

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARIE ANTOINETTE ROCHETTE,

Petitioner,

vs.

Case No. 18-6104

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

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Tampa and Tallahassee, Florida, on March 11, 2019, before Lynne A. Quimby-Pennock, Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Marie Rochette, pro se  
4818 West Flamingo Road  
Tampa, Florida 33611

Lovie Hudson, Representative (Daughter)  
3335 Rankin Drive  
New Port Richey, Florida 34655

For Respondent: Courtney Rae Conner, Qualified  
Representative  
Ryan Sandy, Esquire  
Department of Business and  
Professional Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

Whether Petitioner's application to transfer Alcoholic Beverage License No. 3900441/4COP should be approved.

PRELIMINARY STATEMENT

In the Notice of Intent to Deny issued on September 7, 2016, Respondent, the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (Division or Respondent), notified Petitioner that her application for the transfer of Alcoholic Beverage License No. 3900441/4COP had been denied. Petitioner timely filed a request for administrative hearing. On November 16, 2018,<sup>1/</sup> the matter was referred to DOAH for a disputed-fact hearing.

The hearing commenced as scheduled, and Petitioner requested that Lovie Hudson be allowed to represent her. The Division did not object, and the hearing continued. During the hearing, Petitioner briefly testified on her own behalf, and Ms. Hudson, Jacqueline Olivario, and Bryan Housler testified. The Division offered the testimony of Sharon Scott. The Division's Exhibits 1, 5,<sup>2/</sup> and 7 were admitted into evidence.

At the conclusion of the hearing Ms. Hudson requested 20 days after the transcript was filed in which to submit proposed recommended orders (PROs). The Division did not object to the request, and the request was granted.

The one-volume Transcript of the hearing was filed on March 27, 2019. Both parties timely submitted their PROs. To the extent that either PRO contains information which was not presented during the hearing, that information has not been considered. Each PRO has been reviewed in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the demeanor and credibility of the witnesses, in consideration of the oral and documentary evidence adduced at the hearing, and on the entire record of this proceeding, the following facts are found:

1. Petitioner is an individual. At some time in the past, Petitioner, Ms. Hudson, Mary Pease, and Scott Wetmore incorporated as Peace and Love Enterprises, Inc. (P&L). P&L holds Alcoholic Beverage License No. 3900441/4COP (beverage license) issued by the Division.

2. The Division is the state agency charged with the administration (including licensing), regulation, and enforcement of Florida's alcoholic beverage laws pursuant to section 20.165(2)(b) and chapters 561 through 568, Florida Statutes (2018).<sup>3/</sup>

3. All applications filed with the Division are subject to investigation pursuant to section 561.18. Applications for the transfer of an alcoholic beverage license are considered pursuant to section 561.32.

4. Ms. Scott is currently the Division's senior management analyst II, over the Tampa, Fort Myers, and Orlando district offices. Ms. Scott supervises the processing and reviewing of applications for alcoholic beverage licenses, tobacco licenses, transfers of licenses, and permits.

5. Once an application for the transfer of an alcoholic beverage license is submitted to the Division, it is reviewed for specific information. The Division looks at the named current license holder to ensure that the signature on the application matches the name of someone authorized to sign the application. The Division verifies that the application information is complete on its face, the alcoholic beverage license is current and can be transferred, and there are no "flags" on the license that would prevent a transfer. The Division must determine if the transferee has a current alcoholic beverage license or not. The Division then looks at the person, corporation, or LLC that wants the alcoholic beverage license transferred to it, and conducts background checks on all persons associated with the application. Once all the background checks are completed, then a recommendation of approval or denial is made. If the approval is given, an invoice on the transfer is generated and the applicant is told to pay the fee to complete the application transfer. If there is an intended denial, a notice is sent to the applicant with the reasons stated for the action.

6. Prior to the transfer application, P&L used the beverage license to operate a restaurant/bar, The Manhattan Dolce Bar and Bistro (The Manhattan). Ms. Hudson was the primary force for The Manhattan's operation on behalf of P&L. Petitioner or Ms. Hudson met an individual, John Clay Weldy, who wanted to get involved in the business. Mr. Weldy became associated with P&L and took actions that made it appear as though he had authority over the beverage license and The Manhattan. No evidence was presented that the P&L Board of Directors, officers, or shareholders conferred any authority on Mr. Weldy to make any P&L decisions or to act on its behalf. Additionally, no credible evidence was presented by Petitioner that the P&L Board of Directors, officers, or shareholders conferred any authority on Petitioner or Ms. Hudson to make any P&L decisions or to act on its behalf.

7. At some point, when Ms. Hudson became too ill to run The Manhattan, Ms. Oliverio became its manager until she was fired by Mr. Weldy. At some point, Ms. Oliverio and her boyfriend attempted to purchase the beverage license from Mr. Weldy, but he made the offer too burdensome for that sale to be completed.

8. On August 15, 2016, Petitioner filed an application to transfer the beverage license from P&L to Petitioner.

9. On August 25, 2016, Beverage Law Institute, Inc. (BLI), filed an application to transfer the same beverage license from P&L to BLI.

