

# **ABC Board**

**December 10, 2013**

**Board Packet**

**State of Alaska**  
**Alcoholic Beverage Control Board**  
**Agenda**  
**December 10, 2013**

● **DIRECTOR BRIEFING**

A. Director's Report 8:45 AM **TAB 1**

● **ADMINISTRATION**

A. Approve minutes of the October 2, 2013 Board Meeting 9:00 AM **TAB 2**

● **PUBLIC TESTIMONY**

9:05 AM

A. Period of time for public testimony on issues not on this agenda.  
Please phone 1-800-315-6338 code 222

B. Strategic Prevention Framework State Incentive Grant 9:35 AM **TAB 3**

● **REGULATIONS**

A. Recreational Site License 10:00 AM **TAB 4**

● **BOARD CONSIDERATION**

A. **838 Alaska Roadhouse Bar and Grill:** Alaska Roadhouse Co.;  
Kenai Peninsula Borough  
**Request for transfer of security interest** 1:00 PM **TAB 5**

B. **866 Pioneer Bar:** Old Times, Inc.;  
Anchorage  
**Clarification of transfer with security interest** 1:10 PM **TAB 6**

● **ACTION ON LICENSEE CONVICTION/VIOLATION**

A. Prior Licensee Sanctions **TAB 7**

B. **2616 Chepo's Fiesta:** Jose Nanez; Wasilla  
**License: Beverage Dispensary**  
731 W Parks Highway 1:30 PM **TAB 8**

**Violations: 1. Furnishing Alcohol to a Person Under 21**  
**2. Failure to Maintain Alcohol Server Education**

**C. 688 In and Out Bush Liquor #2:** Kay, Inc.; Anchorage **1:40 PM** **TAB 9**  
(DBA Changed to In & Out Wine & Bush Liquor #2)  
**License: Package Store**  
1100 W Benson Blvd

**Violation: Furnishing Alcohol to a Person Under 21**

**D. 4325 Old Power House Restaurant:** Ocean Enterprises of Alaska, **1:50 PM** **TAB 10**  
Inc.; Kodiak  
**License: Beverage Dispensary**  
516 E Marine Way

**Violations: 1. Responsibility of Licensees, Agents, & Employees**  
**2. Licensed Premises**

● **BEVERAGE DISPENSARY TOURISM – NEW** **TAB 11**

**5252 Navigator Lounge:** Allstar Alliance Company; Kodiak Island Borough  
1633 Airport Way (Kodiak Airport)  
**New – Beverage Dispensary – Tourism**

All statutory requirements have been met. Kodiak Island Borough and  
Dept. of Environmental Conservation approve. Background investigations complete.  
Temporary has been issued.

● **DELEGATED CONSENT AGENDA** **TAB 12**

**5262 Aha Oriental Kitchen:** Moonstone, LLC; Fairbanks  
996 Blair Road  
**New – Restaurant / Eating Place**

All statutory requirements have been met. Fairbanks does not protest.  
Dept. of Environmental Conservation approves. Background investigations pending.  
Temporary has been issued.

**4466 American Legion Post 30:** Con Miller Post 30 The American Legion;  
Fairbanks North Star Borough: 3614 Old Richardson Highway  
**Transfer – Club**  
From: 3481 Old Richardson Highway

All statutory requirements have been met. Fairbanks North Star Bor. does not protest.  
Pending Dept. of Environmental Conservation and State Fire Marshal.  
Background investigations complete.

**4356 Backstage Bistro:** Coming Attractions Theatres, Inc.; Wasilla  
3331 E Old Matanuska Road

**Transfer – Restaurant / Eating Place**

From: K & L Enterprise, LLC d/b/a BurgundyHorse; 300 W Swanson Avenue

All statutory requirements have been met. Dept. of Revenue approves. City of Wasilla does not protest. Pending Dept. of Labor. Background investigations complete.

**1085 Kharacters:** Wonderful, LLC; Homer  
3851 Shelford Street

**Transfer – Beverage Dispensary**

From: L & S, Inc.

All statutory requirements have been met. Dept. of Labor approves.  
Pending City of Homer and Dept. of Revenue. Background investigations pending.

**5263 Lemongrass Thai Cuisine:** Navachai, Inc.; Fairbanks North Star Borough  
388 Old Chena Pump Road, Ste K

**New – Restaurant / Eating Place**

All statutory requirements have been met. Fairbanks North Star Borough approves.  
Dept. of Environmental Conservation approves. Background investigations pending.  
Pending State Fire Marshal.

**3460 Long Creek Trading Post:** Long Creek Trading Post, LLC; Fairbanks North Star Bor.  
8721 Steese Highway

**Transfer – Package Store**

From: Larry W. Walters

All statutory requirements have been met. Dept. of Labor and Revenue approve.  
Pending Fairbanks North Star Borough. Background investigations pending.

**534 No DBA:** Burkeshore Marina Enterprises, LLC; Houston  
No Premises

**Transfer – Package Store**

From: Edward Evans, Inc. d/b/a Houston Lodge

All statutory requirements have been met. Dept. of Revenue approves.  
Pending City of Houston and Dept. of Labor. Background investigations pending.



**2847 No DBA: Scruff N Pork's, Inc.; Fairbanks**

No Premises

**Transfer – Beverage Dispensary**

From: John J. Lounsbury d/b/a The Attic; 2701 Cushman Street

All statutory requirements have been met. Dept. of Labor approves.

Pending City of Fairbanks and Dept. of Revenue. Background investigations complete.

**5264 The Norwegian Rat: M&M Holdings, Inc.; Unalaska**

1906 Airport Beach Road

**New – Beverage Dispensary**

All statutory requirements have been met. City of Unalaska does not protest.

Pending Dept. of Environmental Conservation and State Fire Marshal.

Background investigations pending.

**5248 Vino's: Vino's, Inc.; Fairbanks North Star Bor.**

4371 Dartmouth Road, #A

**New – Wholesale – Malt Beverage and Wine**

All statutory requirements have been met. Fairbanks North Star Bor. does not protest.

Pending State Fire Marshal. Background investigations complete.

**4438 White Mountains Café: Long Creek Trading Post, LLC; Fairbanks North Star Bor.**

8721 Steese Highway

**Transfer – Restaurant / Eating Place**

From: Larry W. Walters

All statutory requirements have been met. Dept. of Labor and Revenue approve.

Pending Fairbanks North Star Borough. Background investigations pending.

**END OF DELEGATED CONSENT AGENDA**

● **PROTESTS**

**A. 321 Chili's Bar and Grill: Peppers North, LLC; Anchorage**

**2:00 PM**

**TAB 13**

800 E Dimond Blvd, #162

**Transfer – Beverage Dispensary**

From: George's Homestead Lounge, LLC

d/b/a George's Homestead Lounge; 10240 Old Seward Highway

All statutory requirements have been met. Dept. of Revenue approves.

Background investigations completed. Pending Dept. of Labor.

**Anchorage protests pending approval from Anchorage Fire, Planning, and Health & Human Services.**

- B. 5260 Hard Rock Café:** Hard Rock Café International (STP), Inc.; **1:25 PM** **TAB 14**  
 Anchorage: 415 E Street  
**New – Beverage Dispensary – Duplicate**
- All statutory requirements have been met.  
 Background investigations complete.  
**Anchorage protests pending approval from Anchorage Health & Human Services Department.**
- C. 5154 I Luv Sushi:** B.M.K., LLC; Anchorage **2:05 PM** **TAB 15**  
 3826 Spenard Road  
**Transfer – Restaurant / Eating Place**  
 From: Tempura Kitchen, LLC
- All statutory requirements have been met. Depts. of Revenue & Labor approve. Background investigations complete.  
**Anchorage protests due to taxes owed to the MOA and pending approval from Anchorage Fire & Building Safety Depts.**
- D. 1. 4200 No DBA:** Texas Roadhouse Holdings, LLC; **2:10 PM** **TAB 16**  
 Anchorage: No Premises  
**Transfer – Beverage Dispensary**  
 From: Duke Investments, LLC d/b/a Chili's Grill & Bar;  
 1811 Abbot Road
- All statutory requirements have been met.  
 Anchorage does not protest. Dept. of Revenue approves.  
 Background investigations pending.  
**Dept. of Labor protests due to taxes owed.**  
**Objection from former employee, Evanjelina Gonzalez.**
- 2. 4200 Texas Roadhouse:** Texas Roadhouse Holdings, LLC;  
 Anchorage: 1154 North Muldoon Road  
**Transfer – Beverage Dispensary**  
 From: No Premises; No DBA
- All statutory requirements have been met.  
**Anchorage protests pending approval of Conditional Use Permit and Anchorage Fire Dept.**

- 4694 La Mex:** La Mexicana, Inc.; Anchorage  
2550 Spenard Road  
**Transfer – Beverage Dispensary**  
From: No Premises d/b/a La Mex Too

All statutory requirements have been met. Anchorage does not protest.  
Background investigations complete. Temporary has been issued.

- 2385 Party Time Plaza Liquor:** Trader Jim’s, Inc.; Anchorage  
5520 Lake Otis Parkway, Ste 107  
**Stock Transfer – Package Store**  
From: Jae Gak Lee (50%) to Ae Kyong Lee

All statutory requirements have been met. Anchorage does not protest.  
Depts. of Labor & Revenue approve. Background investigations complete.

- 5231 Suwanna Café:** Suwanna Café, LLC.; Juneau  
8800 Glacier Highway, Ste 100  
**New – Restaurant / Eating Place**

All statutory requirements have been met. City & Borough of Juneau does not protest.  
Dept. of Environmental Conservation approves. Background investigations complete.

- 5261 The Rack:** Paul & Mikki’s, Inc.; Dillingham  
3310 Nina Way  
**New – Restaurant / Eating Place**

All statutory requirements have been met. Dillingham does not protest.  
Dept. of Environmental Conservation & State Fire Marshal approve.  
Background investigations complete.

- 5257 Tokyo Garden:** Young S. Tang; Anchorage  
550 W Tudor Road  
**New – Restaurant / Eating Place**

All statutory requirements have been met. Anchorage does not protest.  
Background investigations complete. Temporary has been issued.

- 4459 Turnagain Arm BBQ Pit:** Turnagain Arm BBQ, LLC; Anchorage  
3637 Old Seward Highway  
**Transfer – Restaurant / Eating Place**  
From: Chiang Mai, Inc. d/b/a Chiang Mai Ultimate Thai

All statutory requirements have been met. Anchorage does not protest. Dept. of Labor &  
Revenue approve. Background investigations complete. Temporary has been issued.

● **FIRST AND SECOND WAIVERS**

**TAB 18**

**1<sup>st</sup> Waivers**

- 5157** Asuka II, MV  
**License:** Common Carrier  
Alaska Waters
- 410** Forks Roadhouse  
**License:** Beverage Dispensary  
No Premises; Matanuska-Susitna Borough
- 4835** Henri Hawaii  
**License:** Beverage Dispensary  
201 E Northern Lights Blvd, Ste B; Anchorage
- 996** La Bodega  
**License:** Package Store  
194 Olympic Mountain Loop #C107; Anchorage
- 1248** Nome Liquor Store  
**License:** Package Store  
205 Front Street; Nome
- 4686** Sicily's Pizza  
**License:** Beverage Dispensary  
259 S McCallister Drive; Matanuska-Susitna Borough

**2<sup>nd</sup> Waivers**

- 5170** La Bodega  
**License:** Package Store  
1200 W Northern Lights Blvd, Ste F; Anchorage
- 2267** Red Robin  
**License:** Beverage Dispensary  
No Premises; Anchorage

**END OF CONSENT AGENDA**

● **THIRD WAIVERS**

- 110** Bering Sea Saloon  
**License:** Beverage Dispensary  
No Premises; Nome

**2:25 PM**

**TAB 19**

ABC Board Meeting Agenda 12/10/13

- |  |  |         |                      |
|--|--|---------|----------------------|
| 534                                    | Houston Lodge<br><b>License:</b> Package Store<br>No Premises; Houston                   | 2:30 PM | <u><b>TAB 20</b></u> |
| 826                                    | No DBA (Serrano's, LLC)<br><b>License:</b> Beverage Dispensary<br>No Premises; Anchorage | 2:35 PM | <u><b>TAB 21</b></u> |
| 2267                                   | Red Robin<br><b>License:</b> Beverage Dispensary<br>No Premises; Anchorage               | 2:40 PM | <u><b>TAB 22</b></u> |
| <p>● <b>EXECUTIVE SESSION</b></p>      |  |         |                      |
|  | A. Subject that would tend to prejudice the reputation and character of a person         | 2:50 PM |                      |
| <p>● <b>NOTICE OF VIOLATION</b></p>    |  |         |                      |
|  | A. Notices of Violation Issued and Licensee Responses                                    |         | <u><b>TAB 23</b></u> |
| <p>● <b>NEXT ABC BOARD MEETING</b></p> |  |         |                      |

