recommended penalty.

20. The Stipulated Agreement is an agreement entered into by and between Respondent and DOR. (Tr. P. 75)

21. Judge Desai’s recommended penalty would therefore require the Department to enforce Respondent’s compliance with the terms of a Stipulated Agreement to which it is not a party. The Department has no mechanism to enforce Respondent’s compliance with DOR’s payment plan.

22. Further, this recommended penalty is not authorized by the guidelines set forth in Rule 61A-2.022, Florida Administrative Code.

23. The penalty provided herein is therefore substituted.

FINDINGS OF FACT

24. The Findings of Fact as set forth in the Recommended Order Paragraphs One, Three, Four, and Six are approved, adopted, and incorporated herein by reference. These findings

are supported by competent substantial evidence and comply with the essential requirements of law.

25. The Findings of Fact in the Recommended Order Paragraphs Two and Five, as modified above, are approved, adopted, and incorporated herein by reference.

CONCLUSIONS OF LAW

26. The Conclusions of Law as set forth in the Recommended Order Paragraphs Seven through Twelve are approved, adopted, and incorporated herein by reference.

27. The Conclusions of Law in the Recommended Order Paragraph Thirteen, as modified above, which is as or more reasonable than that of the Recommended Order, is approved, adopted, and incorporated herein by reference.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

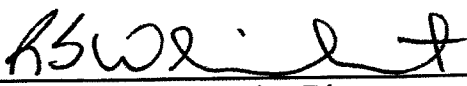
1. Respondent violated sections 561.29(1)(l), 212.14, and 212.15, Florida Statutes, as alleged in the Administrative Complaint.

2. Respondent is ordered to take corrective action by satisfying the debt owed to DOR, or by entering into an approved payment plan with DOR. Proof of satisfaction or payment plan shall be provided to the ABT District Enforcement Office located at 400 W. Robinson Street, Orlando, Florida 32801-1700 no later than February 22, 2019.

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

**DONE and ORDERED** at Tallahassee, Florida, this 23<sup>rd</sup> day of January, 2019.



  
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Sterling Whisenhunt, Acting Director  
Division of Alcoholic Beverages and Tobacco

**NOTICE**  
**OF RIGHT TO JUDICIAL REVIEW**

This *Order* of the Director of the Division of Alcoholic Beverages and Tobacco will become final unless judicial review is initiated within 30 days of the date of rendition. The rendition date is the date the *Order* is filed by the Agency Indexing Clerk. Review Proceedings are governed by Rules 9.110 and 9.190, *Florida Rules of Appellate Procedure*. Such proceedings may be commenced by filing one copy of a *Notice of Appeal* with the Department of Business and Professional Regulation, Attn: Ronda L. Bryan, Agency Clerk, 2601 Blair Stone Road, Tallahassee, Florida 32399 and a Second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal in the Florida Appellate District where the Party resides.

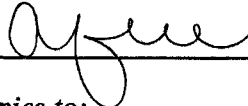
Respondent may petition the Director to amend this Final Order pursuant to Rule 61A-2.022(10), *Florida Administrative Code*. Petitions filed shall not stay any effective dates in this Order unless the Director authorizes the stay or amendment requested in the Petition.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed by regular US mail to:

Leonard Nolan  
Celtic Management Concepts, LLC  
d/b/a Connolly's Pub  
323 North Ronald Regan Boulevard  
Longwood, Florida 32750

By: \_\_\_\_\_



Mail Date: 1/23/19

*Additional copies to:*

District Enforcement Office

Daniel McGinn, Esquire  
Department of Business and Professional Regulation  
2601 Blair Stone Road  
Tallahassee, FL 32399

Alicia Bhambhani, Esquire  
Department of Business and Professional Regulation  
2601 Blair Stone Road  
Tallahassee, FL 32399

Robin Smith, Deputy General Counsel  
Department of Business and Professional Regulation  
2601 Blair Stone Road  
Tallahassee, FL 32399

Hetal Desai  
Administrative Law Judge  
Division of Administrative Hearings  
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Tallahassee, FL 32399-3060