10. Ms. Oliverio was not an officer of P&L, and was not familiar with the details of the P&L corporate structure. Further, Ms. Oliverio did not participate in Petitioner's transfer application.

11. Mr. Housler worked at The Manhattan. Mr. Housler did not have any knowledge of the sale of the beverage license or the attempted transfer of the beverage license.

12. The Division had completed its investigation of Petitioner's application filed on August 15, 2016, and had signaled its intent to approve it by issuing an invoice for the transfer. However, the invoice had not been paid when the second application to transfer the same beverage license was filed by BLI.

13. On September 7, 2016, the Division issued to Petitioner a Notice of Intent to Deny License, setting forth the following as the grounds for the denial:

Authority: 561.18 and 561.32(1)(a), Florida Statutes.

Reason: Due to transfer application and supporting documentation submitted to the Division by the Beverage Law Institute on August 25, 2016, the Division is unable to determine whether a bona fide sale of the business has been made such that the licensee may obtain a transfer.

14. On September 7, 2016, the Division issued to BLI a Notice of Intent to Deny License, setting forth the following as the grounds for the denial:

Authority: 561.18 and 561.32(1)(a), Florida Statutes.

Reason: Due to transfer application and supporting documentation submitted to the Division by Marie Antoinette Rochette on August 10, 2016,<sup>[4/]</sup> the Division is unable to determine whether a bona fide sale of the business has been made such that the licensee may obtain a transfer.

15. Ms. Hudson testified that a sale of P&L to either Petitioner or BLI had not and has not happened.

16. Ms. Scott assisted Petitioner and Ms. Hudson as they attempted to maneuver the transfer application through the Division's process. The affidavit of the applicant form fails to list the "DBA" (doing business as) on Petitioner's August 15, 2016, transfer application, but contains Petitioner's notarized signature. The affidavit of the transferor form also fails to list the "DBA," but contains Petitioner's notarized signature. Ms. Scott testified that although the Division records provided that Petitioner was authorized to sign on behalf of P&L, the transfer application was denied because a second transfer application was received prior to Petitioner's transfer invoice being paid.

17. In the August 25, 2016, BLI transfer application, the affidavit of the applicant form lists the "DBA" as "ESCROW," and contains Horace Moody's notarized signature. The affidavit of the transferor form also lists the "DBA" as "ESCROW" but contains Mr. Weldy's notarized signature. Ms. Scott testified that the

Division records also provided that Mr. Weldy was authorized to sign on behalf of P&L. This transfer application was denied because the first transfer application had been submitted.

18. The two competing interests, each asserting that P&L wanted to transfer the beverage license to different transferees, made it impossible for the Division to approve either transfer application.

#### CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

20. Section 561.02 authorizes the Division to "supervise the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages and [further authorizes the Department to] enforce the provisions of the Beverage Law and the Tobacco Law and rules and regulations of the division in connection therewith."

21. Section 561.17 authorizes the Division to consider, and otherwise act upon, applications to manufacture, bottle, distribute, sell, or in any way deal in alcoholic beverages.

22. As the applicant for the transfer of the beverage license, Petitioner is asserting the affirmative, and therefore bears the ultimate burden of proving entitlement to a license. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).



23. The standard of proof that Petitioner must meet is by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

24. Petitioner did not present any evidence to demonstrate a bona fide sale from P&L to Petitioner occurred. Without that bona fide sale, Petitioner did not have authority to transfer the beverage license. Petitioner failed to meet her burden of proof, and therefore her application for the transfer of the beverage license should be denied.

#### RECOMMENDATION

Based on the forgoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, enter a final order denying Marie Antoinette Rochette's application for the transfer of Alcoholic Beverage License No. 3900441/4COP.

DONE AND ENTERED this 1st day of May, 2019, in Tallahassee,  
Leon County, Florida.



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LYNNE A. QUIMBY-PENNOCK  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of May, 2019.

ENDNOTES

<sup>1/</sup> This matter was previously sent to DOAH in 2016, and assigned DOAH Case No. 16-5999. DOAH Case No. 16-5999 was consolidated with DOAH Case No. 16-5998. In January 2017, DOAH Case No. 16-5999 was closed and jurisdiction was relinquished to the Division without prejudice for it to be referred to DOAH in the event a pending circuit court action did not resolve the issue.

<sup>2/</sup> Respondent's Exhibit 5 was admitted over objection.

<sup>3/</sup> All references to Florida Statutes will be to the 2018 codification, unless otherwise indicated. Section 561.01(6) provides that "[t]he Beverage Law" means this chapter and chapters 562, 563, 564, 565, 567, and 568."

<sup>4/</sup> The Division referenced "August 10, 2016" in the denial letter to BLI. Petitioner did not submit her application for transfer until August 15, 2016.

Based on Respondent's Exhibit 1 (page 60), it appears that on August 10, 2016, an "Amended Section 5 Disclosure of Interested Parties" was filed with the Division. This filing provides that: John Weldy is the "PST" of the corporation and holds 50% of the stock; Mary Pease is the "MBR" of the corporation and holds 19% of the stock; and Marie Rochette is the "VP" of the corporation and holds 31% of the stock. The

corporation is not listed, however, The Manhattan Dolce Bar and Bistro is listed as the DBA.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.