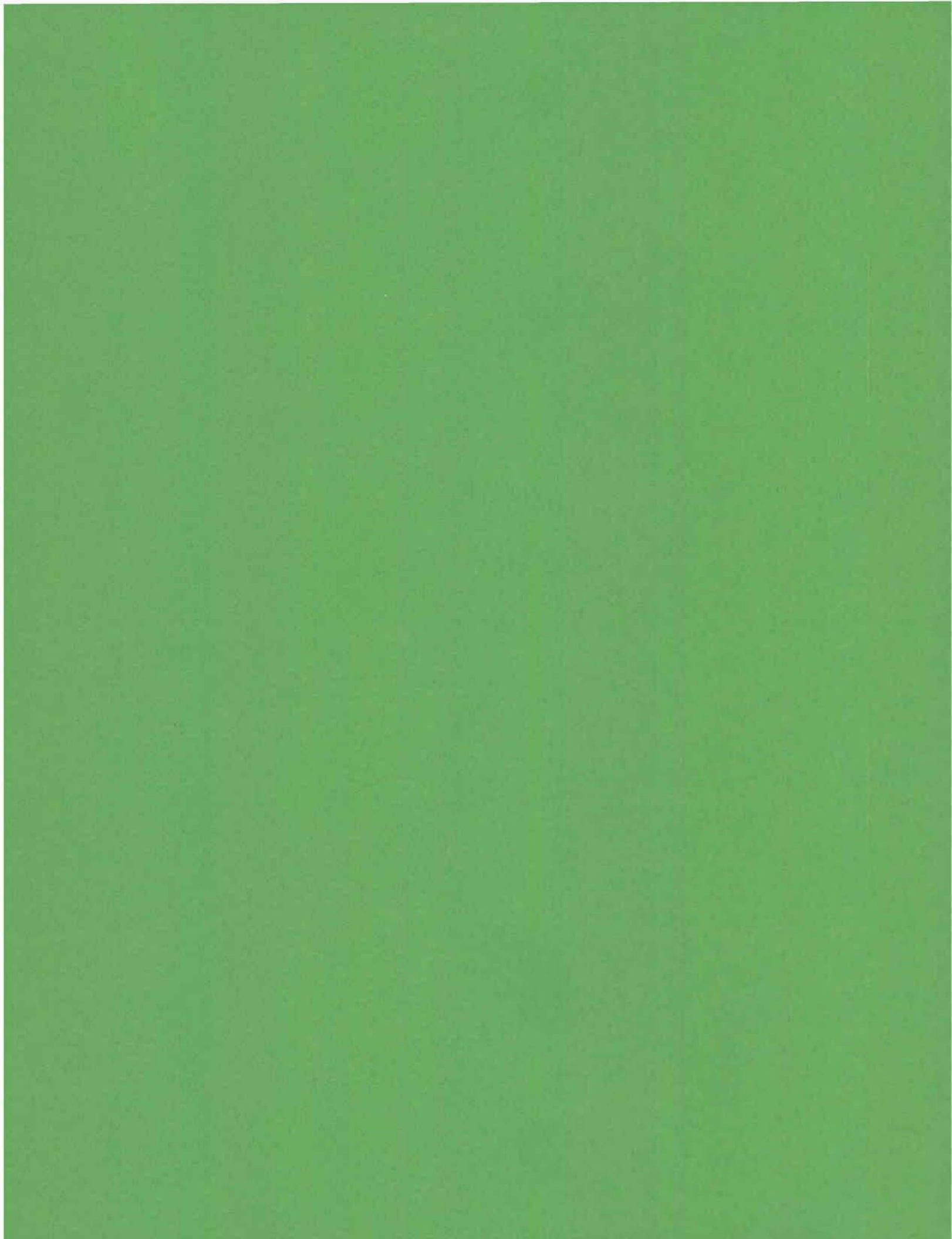


**Alcoholic Beverage Control Board  
Schedule of Appearance  
December 10, 2013**

| <b><u>Time</u></b> | <b><u>Name/D.B.A.</u></b>                                 | <b><u>Name of person to appear</u></b>   | <b><u>Tab</u></b> |
|--------------------|---|--|-------------------|
| <b>8:45 AM</b>     | Director Briefing   | Director Coté  | <b>1</b>          |
| <b>9:05 AM</b>     | Public Testimony  |  |                   |
| <b>9:35 AM</b>     | Strategic Prevention Frame-<br>work State Incentive Grant | Diane Casto<br>465-1188  | <b>3</b>          |
| <b>10:00 AM</b>    | Recreational Site License                                 |  | <b>4</b>          |
| <b>1:00 PM</b>     | Alaska Roadhouse Co.<br>Security Int. Transfer            | Tom Amodio<br>222-7104   | <b>5</b>          |
| <b>1:10 PM</b>     | Pioneer Bar<br>Security Int. Clarification                | Dan Coffey<br>274-3385   | <b>6</b>          |
| <b>1:25 PM</b>     | Hard Rock Café<br>Protest                                 | Dan Coffey<br>274-3385   | <b>14</b>         |
| <b>1:30 PM</b>     | Chepo's Fiesta<br>Violation                               | Jose Nanez<br>696-2263   | <b>8</b>          |
| <b>1:40 PM</b>     | In and Out Bush Liquor #2<br>Violation                    | Martin Kim<br>561-5112   | <b>9</b>          |
| <b>1:50 PM</b>     | Old Power House Restaurant<br>Violation                   | Tomio Demura 486-8334<br>Max Garner 276-1550   | <b>10</b>         |
| <b>2:00 PM</b>     | Chili's Bar and Grill<br>Protest                          | Bill Dubinsky 240-3690<br>MOA Clerk's Office 343-4316  | <b>13</b>         |
| <b>2:05 PM</b>     | I Luv Sushi<br>Protest                                    | Minjing Kim 727-7687<br>MOA Clerk's Office 343-4316  | <b>15</b>         |
| <b>2:10 PM</b>     | Texas Roadhouse<br>Protests & Objection                   | Tara Clemens 263-6375<br>Erik Leroy 277-2006<br>MOA Clerk's Office 343-4316<br>Dept. of Labor 269-4836<br>Laura Ferree 276-7474 x257 | <b>16</b>         |

| <b><u>Time</u></b> | <b><u>Name/D.B.A.</u></b>                   | <b><u>Name of person to appear</u></b> | <b><u>Tab</u></b> |
|--------------------|---|--|-------------------|
| <b>2:25 PM</b>     | Bering Sea Saloon<br>3 <sup>rd</sup> Waiver | Trudy Sobocienski<br>250-6064          | <b>19</b>         |
| <b>2:30 PM</b>     | Houston Lodge<br>3 <sup>rd</sup> Waiver     | Robert Pevan<br>232-3039               | <b>20</b>         |
| <b>2:35 PM</b>     | Serrano's, LLC<br>3 <sup>rd</sup> Waiver    | Josue Picasso<br>569-6909              | <b>21</b>         |
| <b>2:40 PM</b>     | Red Robin<br>3 <sup>rd</sup> Waiver         | John Fabiano<br>561-5555               | <b>22</b>         |





**License Number List by Tab Number**  
**ABC Board Meeting 12/10/13**

| <b>License #</b> | <b>Establishment</b>            | <b>Tab #</b> |
|------------------|---------------------------------|--------------|
| 5262             | Aha Oriental Kitchen            | 12           |
| 838              | Alaska Roadhouse Bar and Grill  | 5            |
| 4466             | American Legion Post 30         | 12           |
| 5157             | Asuka II, MV                    | 18           |
| 4356             | Backstage Bistro                | 12           |
| 110              | Bering Sea Saloon               | 19           |
| 2616             | Chepo's Fiesta                  | 8            |
| 321              | Chili's Bar and Grill           | 13           |
| 410              | Forks Roadhouse                 | 18           |
| 5260             | Hard Rock Café                  | 14           |
| 4835             | Henri Hawaii                    | 18           |
| 534              | Houston Lodge                   | 20           |
| 5154             | I Luv Sushi                     | 15           |
| 688              | In and Out Bush Liquor #2       | 9            |
| 1085             | Kharacters                      | 12           |
| 996              | La Bodega                       | 18           |
| 5170             | La Bodega                       | 18           |
| 4694             | La Mex                          | 17           |
| 5263             | Lemongrass Thai Cuisine         | 12           |
| 3460             | Long Creek Trading Post         | 12           |
| 5252             | Navigator Lounge                | 11           |
| 534              | No DBA (Burkeshore Marina Ent.) | 12           |
| 2847             | No DBA (Scruff N Pork's)        | 12           |
| 826              | No DBA (Serrano's)              | 21           |
| 1248             | Nome Liquor Store               | 18           |
| 4325             | Old Power House Restaurant      | 10           |
| 2385             | Party Time Plaza Liquor         | 17           |
| 866              | Pioneer Bar                     | 6            |
| 2267             | Red Robin                       | 18 & 22      |
| 4686             | Sicily's Pizza                  | 18           |
| 5231             | Suwanna Café                    | 17           |
| 4200             | Texas Roadhouse                 | 16           |
| 5264             | The Norwegian Rat               | 12           |
| 5261             | The Rack                        | 17           |
| 5257             | Tokyo Garden                    | 17           |
| 4459             | Turnagain Arm BBQ Pit           | 17           |
| 5248             | Vino's                          | 12           |
| 4438             | White Mountain Café             | 12           |

# **Tab**

# **1**



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5438  
Fax: 907.263.5930

## MEMORANDUM

TO: Chair Klein and Members of the  
ABC Board

DATE: November 25, 2013

FROM: Shirley A. Coté, *pac*  
Director, ABC Board

RE: Director's Report

### **Supreme Court Decision: Elizabeth Rollins/Alaska 1910, Lic. #4446**

The Supreme Court delivered an opinion on the Elizabeth Rollins case. Ms. Rollins had purchased a license in 1990 and over the years had gotten five waivers of operation. As you know, in order to obtain a waiver a licensee must show he or she could not operate through no fault of his or her own. Ms. Rollins sold the license but the licensee defaulted and Ms. Rollins took the license back and asked for a first waiver. The board denied what they believed was a sixth waiver and not a first. This went through an Administrative Hearing and Superior Court. The Supreme Court upheld the Superior Court decision to uphold the denial of the ABC Board; that Ms. Rollins was not denied due process and she did not establish that she did not operate through no fault of her own. The copy of the opinion is attached. Assistant Attorney General Harriet Milks represented the ABC Board before the Supreme Court.

### **Stakeholders Group**

I have attended 17 meetings of the subcommittees and steering committee since the last board meeting. The subcommittees continue to work very hard on their recommendations for improvement to Title 4 and the ABC Board. Agnew::Beck also continue to do a good job of taking the meeting notes. I, along with the chairs and co-chairs review all notes for accuracy prior to distribution to ensure the utmost accuracy in capturing what can be complicated issues. Agnew::Beck is compiling the recommendations for ease of review and we are gearing up for the Stakeholders Group meeting in February.

### **Telephones**

We had a reduction in capabilities with our phones from the Cisco phones we had in DPS to the Mitel phones in DCCED. Over time the phones started stopping even the basic



capabilities, i.e. transferring calls, teleconferencing, and taking voicemail messages. Due to the increase in problems our project was prioritized by the Department of Administration and we will have our new system in place by the end of the year. In the meantime we have a message on our website that some of our phones do not take voicemail messages, or even ring and therefore email should be used.

### **Licensing Unit**

Supervisor Christine Lambert went on medical family leave on November 4<sup>th</sup>. Due to complications it was anticipated she would be out for two to three months. On November 26<sup>th</sup> we received good news that her healing process is going well enough for her to return to light-duty on December 2, 2013.

The renewal season is going smoothly and as last year we are enclosing the "Born on Stickers," "Born on Calendars" and the 16 points brochure for alcohol service provided by CHARR.

Our new filing system was installed and Business Registration Examiner Maxine Andrews has been able to physically transfer the license files to the new file shelves.

### **Enforcement Unit**

Investigator Brandon Hunter left ABC on November 8, 2013 for a position with the Anchorage Police Department as a forensics computer examiner. Enforcement Unit Supervisor Bob Beasley has received training to reinstate his status as a hiring manager. The posting process for this position is in progress.

Investigators with the ABC Board attended a 12 hour Alaska Records Management System in-house training course on November 4-5, 2013.

Investigators have conducted the following investigations:

|           |    |
|-----------|----|
| Juneau    | 90 |
| Anchorage | 73 |
| Fairbanks | 43 |

### **Compliance Checks**

| REGION | TOTAL     | PASS      | FAIL     | PERCENTAGE PASS |
|--------|-----------|-----------|----------|-----------------|
| CBJ    | 33        | 29        | 4        | 87.9            |
| FNSB   | 0         | 0         | 0        | 0               |
| MOA    | 118       | 106       | 12       | 89.8            |
| SE     | 80        | 75        | 5        | 93.7            |
| MSB    | 28        | 25        | 3        | 89.3            |
| KPB    | 46        | 45        | 1        | 97.8            |
| R-ON   | 0         | 0         | 0        | 0               |
| R-OFF  | <u>12</u> | <u>11</u> | <u>1</u> | <u>91.7</u>     |
| Totals | 317       | 291       | 26       | 91.8 overall    |



Three hundred and seventeen premises have had compliance checks. With five months into the program for FY2014 they are running a 91.8% success rate, down from the 3-month mark of 94.2%. About 500 more checks will be conducted by the end of June. The checks have taken place in six of the eight regions.



*Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, email corrections@appellate.courts.state.ak.us.*

THE SUPREME COURT OF THE STATE OF ALASKA

|                              |   |                                    |
|------------------------------|---|------------------------------------|
| ELIZABETH H. ROLLINS,        | ) |                                    |
|                              | ) | Supreme Court No. S-14760          |
| Appellant,                   | ) |                                    |
|                              | ) | Superior Court No. 4FA-11-01678 CI |
| v.                           | ) |                                    |
|                              | ) | <u>OPINION</u>                     |
| STATE OF ALASKA,             | ) |                                    |
| DEPARTMENT OF PUBLIC         | ) | No. 6842 - November 22, 2013       |
| SAFETY, ALCOHOLIC BEVERAGE ) | ) |                                    |
| CONTROL BOARD,               | ) |                                    |
|                              | ) |                                    |
| Appellee.                    | ) |                                    |
|                              | ) |                                    |

Appeal from the Superior Court of the State of Alaska,  
Fourth Judicial District, Fairbanks, Michael P. McConahy,  
Judge.

Appearances: Elizabeth H. Rollins, pro se, North Pole,  
Appellant. Harriet Dinegar Milks, Assistant Attorney  
General, and Michael C. Geraghty, Attorney General, Juneau,  
for Appellee.

Before: Fabe, Chief Justice, Winfree, Stowers, Maassen, and  
Bolger, Justices.

BOLGER, Justice.

**I. INTRODUCTION**

Elizabeth Rollins appeals the superior court's decision upholding the  
Alcoholic Beverage Control Board's determination to deny her application for a waiver

of the annual operating requirement for her liquor license. Rollins argues that: (1) the Board's decision was not supported by the evidence; (2) she was improperly assigned the burden of proof; (3) the hearing before the administrative law judge violated her right to due process; and (4) the Board's selective enforcement of its statutes violated her right to equal protection. We conclude that Rollins properly bore the burden of proof on the issue of whether she was entitled to a waiver, that the record supports the Board's decision, and that the Board proceedings did not violate her constitutional rights. We therefore affirm the superior court's decision to uphold the Board's action.

## **II. FACTS AND PROCEEDINGS**

Elizabeth Rollins purchased a beverage dispensary license (liquor license) in late 1990.<sup>1</sup> Rollins attempted to open a bar on a property she owned on Old Richardson Highway, but was, for several years, unsuccessful.<sup>2</sup> Alaska Statute 04.11.330(a)(3) contains a requirement that an applicant for renewal of a liquor license must operate the licensed premises "for at least 30 eight-hour days during each of the two preceding calendar years . . . ." Each year from 1991 through 1994, Rollins applied for a waiver of the 30-day annual operating requirement for varying reasons.<sup>3</sup> Each year the Board granted Rollins a waiver.<sup>4</sup>

In December 1995, Rollins applied for her fifth waiver of the annual operating requirement. In her application Rollins explained that she attempted to open

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<sup>1</sup> *Rollins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd.*, 991 P.2d 202, 205 (Alaska 1999).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 205-06 (detailing Rollins's struggles to complete the renovations required to obtain the permits necessary to open the bar and her attempts to sell the property and open the bar at another location).

<sup>4</sup> *Id.* at 205.



the bar, but needed extensive renovations in order to receive a health permit, and she could not complete those renovations by December 1, 1995. The Board denied her request for a waiver under the regulation governing a third or subsequent consecutive application for a waiver.<sup>5</sup> Because a waiver was required to renew her license, the Board also denied the renewal of her liquor license. Rollins appealed.

In *Rollins v. State, Department of Revenue, Alcoholic Beverage Control Board*, we upheld the superior court's decision upholding the Board's determination that the Board had the authority to enact the regulation governing consecutive applications for waiver and held that the Board's decision was supported by substantial evidence.<sup>6</sup> However, we granted Rollins leave to file an Alaska Civil Rule 60(b)(3) motion for relief from judgment based on a misrepresentation the Board had made in the superior court.<sup>7</sup> On remand, the superior court granted Rollins relief from its earlier judgment and reversed the Board's denial of the waiver application. In 2003, the Board sent Rollins a letter proposing terms for a settlement (the 2003 settlement). Rollins agreed to the terms outlined in the letter. According to the terms, the Board would grant her a fifth consecutive waiver "with the express warning that it is a final waiver of the operating requirement and no future waivers will be granted for this license." The letter also

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<sup>5</sup> Former 15 Alaska Administrative Code (AAC) 104.170(e) (1996) (now numbered 3 AAC 304.170(e)) provided, in relevant part, that the Board "will, in its discretion, deny a third or subsequent consecutive application for waiver unless the licensee clearly shows that the licensed premises were not operated because the premises were condemned or substantially destroyed by any cause."

<sup>6</sup> *Rollins*, 991 P.2d at 206-11.

<sup>7</sup> Before the superior court, the Board represented that other licensees had been treated equally to Rollins. But the Board acknowledged to a third party that it had become stricter in enforcement, and Rollins was the first person to be affected by this stricter enforcement. *Id.* at 212-13.

specified that the license may only be transferred to another licensee with an express warning that “[t]he Board currently reviews waiver histories by license” and “[t]he requirement that the license be operated for 30 consecutive days in the calendar year 2004 will transfer to the new licensee.”

After the 2003 settlement, Rollins applied to transfer her license to a new location on Old Airport Way. Rollins operated at the Old Airport Way location beginning in August 2004. In May 2005, Rollins sold the license to Tracy Hester. Under the agreement, Rollins retained a security interest in the license. Hester operated the license until mid-2006 when she disappeared and became delinquent in her payments to Rollins. Although Hester had disappeared, Rollins claims the building owner at Old Airport Way continued to operate the license.

Rollins commenced foreclosure proceedings on the license in October 2006. She also renewed the license. At some point in mid-2007, Rollins began operating the license again.

Rollins operated the license at the Old Airport Way location until May or June 2008. After she repeatedly noticed her alcohol was missing and received reports that the building owner had been opening the bar after hours, Rollins shut down operations and vacated the property. However, the license remained registered to the Old Airport Way location.

In June 2009, Rollins saw an advertisement indicating that another bar was moving to the Old Airport Way location. She filed an application to transfer her license from the Old Airport Way location to “No Premises.” Around the same time, the Board became aware that Rollins had lost the lease on the Old Airport Way location and had not operated her license since May 2008. In a letter to Rollins sent in August 2009, the Board informed Rollins that she “must find a suitable location and file a transfer application, *and* be able to operate the license for at least 30 eight-hour days in 2009.”

The letter reminded Rollins that under the terms of the 2003 settlement letter, no future waivers would be granted for the license.

In an attempt to operate her license, Rollins prepared a business plan and tried to obtain a bank loan. But the bank declined to make a loan. Rollins inquired about leasing the premises formerly occupied by the bar that had moved to the premises she had vacated, but she did not want to share the space with a restaurant that had already leased part of the property. Rollins also spoke with a real estate agent about other possible locations and placed an ad in the newspaper offering the license for sale.

On October 21, 2009, Rollins filed an application for waiver, marking her application as the “first waiver request.” In her application, Rollins indicated that she planned to operate the license at the Old Richardson Highway location (the same location that was the subject of the 1992-95 waivers), but noted that she would need to complete renovations to convert the space into a bar and obtain the necessary permits. After the Board voted to deny Rollins’s waiver application at a meeting in May 2010, Rollins invoked her right to a formal hearing.

An administrative hearing was held on November 10, 2010 in front of an Administrative Law Judge (ALJ). Rollins represented herself at the hearing. The ALJ issued a proposed decision affirming the Board’s denial, and the Board adopted the decision on March 24, 2011. Rollins filed a request for reconsideration, which the Board denied. Because Rollins’s application for waiver was denied, her application for license renewal was also denied.<sup>8</sup>

Rollins appealed to the superior court. The superior court upheld the Board’s decision and rejected Rollins’s due process and selective enforcement claims. Rollins now appeals to this court.

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<sup>8</sup> See AS 04.11.330(a)(3); 3 AAC 304.170(g).

### III. STANDARD OF REVIEW

Where the superior court acts as an intermediate appellate court, we “independently review the merits of the underlying administrative decision.”<sup>9</sup> The “substantial evidence” standard applies to questions of fact, and the “reasonable basis” test applies to questions of law involving agency expertise.<sup>10</sup> “We apply our independent judgment to questions of law that do not involve agency expertise, including constitutional questions.”<sup>11</sup>

### IV. DISCUSSION

Alaska Statute 04.11.330(a)(3) provides that

an application for renewal shall be denied if . . . the applicant has not operated the licensed premises for at least 30 eight-hour days during each of the two preceding calendar years, unless the board determines that the licensed premises are under construction or cannot be operated through no fault of the applicant.

The implementing regulation, 3 AAC 304.170(b), provides that a licensee may apply to the board for a waiver of the operating requirement in AS 04.11.330(a)(3) and “the board will determine whether, through no fault of the licensee or because the premises are under construction, the licensed premises could not be operated for the required time[.]”

#### **A. The Board Did Not Err When It Assigned The Burden Of Proof To Rollins.**

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<sup>9</sup> *Stevens v. State of Alaska, Alcoholic Beverage Control Bd.*, 257 P.3d 1154, 1156 (Alaska 2011).

<sup>10</sup> *Rollins*, 991 P.2d at 206 (quoting *Handley v. State, Dep’t of Revenue*, 838 P.2d 1231, 1233 (Alaska 1992)).

<sup>11</sup> *Stevens*, 257 P.3d at 1156 (quoting *Squires v. Alaska Bd. of Architects, Eng’rs, & Land Surveyors*, 205 P.3d 326, 332 (Alaska 2009)) (internal quotation marks omitted).

The ALJ concluded that Rollins bore the burden of proof because she sought to change the status quo by requesting a waiver from the operating requirement. Rollins argues that the Board should bear the burden of proof. Rollins relies on *Alaska Alcohol Control Board v. Malcolm, Inc.*, where this court held that in denying a renewal of a license, the Board bears the burden of proof.<sup>12</sup> In reaching that conclusion, this court relied on the fact that a person who seeks renewal of a liquor license is designated as the respondent.<sup>13</sup> In *State, Alcoholic Beverage Control Board v. Decker*, however, this court placed the burden of proof on a liquor license *applicant*, stating that “[o]rdinarily the party seeking a change in the status quo has the burden of proof.”<sup>14</sup>

After *Malcolm* and *Decker*, the Administrative Procedure Act (APA) was amended to place the burden of proof on the respondent in certain circumstances.<sup>15</sup> Alaska Statute 44.62.460(e) now provides:

Unless a different standard of proof is stated in applicable law, the

(1) petitioner has the burden of proof by a preponderance of the evidence if an accusation has been filed under AS 44.62.360 or if the renewal of a right, authority, license, or privilege has been denied;

(2) respondent has the burden of proof by a preponderance of the evidence if a right, authority, license, or privilege has been initially denied or not issued.

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<sup>12</sup> 391 P.2d 441, 444 (Alaska 1964).

<sup>13</sup> *Id.* at 444.

<sup>14</sup> 700 P.2d 483, 485 (Alaska 1985).

<sup>15</sup> Ch. 63, § 8, SLA 1995.

In this case, Rollins initiated the administrative proceeding by filing a waiver of operation application under AS 04.11.330(a)(3). This statute provides that an application for renewal must be denied if “the applicant has not operated the licensed premises for at least 30 eight-hour days during each of the two preceding calendar years, *unless the board determines that the licensed premises are under construction or cannot be operated through no fault of the applicant*[.]”<sup>16</sup> In addition, the implementing regulation clearly requires a licensee to make a special application for this waiver and clearly requires the Board to make the same determination.<sup>17</sup> Because the licensee must apply for a waiver, and because the Board must make an affirmative no-fault determination, it is clear that a waiver of operation is a privilege, and that the applicant must affirmatively prove the lack of fault. Thus, the Board properly assigned the burden of proof to the respondent in her application for a waiver.

The ALJ also relied on a regulation associated with the APA, which provides that “[u]nless otherwise provided by applicable statute or regulation, the burden of proof and of going forward with evidence is on the party who requested the hearing. . . .”<sup>18</sup> Here it is Rollins who exercised her right to a hearing after the Board initially denied her application for waiver. Therefore, this regulation also supports the ALJ’s recommendation on the burden of proof. We conclude that the Board correctly required Rollins to bear this burden.

**B. The Board’s Decision Was Supported By Substantial Evidence.**

Under AS 04.11.330(a)(3), the Board was required to deny Rollins’s application unless it determined that her failure to operate under the license was not her

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<sup>16</sup> AS 04.11.330(a)(3) (emphasis added).

<sup>17</sup> 3 AAC 304.170(b).

<sup>18</sup> 2 AAC 64.290(e).



fault. Rollins argues that the ALJ erred when he ruled against her on this issue.

At the hearing, Rollins presented little evidence regarding her efforts to operate her license after she vacated the Old Airport Way location. Rollins testified that between May 2008 and May 2009, she had approximately six conversations with a potential buyer. In August 2009, she investigated the possibility of moving to another location. Although it appears the location was equipped to operate a bar, Rollins did not want to share the location with a restaurant that was already operating there. In October 2009, Rollins prepared a business plan and spoke with a bank about obtaining a loan, but she did not receive the loan. Rollins also spoke with a real estate agent about other possible locations, and she placed an ad in the newspaper offering the license for sale.

The ALJ found that Rollins did not establish the requisite absence of fault. First, the ALJ explained that the problems at the Old Airport Way location were within Rollins's control, and she did not take reasonable steps to eliminate them before she voluntarily left in May 2008. Second, the ALJ found that Rollins did not take reasonable steps to operate the license again in 2009. Third, the ALJ commented that Rollins failed to show her plan to operate the license at the Old Richardson Highway location (where she previously failed to operate the license) was feasible or that it could be accomplished in a reasonable time. The ALJ relied on this court's holding that the purpose of the operating requirement was to "prevent a licensee from holding onto one of a limited number of licenses without operating it . . . beyond a reasonable time necessary to construct or otherwise establish premises. . . ."<sup>19</sup> The ALJ ultimately concluded that Rollins was not entitled to a waiver because she did not take reasonable steps to operate the license and instead chose not to operate the license for business reasons.

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<sup>19</sup> *Rollins*, 991 P.2d at 209.

Rollins challenges several of the ALJ's factual findings. She argues that the ALJ improperly speculated about measures Rollins could have taken to resolve issues at the Old Airport Way location when he found that her actions were not reasonable. Rollins also asserts that there were legitimate reasons to reject the alternative location and clarifies that her advertisement for sale of the license ran in the newspaper for six weeks.

We note that the Board was required to deny Rollins's application for a waiver unless it found that the licensed premises could not be operated and that Rollins was not at fault for this condition.<sup>20</sup> In this appeal, we decide only whether the ALJ's conclusion on this issue is supported by substantial evidence.<sup>21</sup> In deciding whether the license was not operated through no fault of the applicant for waiver, it was appropriate for the ALJ to consider the options available to the applicant.

The evidence Rollins presented at the hearing showed that she did not take reasonable steps to operate her license. Rollins admitted she voluntarily left the Old Airport Way location in May 2008 and that her lease was still valid. She was concerned that the building manager was operating her license after hours, but she presented no evidence of steps she took to prevent this after-hours operation. Rollins presented no evidence that she attempted to operate her license from May 2008 to May 2009. Rollins did investigate other options to operate or sell the license, but ultimately rejected them. She considered but rejected an opportunity to lease another location. Rollins tried to obtain a loan to buy property but the bank refused.

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<sup>20</sup> See AS 04.11.330(a)(3).

<sup>21</sup> *Rollins*, 991 P.2d at 206 (the "substantial evidence" test applies to questions of fact).



At the hearing, Rollins was asked if it was correct that she “could have operated [the license], but . . . chose not to do that because . . . it [wasn’t] profitable enough.” She responded, “That’s exactly right. I could not afford to do that. . . . I don’t feel like throwing all my retirement monies away.” She explained that she couldn’t sell the license because she wanted cash, and she couldn’t find a buyer. Based on this evidence, the ALJ reasonably concluded that Rollins’s failure to operate the license was the result of business decisions.

Although in her application Rollins stated that she planned to operate the license at the Old Richardson Highway location, she presented no evidence of actions she had taken which would make it possible to operate a bar there. And, if her previous attempts to operate at that location were any indication, the premises likely needed significant renovations. We conclude that the Board’s ultimate finding — that Rollins failed to establish that she was without fault in failing to operate her license — is supported by substantial evidence in the record.<sup>22</sup>

**C. Rollins Was Not Denied Due Process.**

Rollins argues that she was denied due process at the hearing. She argues that she understood that the hearing would address the effect of the settlement letter and whether this was her first application for waiver. Rollins also asserts that the hearing was generally unfair and that she was “denied the right to interject and present her findings in her own word and manner.”

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<sup>22</sup> Because the ALJ treated her application as a first application for a waiver and because the ALJ did not rely on the 2003 settlement, we do not need to address Rollins’s arguments that her application should be treated as a first application or that the Board cannot place “a lifetime waiver restriction on a license.”

Rollins correctly notes that a litigant has a due process right to fair notice of the issue to be litigated.<sup>23</sup> But the record does not support Rollins’s argument that she was misled about the issue to be addressed. After Rollins exercised her right to a formal hearing, the Board filed and served a statement which framed the issue as follows: “Should the Alcoholic Beverage Control Board grant [Rollins’s] request, dated October 21, 2009, for waiver of the AS 04.11.330 requirement to operate its alcoholic beverage dispensary license — whether the requested waiver be viewed as a first or a sixth waiver . . . ?”

At a pre-hearing conference, the ALJ clarified the issue by explaining to Rollins that the effect of the settlement letter and whether this application was the sixth application for a waiver were topics that could be addressed. But the ALJ reiterated that the ultimate question was “whether a waiver should be granted under the circumstances in 2009” and explained that Rollins would need to present evidence about the circumstances in 2009 that supported a waiver. When Rollins indicated that she did not understand, the ALJ repeated that the Board would have to make a decision about whether to grant a waiver “regardless of what happened in 2003 and the settlement agreement.”

We have explained that “due process requires that a license holder be provided with notice and an opportunity to be heard in a meaningful, impartial hearing.”<sup>24</sup> Here, Rollins does not allege that there were any procedural defects in her

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<sup>23</sup> See *Cushing v. Painter*, 666 P.2d 1044, 1046 (Alaska 1983) (reversing a final child custody decision made after a hearing scheduled to determine interim custody).

<sup>24</sup> *Stevens v. State of Alaska, Alcoholic Beverage Control Bd.*, 257 P.3d 1154, 1160 (Alaska 2011) (quoting *Rollins*, 991 P.2d at 211) (internal quotation marks (continued...))

hearing or that it did not comply with the APA. She was given an opportunity to speak and to present and cross-examine witnesses. When she testified, the ALJ asked questions regarding her actions over the period from 2008 to 2009. During the questioning, Rollins spoke freely. And at the end of his questions, the ALJ asked if there was anything Rollins wanted to add. She replied, “Nope that’s it.”

Rollins’s arguments that she was denied fair notice and a fair hearing are not supported by the record. We therefore conclude that Rollins was not denied due process.

**D. The Board Did Not Violate Rollins’s Right To Equal Protection By Engaging In Selective Prosecution.**

Rollins argues that the Board’s decision amounts to selective prosecution because the Board has previously granted multiple waivers to other license holders. In our previous decision in this case, we explained that “[i]n order to make a prima facie case that the Board selectively enforced the annual operating requirement . . . Rollins would have to show that the Board intended to discriminate against her based on an arbitrary or unjustifiable classification.”<sup>25</sup> As in the previous case, Rollins has failed to offer any evidence of discriminatory intent.<sup>26</sup>

Both the current executive director and the former executive director of the Board testified that Rollins’s case is unique. The former attorney for the Board agreed. Although the current executive director could not remember if the Board had ever denied a first application for waiver, she also testified that there are situations when a first

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<sup>24</sup> (...continued)  
omitted).

<sup>25</sup> *Rollins*, 991 P.2d at 210.

<sup>26</sup> *See id.*

waiver might be rejected. Rather, the Board inquires as to the reasons for the application in order to make the required determination under AS 04.11.330(a)(3). The Board also considers the history of a license in evaluating whether the licensee is entitled to a waiver. The former attorney for the Board testified that in determining whether to grant a waiver, the Board considers whether a waiver is in the public interest.

This testimony suggests that the Board does not automatically grant first and second applications for waiver, and that the Board generally considers the licensee's history when deciding whether to grant a waiver. We conclude that Rollins has failed to show that the Board's decision in this case involved any arbitrary or unjust classification that would violate her right to equal protection.

## **V. CONCLUSION**

We AFFIRM the superior court's decision to uphold the Board's decision denying Rollins's application for a waiver of the annual operating requirement.

**Tab**

**2**

**State of Alaska**  
**Alcoholic Beverage Control Board**  
**Meeting Minutes**  
**October 2, 2013**

**Board Members Present:**

Ellen Ganley, Vice Chair (Acting as Chair)  
Bobby Evans, Member  
Ethan Billings, Member – Telephonic  
Marvin Yoder – Telephonic

**Staff Members Present:**

Shirley Coté, Director  
Christine Lambert, Records & Licensing Supervisor

**ABC Board Counsel Present:**

Harriett Milks, Assistant Attorney General

● **DIRECTOR BRIEFING**

A. Director's Report [1:07:20 PM](#) [TAB 1](#)

● **ADMINISTRATION**

A. Approve minutes of the July 23, 2013 Board Meeting [1:16:59 PM](#) [TAB 2](#)

Bobby Evans **motions to approve the minutes**  
Ethan Billings **seconds the motion**  
**Motion carried**

**Roll call vote** [1:17:28 PM](#)  
Approved 4-0

● **PUBLIC TESTIMONY** [1:18:12 PM](#)

Period of time for public testimony on issues not on this agenda.

A. Sue Steinacher, Director, Nome Emergency Shelter Team [1:18:44 PM](#)  
Requests ABC Board advocacy on behalf of increased alcohol  
treatment facilities throughout the State of Alaska. Information  
given to ABC Board regarding Nome Emergency Shelter.

B. Bridie Trainor, Kawerak Wellness [1:26:07 PM](#)  
Presents information on cost of heavy alcohol consumption impact  
to the State of Alaska in support of ABC Board being housed under  
the Department of Public Safety.

- C. Ben Esch, Retired Superior Court Judge [1:28:27 PM](#)  
Thanks the ABC Board for travelling to rural communities for meetings. Encourages ABC Board to continue enforcement efforts in Nome and throughout the State of Alaska.
- D. Dorcas Bloom, Resident of Nome [1:30:29 PM](#)  
Questioned ABC Board on efforts to stop “home brew” alcohol.
- E. Mike McNally, Alaska Commercial Company [1:34:23 PM](#)  
Addresses concern regarding “home brew”. Yeast is the main ingredient of “home brew” orders received for large amounts of yeast are a “red flag” for retailers. Alaska Commercial Company will not fill large orders for yeast.
- F. Nome Strategic Prevention Framework Grant Presentation [1:58:35 PM](#)

● **BOARD CONSIDERATION**

- A. **3121 Twister Creek Restaurant:** Talkeetna Restaurant, LLC; [2:24:06 PM](#) **TAB 3**  
Mat-Su Borough  
**Off-premises Brewing**  
  
No motion presented. Prior off site brewing allows this application to operate within AS 04.11.135(d). Bobby Evans, Ethan Billings, Marvin Yoder and Ellen Ganley all in favor of allowing off-premises brewing.
- B. **Delegation of Authority – Permits** [2:45:51 PM](#) **TAB 4**  
  
Marvin Yoder **motions to delegate authority to the Director to impose restrictions and conditions on permits**  
Ethan Billings **seconds the motion**  
**Motion carried**  
  
**Roll call vote** [2:48:54 PM](#)  
Approved 4-0
- C. **Alaska Justice Forum Article** [4:52:03 PM](#) **TAB 5**  
“Reducing Sales of Alcohol to Underage Persons in Alaska”

● **REGULATIONS – UPDATES ONLY**

- A. Recreational Site License [3:04:24 PM](#) [TAB 6](#)
- B. Wine Clubs [3:06:39 PM](#) [TAB 7](#)

● **POLICIES & PROCEDURES**

- A. Press Contact Discussion – Discussion to resume at the next ABC Board meeting [4:55:38 PM](#)

● **REFUND REQUEST CONSIDERATION**

- A. **4763 Bobby’s Downtown:** Delta Epsilon, Inc.; Fairbanks  
609 Second Avenue  
**Renewal Late Fee Refund Reconsideration** [3:15:53 PM](#) [TAB 8](#)
- No motion to reconsider decision of May 30<sup>th</sup> meeting**

● **ACTION ON LICENSEE CONVICTION/VIOLATION**

- A. Prior Licensee Sanctions [TAB 9](#)
- B. **688 In and Out Bush Liquor #2:** Kay, Inc.; Anchorage  
(DBA Changed to In & Out Wine & Bush Liquor #2)  
**License: Package Store**  
1100 W Benson Blvd [3:30:17 PM](#) [TAB 10](#)
- Violation: Furnishing Alcohol to a Person Under 21**
- Ethan Billings **motions to fine licensee \$500.00 for not having an alcohol server education card, with 45 days suspension, 45 days suspended and no further violations within the next 12 months**  
Marvin Yoder **seconds the motion**
- Bobby Evans **motions to amend fine licensees \$500.00 with 45 days suspension 38 days suspended and no further violations within the next 12 months**  
Motion not seconded
- First motion by Ethan Billings voted on**  
**Roll call vote [3:45:00 PM](#)**  
Marvin Yoder & Ethan Billings – Yes  
Bobby Evans & Ellen Ganley – No
- Item tabled until next ABC Board meeting due to tie vote with no tie breaker vote available



- C. **5033 Jimmy Sushi Restaurant:** Jimmy Zhou; Anchorage [3:45:50 PM](#) [TAB 11](#)  
(Tabled from July 23, 2013 meeting)  
**License: Restaurant/Eating Place**  
301 E Dimond Blvd

**Violation: Furnishing Alcohol to a Person Under 21**

Marvin Yoder **motions to fine \$500.00 and suspension of 45 days with 38 days suspended no new violations within next 12 months**

Bobby Evans **seconds the motion**

**Motion carried**

**Roll call vote** [3:47:05 PM](#)

Approved 4-0

- D. **4325 Old Power House Restaurant:** Ocean Enterprises of Alaska [1:17:44 PM](#) [TAB 12](#)  
Inc.; Kodiak  
**License: Beverage Dispensary**  
516 E Marine Way

**Violations: 1. Responsibility of Licensees, Agents, & Employees  
2. Licensed Premises**

**Tabled to December 2013 meeting**

- E. **4595 Roma's:** SOE, LLC; Sitka [3:47:45 PM](#) [TAB 13](#)  
(Tabled from July 23, 2013 meeting; DBA Changed to Asian Palace)  
**License: Restaurant/Eating Place**  
327 Seward Square #1

**Violation: Responsibility of Licensees, Agents, & Employees**

Marvin Yoder **motions a suspension of 30 days with 23 days suspended with no further new violations for 12 months**

Bobby Evans **seconds the motion**

**Motion carried**

**Roll call vote** [3:53:19 PM](#)

Approved 4-0

● **BEVERAGE DISPENSARY TOURISM – TRANSFERS**

**4:50:01 PM**

**TAB 14**

- 4236 Hilton Garden Inn:** BRE Select Hotels Properties, LLC; Anchorage  
4555 Union Square Drive

**Transfer – Beverage Dispensary - Tourism**

From: Apple Six Services Anchorage I, LLC

All statutory requirements have been met. Anchorage and Dept. of Revenue approve.  
Pending Dept. of Labor. Background investigations complete.

- 4354 Homewood Suites:** BRE Select Hotels Properties, LLC; Anchorage  
101 West 48<sup>th</sup> Avenue

**Transfer – Beverage Dispensary – Tourism**

From: Apple Six Services Anchorage II, LLC

All statutory requirements have been met. Anchorage and Dept. of Revenue approve.  
Pending Dept. of Labor. Background investigations complete.

Ethan Billings **motions to approve beverage dispensary tourism transfers for both  
license numbers 4236 & 4354**

Bobby Evans **seconds the motion**

**Motion carried**

**Roll call vote 4:51:27 PM**

Approved 4-0

● **DELEGATED CONSENT AGENDA**

**4:40:29 PM**

**TAB 15**

- 3173 Club Soda:** Luna Sea, Inc.; Fairbanks North Star Borough  
1855 Van Horn Road

**Stock Transfer – Beverage Dispensary**

From: Melodee Weber selling 50% stock to Nicholas Kelsch

All statutory requirements have been met. Dept. of Labor approves. Pending  
Fairbanks North Star Bor. and Dept. of Revenue. Background investigations complete.

- 4779 Grape Expectations:** Grape Brothers, LLC; Anchorage  
510 West 6<sup>th</sup> Avenue

**Transfer – Package Store**

From: Grape Expectations, LLC

All statutory requirements have been met. Dept. of Labor approves. Pending  
Anchorage and Dept. of Revenue. Background investigations complete.

**4157 Hard Rock Café:** Hard Rock Café International (STP), Inc.; Anchorage  
415 E Street

**Transfer – Beverage Dispensary**

From: Bear Paw Restaurant, LLC; DBA Bear Paw Bar & Grill

All statutory requirements have been met. Dept. of Labor & Revenue approve. Pending Anchorage. Background investigations pending.

**757 Holiday #632:** Holiday Alaska, Inc.; Anchorage  
801 East Tudor Road

**Transfer – Package Store**

From: D.A.W.G., Inc.; DBA Liquor Locker; 20146 Pilots Road Suite D

All statutory requirements have been met. Dept. of Labor & Revenue approve. Pending Anchorage. Background investigations pending.

**156 In and Out Liquor #1:** Dong K. Kang; Anchorage  
3601 Arctic Blvd

**Transfer – Package Store**

From: In Sook Kang

All statutory requirements have been met. Dept. of Revenue approves. Pending Anchorage and Dept. of Labor. Background investigations complete.

**4077 Levant at Wolf Run:** Levant, LLC; Fairbanks North Star Borough  
3360 Wolf Run

**Transfer – Restaurant/Eating Place**

From: Joshua P & Jennifer K Rindlisbacher; DBA Wolf Run Restaurant

All statutory requirements have been met. Dept. of Labor approves. Pending Fairbanks North Star Borough & Dept. of Labor. Background investigations pending.

**656 Linwood Bar:** Seldovia Enterprises, Inc.; Seldovia  
257 Main Street

**Transfer – Beverage Dispensary**

From: Miller & Miller, Inc.

All statutory requirements have been met. Seldovia approves. Dept. of Labor & Revenue approve. Background investigation pending. Temporary has been issued.

**657 Linwood Bar:** Seldovia Enterprises, Inc.; Seldovia  
257 Main Street  
**Transfer – Package Store**  
From: Miller & Miller, Inc.

All statutory requirements have been met. Seldovia approves. Dept. of Labor & Revenue approve. Background investigation pending. Temporary has been issued.

**3695 Louie’s Douglas Inn:** South of the Bridge, LLC; Juneau  
No Premises  
**Transfer – Beverage Dispensary**  
From: 64 Thunderbird, LLC; DBA Triple F Bar and Grill;  
9109 Mendenhall Mall Road, Suite 4B

All statutory requirements have been met. Dept. of Labor & Revenue approve. Juneau does not protest. Background investigation pending.

**674 Lucky Lady:** MSE, LLC; Juneau  
192 S Franklin Street  
**Transfer – Beverage Dispensary**  
From: Lucky Lady, Inc.

All statutory requirements have been met. Dept. of Labor & Revenue approve. Juneau does not protest. Background investigations pending.

**1850 Lynx Creek Liquor:** White Raven, LLC; Denali Borough  
Mile 238.6 Parks Highway 3  
**Transfer – Package Store**  
From: Zarcone Brothers Real Estate Limited Partnership

All statutory requirements have been met. Denali does not protest. Dept. of Labor & Revenue approve. Background investigation pending.

**5253 M/V Le Soleal:** Compagnie Du Ponant, SAS  
Alaskan Waters  
**New – Common Carrier**

All statutory requirements have been met. Background investigations pending. Temporary has been issued.

**5254 M/V Sikumi:** Coastal Alaska Adventures, Corp.  
Alaskan Waters  
**New – Common Carrier**

All statutory requirements have been met. Background investigations pending.  
Temporary has been issued.

**4200 No DBA:** Texas Roadhouse Holdings, LLC; Anchorage  
No Premises  
**Transfer – Beverage Dispensary**  
From: Duke Investments, LLC DBA Chili's Grill & Bar; 1811 Abbot Road

All statutory requirements have been met. Anchorage & Dept. of Revenue do not protest.  
Pending Dept. of Labor approval. Background investigation pending.

**5191 Noodle World Alaska:** Y K, LLC; Anchorage  
2844 East Tudor Road, Unit A  
**Transfer – Restaurant/Eating Place**  
From: Noodle World, LLC

All statutory requirements have been met. Dept. of Labor & Revenue approve.  
Pending Anchorage approval. Background investigations pending.

**866 Pioneer Bar:** Old Timers, Inc.; Anchorage  
739 W 4<sup>th</sup> Avenue  
**Stock Transfer – Beverage Dispensary**  
From: Dennis French 25%, William Selkenreich 50% and Connie French 25% to  
David Croffut 50% and Michael Ward 50%

All statutory requirements have been met. Dept. of Revenue approves.  
Pending Anchorage & Dept. of Labor approvals. Background investigations pending.

**4905 Taco Azteca Mexican Restaurant:** Taco Azteca, Inc.; North Pole  
101 Santa Claus Lane  
**Transfer – Restaurant/Eating Place**  
From: 08 Capital, Inc.; DBA Benny's Grill

All statutory requirements have been met. Dept. of Environmental Conservation,  
Revenue, and Labor approve. Pending North Pole & Fire Marshal approvals.  
Background investigations complete.

**5255 Tsaina Lodge:** RFS Management, LLC; Unorganized Borough  
Mile 35 Richardson Highway  
**New – Beverage Dispensary**

All statutory requirements have been met. Dept. of Labor & Revenue approve.  
Background investigation pending.

**4948 Wal-Mart Supercenter:** Wal-Mart Stores, Inc.; Anchorage  
7405 Debarr Road  
**Transfer – Package Store**  
From: No Premises

All statutory requirements have been met. Dept. of Revenue & Labor approve.  
Pending Anchorage. Background investigations complete.

Ethan Billings **motions to approve the delegated consent agenda**  
Marvin Yoder **seconds the motion**  
**Motion carried**

**Roll call vote** [4:45:41 PM](#)  
Approved 4-0

#### **END OF DELEGATED CONSENT AGENDA**

### ● **PROTESTS**

**A. 5245 Fat Ptarmigan Wood Fired Pizza:** Fat Ptarmigan Management [2:53:15 PM](#) **TAB 16**  
LLC; Anchorage  
441 W 5<sup>th</sup> Avenue  
**New – Restaurant/Eating Place**

Background investigations pending.  
**Anchorage protests pending approval from Anchorage Fire Dept.  
and Administrative Site Plan Review.**

Marvin Yoder **motions to approve with delegation**  
Ethan Billings **seconds the motion**  
**Motion carried**

**Roll call vote** [2:54:51 PM](#)  
Approved 4-0

- B. 1839 Great Alaskan Bush Company:** B.V., Inc.; Anchorage [2:50:08 PM](#) [TAB 17](#)  
631 E International Airport Road  
**Controlling Interest Transfer – Beverage Dispensary**  
From: Vicky Cox 60% to E. Shannon Fillman 48% and Justin Cox 52%
- Dept. of Revenue & Labor approve. Background investigations pending.  
**Anchorage protests pending approval from Health & Human Services Department.**
- Ethan Billings **motions to approve with delegation**  
Bobby Evans **seconds the motion**  
**Motion carried**
- Roll call vote** [2:52:48 PM](#)  
Approved 4-0
- C. 1248 Nome Liquor Store:** The North West Company (International), [4:03:03 PM](#) [TAB 18](#)  
Inc.; Nome  
205 Front Street  
**Transfer – Package Store**  
From: Nome Commercial Company
- All statutory requirements have been met. Nome approves. Dept. of Revenue & Labor approve. Background investigations complete.  
**Public objection.**
- ABC Board decision not to overturn the delegated consent given at the July 23<sup>rd</sup> ABC Board meeting. All requirements have been met.** [4:36:49 PM](#)  
**Transfer is approved.**
- D. 4459 Turnagain Arm BBQ Pit:** Turnagain Arm BBQ Pit, LLC; [2:55:17 PM](#) [TAB 19](#)  
Anchorage  
3637 Old Seward Highway  
**Transfer – Restaurant/Eating Place**  
From: Chiang Mai, Inc. DBA Chiang Mai Ultimate Thai
- Pending Anchorage. Dept. of Revenue approves. Background investigations complete.  
**Dept. of Labor protests.**
- Tabled for next meeting due to lack information regarding protest**

- E. **5251 Wild Chicken:** Su Chong An & Mingzhe Zheng; Anchorage [2:58:46 PM](#) **TAB 20**  
3001 Spenard Road  
**New – Restaurant/Eating Place**

Background investigations pending.

**Anchorage protests pending approval from Anchorage Fire and Planning Departments**

Marvin Yoder **motions to approve with delegation**

Ethan Billings **seconds the motion**

**Motion carried**

**Roll call vote** [3:02:36 PM](#)

Approved 4-0

● **CONSENT AGENDA** [4:46:16 PM](#) **TAB 21**

- 2773 City Lighthouse Liquor Store:** Williams Incorporated; Ketchikan  
3812 Tongass Avenue  
**Transfer – Package Store**  
From: U.S. Spirits, Inc. DBA Kaptain's Keg

All statutory requirements have been met. Ketchikan does not protest. Dept. of Labor & Revenue approve. Background investigations complete. Temporary has been issued.

- 5254 Era Aviation N880EA:** Era Aviation, Inc.  
Alaskan Skies  
**New – Common Carrier**

All statutory requirements have been met. Background investigations complete. Temporary has been issued.

- 4738 Knik Kountry Liquor:** Knik Kountry Liquor, Inc.; Mat-Su Borough  
No Premises  
**Involuntary Retransfer – Beverage Dispensary**  
From: Big Su Lodge, Inc. DBA Big Su Lodge; 36535 S Parks Highway

All statutory requirements have been met. Mat-Su Borough does not protest. Background investigation complete.



- 996 La Bodega:** Midtown Spirits, LLC; Anchorage  
194 Olympic Mountain Loop, Unit #C107 (Girdwood)  
**Transfer – Package Store**  
From: 3801 Old Seward Highway

All statutory requirements have been met. Anchorage does not protest. Background investigation complete.

- 4573 Sizzlin Café:** Grizzly Group, Inc.; Anchorage  
346 E 5<sup>th</sup> Avenue  
**Transfer – Restaurant/Eating Place**  
From: 523 W 3<sup>rd</sup> Avenue

All statutory requirements have been met. Anchorage does not protest. Dept. of Labor & Revenue approve. Background investigation complete. Temporary has been issued.

- 5247 Tequila Kitchen Express:** Tequila Kitchen Express, LLC; Anchorage  
2514 E Tudor Road  
**New – Restaurant/Eating Place**

All statutory requirements have been met. Anchorage does not protest. Background investigations complete. Temporary has been issued.

Marvin Yoder **motions to approve the consent agenda**  
Ethan Billings **seconds the motion**  
**Motion carried**

**Roll call vote [4:47:34 PM](#)**  
Approved 4-0

#### **END OF CONSENT AGENDA**

#### **● FIRST AND SECOND WAIVERS**

**TAB 22**

##### **1<sup>st</sup> Waivers**

- 3472 Patel's #2**  
**License:** Package Store – Seasonal  
3789 Homer Spit Road; Homer

**[4:47:53 PM](#)**

Marvin Yoder **motions to approve waiver**  
Ethan Billings **seconds the motion**  
**Motion carried**

**Roll call vote [4:48:35 PM](#)**  
Approved 4-0

**2<sup>nd</sup> Waivers**  
**4905** Benny's Grill  
**License:** Restaurant/Eating Place – Seasonal  
101 Santa Claus Lane; North Pole

4:48:47 PM

Ethan Billings **motions to approve waiver**  
Marvin Yoder **seconds the motion**  
**Motion carried**

**Roll call vote** 4:49:38 PM  
Approved 4-0

● **NOTICES OF VIOLATION**

**A. Notices of Violation Issued and Licensee Responses**

**TAB 23**

● **NEXT ABC BOARD MEETING – Tuesday, December 10, 2013 - Anchorage**

Minutes reviewed & approved by:

Shirley A. Coté, Director Shirley A. Coté

Date: 10/4/13

Christine C. Lambert, Rec. & Lic. Supervisor Christine C. Lambert

Date: 10-4-13

**Tab**

**3**



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Commerce, Community,  
and Economic Development**

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5438  
Fax: 907.263.5930

**MEMORANDUM**

TO: Robert Klein, Chair and  
Members of the Board

DATE: November 27, 2013

FROM: Shirley A. Coté *SAC*  
Director, ABC Board

RE: Presentation of the Strategic Prevention  
Framework State Incentive Grant – Project  
Manager Diane Casto

Project Manager Diane Casto with the Department of Health and Social Services, Division of Behavioral Health will give an update on the Strategic Prevention Framework State Incentive Grant (SPF SIG). A summary of the grantee strategies is attached.

## SPF SIG: Summary of grantee strategies

| <u>Grantee</u>  | <u>Priority consequences<br/>(if applicable)</u>      | <u>Intervening variables</u> | <u>Contributing factors</u>   | <u>Strategies</u>   |
|---|---|------------------------------|---|---|
| <b><u>Consumption pattern: Heavy/binge drinking, adults 21-44</u></b> |   |                              |   |   |
| Bering Straits/Nome   | Alcohol related interpersonal violence                | Community norms              | Community acceptance of public inebriation<br><br>Community identity as a drinking town   | Community Mobilization: Green Dot, increase Safety Patrol<br><br>Media Campaign: individual and community impacts of alcohol  |
| Fairbanks   | Alcohol related injuries and death                    | Community norms              | Community acceptance of alcohol-impaired driving  | Awareness Campaign: stickers on products and media  |
| Homer   | Children affected by ACEs                             | Community norms              | Drinking is component of community identity<br><br>Community tolerates heavy/binge drinking                                     | PhotoVoice: youth use of photography to address issues of alcohol in community<br><br>Positive Community Norms Campaign: "Most of Us" campaign  |
|   |   | Perception of risk           | Community is unaware of effects of heavy/binge drinking on family   |   |
| SEARHC: Angoon, Kake, & Klukwan                                       | Alcohol related injury, assault and domestic violence | Perception of risk           | Low perception of risk of the negative consequences of heavy and binge drinking including injury, assault and domestic violence | Community Gatherings and Education: Increase community readiness to address heavy/binge drinking through monthly alcohol-free events featuring educational speakers on topics related to community health |

**SPF SIG: Summary of grantee strategies**

| <u>Grantee</u>      | <u>Priority consequences<br/>(if applicable)</u> | <u>Intervening variables</u> | <u>Contributing factors</u>   | <u>Strategies</u>  |
|---------------------|--|------------------------------|---|--|
|                     |  | Community norms              | Community acceptance of high rates of alcohol related injury and assault  | Green Dot: bystander training in intervention of alcohol-related violence  |
| Wrangell/Petersburg | Alcohol related domestic violence                | Community norms              | Lack of resources for prevention, intervention of alcohol related DV  | Green Dot  |
|                     |  |                              | Acceptance of heavy drinking ("we work hard, we play hard")   | Prime for Life: educational curriculum for use with adults   |
|                     |  |                              | Lack of knowledge about what constitutes heavy and binge drinking   | Community Awareness Campaign: disseminate information about SPF SIG project and consequences of adult heavy/binge drinking and underage drinking |
| Yakutat             | Children affected by ACEs                        | Community norms              | Alcohol is a prominent aspect of community events and celebrations  | Monthly Alcohol-Free Community Events  |
|                     |  | Perception of risk           | Low perception of risk of heavy/binge drinking and negative impacts on the family   | Prevention Education: ACEs presentations targeting parents   |
|                     |  | Individual level             | Lack of recreational and alcohol-free activities in community<br>Alcohol plays a role in individual identity and a sign of being an adult | Traditional Cultural Activities: quarterly classes<br>Women's Wellness Group: monthly sessions, including cultural activities                    |

**SPF SIG: Summary of grantee strategies**

| <u>Grantee</u>   | <u>Priority consequences<br/>(if applicable)</u> | <u>Intervening variables</u> | <u>Contributing factors</u>                                | <u>Strategies</u>  |
|--|--|------------------------------|--|--|
| <b><u>Consumption pattern: Underage drinking, ages 12-20</u></b> |  |                              |  |  |
| Bering Straits/Nome  |  | Perception of risk           | Lack of understanding of consequences of underage drinking | Media Campaign: legal, health, and social consequences of underage drinking  |
|  |  | Social availability          | Lack of adult role models who don't heavy/binge drink      | Policy Change: enact softball league policy barring alcohol consumption during games and practices   |
|  |  | Individual level             | Lack of youth role models who don't heavy/binge drink      | Youth Leadership Program: development of healthy youth role models   |
|  |  | Individual level             | Lack of adult role models who don't heavy/binge drink      | Cultural Mentoring Program: Connect youth with healthy adults through culture  |
| Fairbanks  |  | Community norms              | Youths' friends approve of alcohol use                     | Alcohol-Free Activities: 5 per year  |
|  |  | Individual level             | Limited personal involvement in meaningful activities      | Awareness Campaign: connection between meaningful activities and reduced underage drinking; promote existing activities<br><br>Parent Education: parent track at Safety Summit |

**SPF SIG: Summary of grantee strategies**

| <b><u>Grantee</u></b> | <b><u>Priority consequences<br/>(if applicable)</u></b> | <b><u>Intervening variables</u></b> | <b><u>Contributing factors</u></b>   | <b><u>Strategies</u></b>  |
|-----------------------|---|-------------------------------------|--|---|
| Homer                 |   | Community norms                     | Drinking is component of community identity  | Support Alternate Activities for Youth: increase awareness of existing activities   |
|                       |   | Social availability                 | Community considers underage drinking normal and acceptable  | Targeted Information Dissemination: around consequences of providing alcohol to minors  |
|                       |   |                                     | Parents host/allow parties where alcohol is available and provide alcohol to youth                               |   |
|                       |   | Perception of risk                  | Older siblings, friends provide alcohol to youth<br>Youth and adults are unaware of effects of underage drinking | Education and Skill-Building Opportunities: Train the Trainers event re. ACEs, community presentations  |
| SEARHC                | N/A   | Social availability                 | Community is unaware of effects of heavy/binge drinking on family  | Community Gatherings & Education: alcohol-free events featuring educational speakers that raise awareness of consequences on providing alcohol to youth |
|                       |   |                                     | Lack of awareness of consequences of providing alcohol to youth  |   |



**SPF SIG: Summary of grantee strategies**

| <u>Grantee</u>      | <u>Priority consequences<br/>(if applicable)</u> | <u>Intervening variables</u> | <u>Contributing factors</u>   | <u>Strategies</u>  |
|---------------------|--|------------------------------|---|--|
|                     |  |                              | Adults provide youth with alcohol at events such as beach parties and house parties   | Media Campaign: Use Digital Storytelling where youth craft prevention messages from the gatherings and post to social media                  |
| Wrangell/Petersburg |  | Social availability          | Youth sneak or steal alcohol  | "Lock Up Your Liquor" Campaign: includes education and provision of locks  |
|                     |  |                              | Older aged friends provide to minors  | Project "Congrats, You're Going to Jail" Shock: adapted from Project Sticker Shock, education on consequences of providing alcohol to minors |
|                     |  |                              | Older men provide for younger girls   | Community Mobilization Campaign: see above   |
| Yakutat             | ACEs   | Community norms              | Youth perceive that some parents are not involved with them and need to monitor activities and reinforce rules on a regular basis | Youth/Parent Education: offer classes, events, materials   |
|                     |  | Enforcement                  | Youth perceive lack of enforcement by police and consequences   | Build Community Readiness: police events with youth, educational materials development   |

**SPF SIG: Summary of grantee strategies**

| <b><u>Grantee</u></b> | <b><u>Priority consequences<br/>(if applicable)</u></b> | <b><u>Intervening variables</u></b> | <b><u>Contributing factors</u></b>   | <b><u>Strategies</u></b>   |
|-----------------------|---|-------------------------------------|--|--|
|                       |   | Social availability                 | Youth have easy access to alcohol via stealing from parents or having adults buy/provide it for them | Media Campaign:<br>informational brochures, +<br>stickers, "Lock it up" campaign |
|                       |   | Individual level                    | Youth have a lack of alternate and recreational activities, especially in the summer                 | Alternative Youth Activities:<br>year-round, weekly during<br>summer             |

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**Tab**

**4**



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5438  
Fax: 907.263.5930

**MEMORANDUM**

TO: Robert Klein, Chair and  
Members of the Board

DATE: November 26, 2013

FROM: Shirley A. Coté *SAC*  
Director, ABC Board

RE: Recreational Site License Regulation

We gave required and proper notice for written comments for the month of September. I have attached copies of the seven letters received during the written comment period that ended September 30<sup>th</sup>. I have also attached the relevant documents from the Board meetings of May 30, 2013, June 11, 2013, and July 23, 2013. Also attached is a copy of a letter that was intended for the July 23<sup>rd</sup> board packet but came in too late to be included.

Chair Klein wanted to assure that those who wanted to be heard would have the chance to give verbal testimony at this Board meeting prior to deliberation and approval of the regulation proposal. In order to allow for verbal comments, in addition to the written comments, we were required to give the same notice as for the written comment period. The Board may not consider written comments delivered after the September 30<sup>th</sup> deadline; however, written comments may be read into the minutes. I have one request for written comments to be read into the record, that is allowable for me to do in the absence of the author.

You may decide not to approve of this new regulation; however, if you decide to make a motion to approve I am providing the required language below:

"I make a motion to approve 3 AAC 304. Recreational site license as written."

3 AAC 304 is amended by adding a new section to read:

**3 AAC 304. Recreational Site License**

(a) A recreational site license authorizes the licensee to sell beer and wine on licensed premises located on the recreational site.

(b) A license may be issued only if an application is approved by the local governing body and the board, and the applicant does not hold a beverage dispensary license or a restaurant or eating place license.

(c) A recreational site license must be based upon a competitive spectator sporting event with a designated sport season, and with a starting time and an ending time.

(1) A competitive spectator sporting event includes baseball games, softball games, football games, soccer matches, dog sled races, hockey games, basketball games, curling matches, gymnastic meets, volleyball meets, car races, boating races, snow machine races, skiing races.

**Written Comments Received during 30-day Open  
Comment Period – September 2013**



## DENALI ARTS COUNCIL

*Mission: We value Diversity, Artistry and Community.  
We create and nurture community-based opportunities  
for artistic expression.*

P.O. Box 404 ~ Talkeetna ~ AK 99676 ~  
907-733-7929 ~ [www.denaliartscouncil.org](http://www.denaliartscouncil.org)

September 3, 2013

Shirley A. Cote  
Director, Alcoholic Beverage Control Board  
2400 Viking Drive  
Anchorage, AK 99501

Dear Ms. Cote,

I would like to express my opposition to the proposed changes to: 3 AAC 304  
Recreational Site License.

The Denali Arts Council is a current holder of a Recreational Site License. We are not a dispensary, restaurant, eating place, nor are we open every day. We hold events, regularly but sporadically, for the general public. The majority of our events are theatrical in nature. We host music concerts, drama productions, musicals, visual arts receptions and film festivals. Our events have starting time and an ending time. Our events have an audience and many similarities to sporting events. The main difference is simply that our events are not competitive in nature.

Consuming a beer or glass of wine is an essential element to the enjoyment of our events for a great number of our patrons. Limiting the Recreational Site License to sporting events could impose a significantly negative impact on our organization.

Currently, the Recreational Site License is an appropriate fit for our organization. With these proposed changes, we may have no appropriate licensure. This would cause our organization some hardships.

Please reconsider the very narrow definition of the proposed Recreational Site License. Recreation encompasses far more than just sporting events and this fact should be reflected in the Recreational Site License.

Thank you for addressing this very important concern.

Sincerely,

Colleen Coulon Love  
Executive Director



CAPITOL SPEEDWAY

H.C. 89 BOX 130

WILLOW ALASKA

PHONE 495-6420

FAX 495-5819

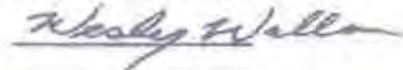
ALCOHOL BEVERAGE CONTROL BOARD

DIRECTOR SHIRLEY A. COTE

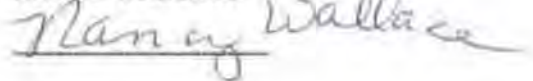
WE ARE OWNERS OF A BEER AND WINE LICENSE IN OUR  
SPEEDWAY INN RESTAURANT AND OWNERS OF A OFF SITE RECREATIONAL  
LICENSE AT OUR RACE TRACK. THESE FICIALITIES ARE ABOUT ONE- EIGHT  
MILE APART. WE HAVE BEEN IN BUSINESS 36 YEARS WITH THESE LICENSES  
AND HAVE NEVER HAD A COMPLAINT. WE NEED BOTH LICENSES BECAUSE  
OF THEIR DISTANCE APART.

THANK YOU:

WESLEY WALLACE



NANCY WALLACE







September 10, 2013

Dear Shirley Cote,

I am writing in regard to the proposed changes to the Recreational Site Liquor license, section 04.11.210. I feel that the listing of sporting events as proposed will be too limiting and should include language that would allow for additional sporting activities to be included. Example: Ballroom Dance, Martial Arts, Body Building, etc... The term "other as approved by board", may also be a way to avoid issues regarding the determination of a sport or competitive activity.

I understand that the proposed changes will also add the language of "competitive spectator event". I understand how this could affect some recreational site license holders; however, this change would not affect my request since we regularly host competitive spectator events. We would not be interested in selling beer or wine during normal classes or training hours.

I also understand that the language "during a season" would be changed to "a designated sport season". In ballroom dance the season is year-round. As an indoor sport, it is not affected by the weather. This fact makes dancing an ideal physical activity for Alaskans. The main competitions for 2014 will be January 23-26, May 15-18, August 1-3 and December 18-21. Preliminary and qualifying competitions will also take place monthly. The language "designated sport season" could be too limiting and may only apply to traditional or outdoor sports. Another issue is that hopefully all indoor recreational sites offer more than one sporting activity so that Alaskans are not limited to specific season for activity.

Thank you,  
Michelle Holland

A handwritten signature in black ink, appearing to read "MH", is written over the printed name "Michelle Holland".

Alaska Dance Promotions



#### Current Regulations for Recreational Site License.

##### Sec. 04.11.210. Recreational site license.

(a) The holder of a recreational site license may sell beer and wine at a recreational site during and one hour before and after a recreational event that is not a school event, for consumption on designated areas at the site.

(b) The biennial fee for a recreational site license is \$800.

(c) In this section,  
"recreational site" includes a location where baseball games, car races, hockey games, dog sled racing events, or curling matches are regularly held during a season.

#### Proposed Changes

(c) A recreational site license must be based upon a competitive spectator sporting event with a designated sport season, and with a starting time and an ending time.

(1) A competitive spectator sporting event includes baseball games, softball games, football games, soccer matches, dog sled races, hockey games, basketball games, curling matches, gymnastic meets, volleyball meets, car races, boating races, snow machine races, skiing races.



**HUGHES GORSKI SEEDORF**  
**ODSEN & TERVOOREN, LLC**  
ATTORNEYS AT LAW

September 30, 2013

Direct Dial:

**(907) 263-8255**

**E-mail: [fodsens@hglawfirm.com](mailto:fodsens@hglawfirm.com)**

Shirley Cote, Executive Director  
State of Alaska, Department of Public Safety  
Alcohol Beverage Control Board  
2400 Viking Drive  
Anchorage, AK 99501

**Via E-Mail**

[Shirley.Cote@alaska.gov](mailto:Shirley.Cote@alaska.gov)

RE: Minnesota Billiards' Comments Regarding  
Proposed Recreational Site License Regulation  
Our File No. 10053-1

Dear Ms. Cote:

As you are aware, we represent Mr. Jin Do So and Ms. Soon Woo So, d/b/a Minnesota Billiards. You will also recall that Minnesota Billiards owns and operates a billiard parlor in the strip mall located near the corner of Minnesota and Benson in Anchorage. As you also are aware, Minnesota Billiards' application for a recreational site liquor license at its billiard parlor was denied by the Board at its July 2013 meeting and that decision is currently the subject of an administrative appeal.

Because significant testimony and information has already been provided to the Board with reference to the Minnesota Billiards' application and recreational site licenses in general, our comments will be quite brief. Minnesota Billiards complied with all of the existing requirements and policies of the Board and satisfied all existing pre-conditions to the issuance of a recreational site license. Indeed as you will recall, the Board initially granted you delegated authority to approve the issuance of the license once a conditional use permit was procured by Minnesota Billiards from the Municipality of Anchorage. That conditional use permit was ultimately acquired (after substantial efforts and negotiated concessions by our clients). A copy of the conditional use permit is attached hereto as Exhibit A. However, during the pendency of those proceedings, you will recall that the issue of

Shirley Cote, Executive Director  
September 30, 2013  
Page 2

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recreational site licenses generally became a subject of apparent significant public interest and discussion resulting in the proposed regulation.

Minnesota Billiards is of the view that the Board's existing policy relative to recreational site licenses is consistent with the statute and within the discretion of the Board. The proposed regulation essentially does away with "activity based" recreational site licenses in favor of "event based" recreational licenses with an apparent designated sport season, a starting time and an ending time. The new regulation apparently contemplates only sanctioning licenses at competitive spectator sporting events.

For purposes of the regulation itself, Minnesota Billiards' principal point is that it does not contain any transitional rules or provisions such as would normally be expected to appear in a regulation of this type. Minnesota Billiards respectfully submits that the proposed regulation should contain a fair and even-handed transitional provision whereby applicants (like Minnesota Billiards) who prior to the time the regulation is implemented have satisfied all of the conditions for the issuance of a recreational site license should be granted that license. In that regard, Minnesota Billiards has expended substantial time and resources in procuring the conditional use permit and in preparing the premises for alcoholic beverage sales. Minnesota Billiards has also incurred significant costs, governmental fees and attorney's fees in its protracted good faith endeavor to acquire a recreational site license. You will also recall that one of Minnesota Billiards' principal competitors, Beluga Billiards, located near the corner of Dimond Blvd. and Jewel Lake Road, does have a recreational site license. Our clients have pointed out in testimony before the Board that they are losing patronage to competing billiards parlors that have liquor licenses.

For the reasons herein set forth and based upon previous submittals and testimony provided by Minnesota Billiards, our clients respectfully request that if the Board chooses to proceed with the proposed regulation (or some variant thereof) that any such regulation provide a fair and equitable set of transition rules that justly take into consideration the circumstances of good faith pending applicants such as Minnesota Billiards.

Shirley Cote, Executive Director  
September 30, 2013  
Page 3

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**HUGHES GORSKI SEEDORF**  
**ODSEN & TERVOOREN, LLC**  
ATTORNEYS AT LAW

Should you have any questions or if we can provide any additional information, please feel free to call. Thank you for your consideration of these comments.

Very truly yours,

HUGHES GORSKI SEEDORF  
ODSEN & TERVOOREN, LLC

By

  
Frederick J. Odsen

FJO:pab:315121  
Enclosure

cc: Minnesota Billiards

CC

A  
L  
A  
S  
K  
A

2013-032137-0

Recording District 301 Anchorage

06/07/2013 03:01 PM

Page 1 of 5



**NOTE**

Send original recorded document to:

Municipality of Anchorage

Current Planning Section

Planning Division

PO Box 196650

Anchorage, AK 99519-6650

**THIS COVER SHEET HAS BEEN ADDED TO THIS DOCUMENT TO PROVIDE SPACE FOR ANCHORAGE RECORDING DISTRICT DATA. THIS COVER SHEET APPEARS AS THE FIRST PAGE OF THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD.**

**DO NOT DETACH**

EXHIBIT A



## NOTICE OF ZONING ACTION


This notice announces that a zoning conditional use has been duly approved by the Municipal Assembly of the Municipality of Anchorage providing for the development of the herein described property in accordance with the provisions of the Anchorage Municipal Code of Ordinances and the terms and conditions of the zoning conditional use approval as set forth in the Municipal zoning file 2013-007. Under the provisions of the specified ordinance the subsequent development of the subject property shall be in accordance with the terms of the approved zoning conditional use or any subsequent amendments hereto.

**LEGAL:** Block 1A, within Minnesota Commons Subdivision, S.M., Anchorage Recording District, Anchorage, Alaska. Generally located south of West Benson Boulevard and west of Minnesota Drive, in Anchorage.

**PETITIONER:** Jin Do So and Soon Woo So

**REQUEST:** A Resolution of the Anchorage Municipal Assembly APPROVING an Alcoholic Beverages Conditional Use for a Recreational Site Use and License Number 5194, in the B-3 (General Business) District for Jin Do and Soon Woo So dba Minnesota Billiards. Located at 3000 Minnesota Drive, Suite 3, Anchorage, Alaska.

**Attachment:** Copy of Anchorage Municipal Assembly Resolution No. AR 2013-120.

  
 Municipal Clerk  
 Municipality of Anchorage  
 Assembly

STATE OF ALASKA            )  
   )  
 THIRD JUDICIAL DISTRICT    )

THIS IS TO CERTIFY that on the 30<sup>th</sup> day of May, 2013 before me, the undersigned, a Notary Public in and for Alaska, personally appeared Barbara A. Jones, to me known to be the duly appointed Municipal Clerk of the Municipal Assembly and acknowledged to me that she had in her official capacity aforesaid executed the forgoing instrument as an act and deed of the Municipality of Anchorage for the uses and purposes therein stated.

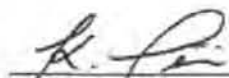
WITNESS my hand and notarial seal on the 30<sup>th</sup> day of May, 2013 in this certificate first above written.

**RECEIVED**

JUN 03 2013

COMMUNITY DEVELOPMENT DEPT



  
 Notary Public in and for Alaska  
 My Commission expires: 2/22/17



Page 2 of 5  
 2013-032137-0

CLERK'S OFFICE  
**AMENDED AND APPROVED**

Date: 5-21-13

Submitted by: Chair of the Assembly at the  
 Request of the Mayor  
 Prepared by: Community Development  
 Department  
 For reading May 21, 2013

Anchorage, Alaska  
 AR 2013-120

**COPY**

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY  
 APPROVING AN ALCOHOLIC BEVERAGES CONDITIONAL USE FOR A  
 RECREATIONAL SITE USE AND LICENSE NUMBER 5194, IN THE B-3  
 (GENERAL BUSINESS) DISTRICT FOR JIN DO AND SOON WOO SO, DBA  
 MINNESOTA BILLIARDS; AT 3000 MINNESOTA DRIVE, SUITE 3, WITHIN  
 MINNESOTA COMMONS SUBDIVISION, BLOCK 1A; GENERALLY LOCATED  
 SOUTH OF WEST BENSON BOULEVARD AND WEST OF MINNESOTA  
 DRIVE.

(Spennard Community Council) (Case 2013-007)

**THE ANCHORAGE ASSEMBLY RESOLVES:**

**Section 1.** A conditional use permit is hereby approved for an Alcoholic  
 Beverages Conditional Use for a Recreational Site Use and License Number  
 5194, in the B-3 (General Business) district for Jin Do and Soon Woo So, dba  
 Minnesota Billiards, at 3000 Minnesota Drive, Suite 3, within Minnesota  
 Commons Subdivision, Block 1A; generally located south of West Benson  
 Boulevard and west of Minnesota Drive. This conditional use generally meets  
 the applicable provisions of AMC 21.15.030, AMC 21.40.180D.8.,  
 AMC 21.50.020, AMC 21.50.160, and AMC 10.50.

**Section 2.** This conditional use is approved subject to the following conditions:

1. A Notice of Zoning Action shall be filed with the District Recorder's Office  
 within 120 days of the Assembly's approval for this recreational site  
 license in the B-3 district.
2. Resolve with Fire Plan Review, the need for improvements to meet the fire  
 code.
3. All uses shall conform to the plans and narrative submitted with this  
 conditional use application, except as modified by this approval.
4. This alcoholic beverages conditional use approval is for a Recreational  
 Site Use and License number 5194 in the B-3 (General Business) district  
 per AMC 21.15.030, AMC 21.40.180D.8., AMC 21.50.020 and  
 AMC 21.50.160 for approximately 1,625 square feet of gross leasable





AR Minnesota Billiards Conditional Use

- 1 floor space within a 5,233 square foot billiards hall in a commercial mall  
2 located at 3000 Minnesota Drive, Suite 3, within Minnesota Commons  
3 Subdivision, Block 1A.  
4
- 5 5. On-premise sale of alcoholic beverages before 6:00pm on Monday  
6 through Friday is prohibited. As a condition of use, this restriction  
7 shall be recommended for the licensee (dba) Minnesota Billiards for  
8 incorporation as a condition of the ABC Board Recreational Site  
9 License at this location. Closing hours on Monday through Friday and  
10 both opening and closing hours on Saturday, Sunday, and holidays are as  
11 permitted by Anchorage Municipal Code 10.50.015C. and Alaska  
12 Alcoholic Beverages Control Board requirements.  
13
- 14 6. Employees will be trained in accordance with the Alcoholic Beverage  
15 Control Board's "Liquor Server Awareness Training Program," in  
16 accordance with Alaska Statute 04.21.025. Upon demand, the applicant  
17 shall demonstrate compliance with a liquor "Server Awareness Training  
18 Program" approved by the State of Alaska Alcoholic Beverage Control  
19 Board, such as or similar to, the program for "Techniques in Alcohol  
20 Management (T.A.M.)."  
21
- 22 7. The use of the property by any person for the permitted purposes shall  
23 comply with all current and future Federal, State and local laws and  
24 regulations including but not limited to laws and regulations pertaining to  
25 the sale, dispensing, service and consumption of alcoholic beverages and  
26 the storage, preparation, sale, service and consumption of food. The  
27 owner of the property, the licensee under the Alcoholic Beverage Control  
28 license and their officers, agents and employees shall not knowingly  
29 permit or negligently fail to prevent the occurrence of illegal  
30 activity on the property.  
31
- 32 8. A copy of the conditions imposed by the Assembly in connection with this  
33 conditional use approval shall be maintained on the premise at a location  
34 visible to the public.  
35
- 36 9. The conditional use permit for this location shall be subject to  
37 expiration. The conditional use permit for this location shall come  
38 before the Assembly for review in May 2014. Failure to comply with  
39 the conditions of this conditional use permit shall constitute grounds  
40 for modification or revocation of alcohol use at this location. The  
41 Assembly shall review the suitability of conditional use for an ABC  
42 Board Recreational Site License at this location because of the  
43 potential for significant impact on the use and enjoyment of adjacent  
44 properties, and the existence of a day care facility within the same  
45 business mall.  
46



AR Minnesota Billiards Conditional Use

**Section 3.** Failure to comply with the conditions of this conditional use permit shall constitute grounds for its modification or revocation, and may render this permit void.

**Section 4.** This resolution shall become effective immediately upon passage and approval by the Anchorage Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 21 day of May, 2013.

ATTEST:

E. K. Kell  
Chair

Amanda K. Mose  
Municipal Clerk

(Case 2013-007; Tax Parcel ID# 010-025-24)





Your Neighborhood Pool Hall

Beluga Billiards  
Sean Weems, Business Manager  
PO Box 220305  
Anchorage, AK 99522-0305  
907-677-6864  
<http://www.belugabilliards.com>

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### **Recreational Site Licenses, Proposed Regulation Change**

As the representative for Recreational Site License #5009, I am writing to express my concern and alarm at this proposed regulatory change, which has the very strong potential to destroy this business. This is not creative exaggeration! The ability to serve beer and wine to our adult customers is critical to our viability not only as a venue for such customers, but for our other customers as well. Without the ability to generate a modest amount of revenue from beer and wine sales to adult customers, our ability to remain financially viable while servicing our remaining customers is in serious doubt. The result is very likely to be that we will simply be put out of business, suffering a total loss of our significant investment in this business and the community's loss of one of the few entertainment venues for people of all ages, where people may go for a fun time, in a safe, clean, drug-free and violence-free environment.

### **Our Standing In The Community**

- Our initial application for this license was supported, **unconditionally and unanimously** by the Sand Land Community Council. In fact, the President of the SLCC appeared before the Municipality of Anchorage Assembly to speak in support of our application for the required Conditional Use Permit. The Chair, Dick Traini, joked that he could not recall a time when a Community Council President appeared before the Assembly to offer such support. The Assembly voted **unanimously** to approve our Conditional Use Permit and Recreational Site License application, **without any restrictions** on the particulars of who, what, when or otherwise with respect to serving customers. Finally, our license was approved **unanimously** by the ABC Board itself, with full knowledge of our business model and how our license would be used within a recreational setting.
- Since obtaining our Recreational Site License, we have NOT ONCE been required to call the police for ANY REASON, let alone due to some issue concerning alcohol. There are many "full-licensees" who cannot truthfully make this claim.
- Since obtaining our Recreational Site License, we have NOT ONCE been cited for any violation of Alaska's alcohol laws, ABC regulations or related controls. Again, there are many "full-licensees" who cannot truthfully make this claim.
- We have gone above and beyond what was asked of us to ensure proper controls and a superior separation of adults and under-aged customers. Our controls are superior to bowling alleys and other recreational site license holders who have held such licenses for many years, without incident.
- We have given the Alaska ABC Board absolutely NO justifiable reason to yank the carpet out from under us, having proven ourselves to be a lawful and responsible seller of beer and wine to adult customers





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### **Facts about our use of a Recreational Site License**

- We are a VERY small business. Our revenue for an entire year is less than what many venues make in a single month. We are neither a massive purveyor of beer and wine to the general public, nor a significant competitive threat to any venue that currently serves beer and wine. We are about as “small time” as “small time” gets. However, the ability to serve beer and wine to adult customers is critical to sustaining our business, both in terms of revenue, and as a point of attractiveness to those wishing to take advantage of the recreational opportunities we offer.
- Our primary customer is someone who wants to hang out and play billiards in a safe, quiet, non-crowded, drug-free and violence-free environment. These are customers who typically DO NOT WANT to go to a bar, for a variety of different reasons. Those who say “people can go play pool in a bar” simply fail to understand our customers and their needs.
- Our license is restricted to a small fraction of our floor-plan (about 40%), with the remaining portion of our floor plan dedicated to customers of all ages. This permits families to come in and play, an opportunity not afforded by bars. This also permits groups of mixed-age (some over 21, some under 21) customers to come in and play, an opportunity not afforded by bars. In the case of this group, their only viable alternatives for satisfying everyone in their group is to attempt to enter bars illegally (some being under 21), or to consume alcohol illegally in parking lots, vehicles and other such places. Finally, we offer services to groups of people who are all under 21. We are attractive to this group because we offer a cheap and safe recreational alternative for those who wish to make good choices and avoid environments where they are likely to encounter trouble. Our ability to offer this environment at affordable prices is absolutely dependent on retaining the ability to serve adults beer and wine on the “adult side” of our floor-plan.

### **What Problem Are You Training To Solve?**

We feel the requirement of basing a license on a “competitive spectator event” is unreasonable and your list of “competitive spectator sporting” events in the proposed regulation is capricious and arbitrary, especially given previous drafts of the proposed regulation and the previous issuance our license, with full knowledge of how it would be used.

From what we can gather from our participation in this process, we are still unclear as to what problem the ABC Board is trying to solve with this regulatory change. We can only guess the following:

- The ABC Board wants to restrict or narrow the use of such licenses for the purposes of reducing the number of venues other than bars and restaurants, where people can consume beer and wine in public
- Owners of bars or other licensees have expressed concern about the few dollars they may be losing in beer and wine sales to those with recreational site licenses, and the





Your Neighborhood Pool Hall

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ABC Board is reacting to those concerns

We also wish to point out that as a licensee, the ABC Board is supposed to protect our interests as much as it is supposed to protect the interests of larger and higher-volume licensees.

#### **Ensuring Justice, Fairness and Equity for Existing Recreational Site Licensees**

We feel that to ensure justice, fairness and equity for existing recreational site licensees, who stand to lose their businesses if the ABC Board chooses to enact certain changes to the regulation, certain protections must be offered. These include any and all of the following:

- Modifying the proposed regulation to accommodate all existing licensees, so that the business models for such they were originally provided a license continue to be permitted under the regulation (as per the "bowling alley justification" used for the original decision to award us our recreational site license)
- Simply grandfathering in existing licenses at their current locations, allowing such licenses to continue to be operated, renewed, transferred/sold or otherwise protected, perpetually
- Grandfathering in existing licenses at current locations, allowing such licenses to continue to be operated, renewed, transferred/sold or otherwise protected, for an absolute MINIMUM of 10 years, so that investments in the business can be recouped and so that leases may run their courses, before a licensee is forced to close its doors due to lack of a recreational site license

#### **Ensuring Justice, Fairness and Equity for Existing Recreational Site Licensees**

In conclusion, we feel that the proposed change to regulation is a disaster and will catastrophically affect our business. We have done nothing to deserve this. We have followed the rules, we were awarded a license and we have operated that license lawfully and responsibly. We have proven ourselves to be a responsible and valued member of our community. There is simply no valid reason for destroying our small business for the sake of intangible ideals or for the benefit of others. We trust that these comments will be made available to the Director and the Board, and that these individuals will look thoughtfully upon our situation with fairness and justice and simply do the right thing. For it to do otherwise is would be to be stunningly unbelievable.

Sincerely,

Sean M. Weems  
Recreational Site Licensee, #5009



Anchorage Ski Club  
PO Box 200546  
Anchorage, Alaska 99520-0546  
[www.skiarctic.net](http://www.skiarctic.net)



September 30, 2013

Shirley A. Coté  
Alcoholic Beverage Control Board  
2400 Viking Drive  
Anchorage, AK 99501

Re: Proposed Recreational Site License Regulation

Dear Ms. Coté:

The Anchorage Ski Club (ASC) Board submits the following comments on the Alcoholic Beverage Control Board's (ABC Board) proposed regulation at 3 AAC 304 for recreational site licenses. ASC believes that the currently-proposed regulation—while well-intentioned—is inconsistent with its authorizing statute at A.S. 04.11.210 and would unintentionally exclude responsible license holders like ASC.

### **1. The Anchorage Ski Club's History at Arctic Valley**

Founded in 1937, the nonprofit ASC has a long history as a social and winter sports recreation club in Southcentral Alaska. In 1941, ASC partnered with the US Military to create the Arctic Valley Ski Bowl. Over the past 60 years of operating a ski area at Arctic Valley, ASC has established itself as an institution within south-central Alaska with deep community ties. Countless numbers of Alaskans have learned to ski and snowboard at Arctic Valley and even those that have left the State retain ties to Arctic Valley and ASC.

ASC operates the Alpenglow Lodge at Arctic Valley as part of its ski and lodge-rental operations. In 2010, ASC obtained a recreational site license from the ABC Board. Soon thereafter, ASC introduced the "Afterglow," the portion of the Alpenglow Lodge where beer and wine is served under its recreational site license. Although a recent addition to Arctic Valley, ASC's Afterglow beer and wine sales have been a critical revenue boost for ASC's operations. ASC's recreational site license coincided with ASC's reorganization and progression out of financial hardships. The Afterglow has been enormously popular thus improving the overall social atmosphere and increasing public exposure to ASC and our mission. The Afterglow has also attracted additional participants for special events like ASC's springtime Merry Marmot Festival. It has proven to be extremely important in making ASC's recent success possible.



## 2. The ABC Board's Proposed Recreational Site Regulation

The ABC Board's proposed regulation attempts to clarify the definition of the types of qualifying events covered under recreational site licenses authorized under A.S. 04.11.210. But the proposed regulation introduces a requirement—not contained in the statute—that the recreational site license must be based on a “competitive spectator sporting event.” The statute explicitly requires a “recreational event,” not a “competitive spectator sporting event.” And thus, the proposed regulation is fundamentally inconsistent with the recreational site license statute at A.S. 04.11.210.

While seemingly innocuous, this distinction has the potential to exclude responsible recreational site license holders like ASC that are bona fide recreational sites but do not necessarily fall under the “competitive spectator” language. For many recreational site license holders like ASC, their ability to sell beer and wine affords an opportunity to capture greatly-needed revenue and attract additional patrons and supporters. Moreover, a loss of ASC's recreational site license would likely result a return to unregulated drinking on the premises, a highly undesirable result.

Recreational site licenses under A.S. 04.11.210 afford qualifying organizations an important opportunity to generate revenue under a limited, seasonal beer and wine license. ASC urges the ABC Board to consider that choosing to adopt the current regulatory proposal could unnecessarily exclude responsible license holders like ASC.

## 3. ASC's Proposed Alternative Regulation

In order to implement a regulation that is consistent with A.S. 04.11.210, ASC proposes the following changes to the ABC Board's current proposal. ASC's suggested revisions are indicated by underlining in bold and the deletions are indicated by ~~strikethrough~~ in bold:

### 3 AAC 304. Recreational Site License

- (a) A recreational site license authorizes the licensee to sell beer and wine on licensed premises located on the recreational site.
- (b) A license may be issued only if an application is approved by the local governing body and the board, and the applicant does not hold a beverage dispensary license or a restaurant or eating place license.

- (c) A recreational site license must be based upon a ~~competitive spectator~~ recreational sporting event with a designated sport season, and a designated starting time and ending time.
- (1) A ~~competitive-spectator~~ recreational sporting event includes baseball games, softball games, football games, soccer matches, dog sled races, hockey games, basketball games, curling matches, gymnastic meets, volleyball meets, car races, boating races, snow machine races, and ski area skiing races.

There is a strong indication that the Legislature did not intend to limit a recreational site license to "competitive spectator sporting events," and ASC believes that its proposed alternative regulation effectively captures both the statutory intent and the clarification that the ABC Board's regulation offers. A.S. 5.45.010 et seq. regulates "ski area" operations and provides a natural tie directly to licensed ski areas under Alaska law.

#### 4. Summary

ASC is a nonprofit organization and the ski area and Alpenglow Lodge are largely operated and maintained by volunteers. But even with this significant contribution of volunteer labor, the facilities' rental and ski area fees do not provide enough income to cover the substantial overhead costs such as capital improvements, major repairs, maintenance, inspections, electricity, and insurance. Even with diligent efforts to support Arctic Valley's high operating costs with donations, membership fees, grants, and other fundraising activities, ASC's recreational site license generates critical revenue that helps make continued Arctic Valley operations possible.

ASC hopes that the ABC Board will consider responsible operators like ASC who have been operating under a recreational site license. This will help enable ASC's continued operation of the Arctic Valley ski area and Alpenglow Lodge as an important part of Southcentral Alaska's winter recreation well into the future.

Thank you for your consideration.

ANCHORAGE SKI CLUB



John Koltun, President  
Board of Directors





George M. Sullivan Sports Arena



September 30, 2013

Shirley A. Cote  
Director  
Alcohol Beverage Control Board  
2400 Viking Drive  
Anchorage, AK 99501

Re: Proposed Changes to 3 AAC 304 Recreational Site License Definition  
Licensee: SMG of Alaska, Inc., Recreational Site License No. 1842

Dear Ms. Cote,

I am in receipt of your memorandum dated, July 10, 2013. Please consider this letter a request for consideration of broadening the definition to include other types of recreational activities.

As the operator of the George M. Sullivan Arena, we host a wide range of activities that are not included in the proposed language. These events most notably include, Concerts, Professional Wrestling, Professional and Amateur Boxing, Professional and Amateur Mixed Martial Arts, Motorcross, etc.

I believe that adding these types of events in the definition would be prudent and would allow for clarity in what is considered a competitive spectator event.

Also at issue is the proposed language of 3 AAC 304 (b). SMG of Alaska, Inc. also manages the Dena'ina and Egan Convention Centers. SMG of Alaska, Inc owns a beverage dispensary license which is used to cover events at those sites. The proposed language amendment in 3 AAC 304 (b) stipulates that a licensee cannot own a recreational site license if it owns a beverage dispensary license. These two operations are mutually exclusive and they act as separate entities.

I appreciate the opportunity to provide you with this information and would be happy to answer any specific questions or entertain any comments you may have regarding this matter. I am happy to meet with you at any time to discuss this matter further.

Sincerely,

Joseph M. Wooden  
Regional General Manager  
SMG of Alaska, Inc.  
George M. Sullivan Arena  
Ben Boeke Ice Arena  
Dempsey Anderson Ice Arena

Cc: Joe Romano, Senior Vice President - SMG  
Michael D. White, Esq., Patton Boggs, LLP.  
Debbie Fitzgerald, Municipality of Anchorage



**Written Comments Intended for July 23, 2013  
Board Packet**

July 22, 2013

Ms. Shirley Cote

Director

State of Alaska, Alcohol Beverage Control Board

2400 Viking Drive

Anchorage Alaska 99501

Via Email: shirley.cote@alaska.gov

Dear Ms. Cote,

Thank you for the proposed draft regulations pertaining to Recreation Site Licenses transmitted via email to us on July 16, 2013. Also enclosed was the prior Policy Memo dated April 11, 2011, and an excel file listing all the recreation site licenses operated within the state. This letter shall reference these documents and provide comment upon the proposed regulation. It is our understanding the proposed regulation, an amendment of 3 AAC 304, is intended to more precisely define those sporting activities that are qualified to operate a recreation site license authorized by AS 04.11.210.

The proposed regulation introduces a new term "a competitive spectator sporting event" which is described in subsection (c):

A recreation site license must be based on a competitive spectator sporting event with a designated sport season, and with a starting time and an ending time.

The prior policy memo (4/11/2011) sought to define recreation site license activities as "event based" and "activity based". It would be helpful to know if the types of qualified licensed events previously qualified as "event based" and or "activity based" are considered to be "competitive spectator sporting events" under the proposed new regulation.

The question may also be simply stated as: which if any of the facilities or sites listed in the excel file of Alaska recreation site licenses would not be considered a qualified licensee under the new regulations? Furthermore, are there problems presented in the operation of existing Recreation Site Licenses that deserve the attention of new regulations? If so, what are they and how does the new regulation address those problems?

My initial goal is to ensure that the changes proposed in the regulations do not compromise the qualifications to operate our licensed establishments, the "Blue Line Pub" and the "Gardens". Both of these establishments in our view are clearly involved in conducting competitive spectator sporting events. But if there are problems or concerns under the existing law, it would be helpful to learn from you (or staff), which if any of the existing recreation site licenses (as currently listed) would not be considered a qualified licensee under the new regulation and why.

O'Malley Ice Arena LLC  
11111 O'Malley Centre Drive  
Anchorage Alaska 99515

Page 2 of 2, July 22, 2013 Letter to Shirley Cote

Thank you for considering our comments.

Sincerely yours,

Steve Agni  
Co-Managing Member  
O'Malley Ice Arena LLC, (dba the Blue Line Pub)  
O'Malley Gardens LLC , (dba the Gardens)

O'Malley Ice Arena LLC  
11111 O'Malley Centre Drive  
Anchorage Alaska 99515

**Relevant documents from the Board of Directors'**  
**meeting of July 23, 2013, Tab 5**



THE STATE  
of ALASKA

GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5438  
Fax: 907.263.5930

## MEMORANDUM

TO: Robert Klein, Chair and  
Members of the Board

DATE: July 10, 2013

FROM: Shirley A. Coté *SAC*  
Director, ABC Board

RE: Recreational Site License

The recreational site license was discussed during public testimony at the board of directors' meeting held on May 30, 2013. You decided a special interim meeting was in order to take additional testimony and to decide the appropriate step to take to deal with requests for recreational site licenses that do not fit perfectly the examples given in statute.

### **Sec. 04.11.210. Recreational site license.**

- (a) The holder of a recreational site license may sell beer and wine at a recreational site during and one hour before and after a recreational event that is not a school event, for consumption on designated areas at the site.
- (b) The biennial fee for a recreational site license is \$800.
- (c) In this section, "recreational site" includes a location where baseball games, car races, hockey games, dog sled racing events, or curling matches are regularly held during a season.

The special meeting of the board was held on June 11, 2013 where the policy written April 11, 2011 was discussed. The policy (copy attached) evolved from two applications before the board at the December 13, 2010 board meeting. One was for a billiards establishment and the other an athletic club. The policy had been objected to from various people from different walks of life.

At the end of the June 11, 2013 meeting you decided the Chair and the Director would work together to develop a draft proposal for regulation for discussion at the July 23, 2013 meeting. The draft proposal is attached for discussion and approval.

3 AAC 304 is amended by adding a new section to read:

**3 AAC 304. Recreational Site License**

(a) A recreational site license authorizes the licensee to sell beer and wine on licensed premises located on the recreational site.

(b) A license may be issued only if an application is approved by the local governing body and the board, and the applicant does not hold a beverage dispensary license or a restaurant or eating place license.

(c) A recreational site license must be based upon a competitive spectator sporting event with a designated sport season, and with a starting time and an ending time.

(1) A competitive spectator sporting event includes baseball games, softball games, football games, soccer matches, dog sled races, hockey games, basketball games, curling matches, gymnastic meets, volleyball meets, car races, boating races, snow machine races, skiing races, and leagues or tournaments that includes golf, bowling, and billiards.





**STATE OF ALASKA**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**MEMORANDUM**



**To:** All ABC Board Staff

**Date:** April 11, 2011

**Telephone:** (907) 269-0351

**From:** Shirley A. Gifford *Dab*  
Director, ABC Board

**Subject:** Policy on Recreational Site  
Licenses

At the Board of Directors' meeting held in Anchorage, December 13-14, 2010 a discussion took place regarding recreational site licenses. Two separate applications were considered and approved at that meeting (The Summit, license #5004 and Beluga Billiards, license #5009). The recreational activities did not fit neatly under AS 04.11.210; however, the Board of Directors approved the licenses and requested that Assistant Attorney John Novak draft proposed changes to the statute.

Mr. Novak provided language for a proposed change that was considered by the Board at the meeting held in Juneau, March 24, 2011. After discussion by the members Mr. Novak offered his suggestions as policy as opposed to initiating a statute change. The members of the board agreed. The following is the policy by which we will consider recreational site license applications that includes the language of AS 04.11.210.

A recreational site license authorizes the licensee to sell beer and wine on licensed premises located on the recreational site. A license may be issued only if an application is approved by the local governing body and the board, and the applicant does not hold a beverage dispensary license or a restaurant or eating place license.

An event-based recreational site license will allow the licensee to sell beer and wine one hour before and one hour after an event. An event based recreational site license includes the following spectator sporting events, or other spectator sporting events having substantially similar characteristics - baseball games, softball games, football games, soccer matches, running events, skiing events, dog sled races, hockey games, basketball games, curling matches, gymnastic meets, volleyball meets, car racing events, and snow machine races.

An activity-based recreational site license will allow the licensee to sell beer and wine during times the recreational activity is taking place. An activity-based recreational site license includes the following recreational activities, or other recreational activities having substantially similar characteristics - baseball, softball, football, soccer, running, skiing, skating, dog sledding, curling, gymnastics, zip lines, volleyball, climbing, hiking, fitness activities, golf, bowling, billiards, hiking, rafting, and boating.



A recreational site license may not be issued if the licensed premise is within 200 feet of the property line for real property that is owned by, leased to, or rented to any public or private school, church, college, or university.

cc: John Novak, Assistant Attorney General

# Recreational Site Licenses

June 2013

| Lic # | Establishment Name                        | Issue Year /Seasonal Dates | City Name           | Borough Description          | Service Location                      | License Activity  | Exp Year |
|-------|---|----------------------------|---------------------|------------------------------|---------------------------------------|---|----------|
| 4895  | AK Tuesday Night Fights                   | 2012 - Transfer Full       | Wasilla             | Matanuska-Susitna Borough    | 1001 S. Mack Drive Wasilla            | Provide beverage during fight events                        | 2014     |
|       | Transferred from Alaska Golf-Shot 7/13/12 |                            |                     |                              |                                       |   |          |
| 3924  | Alaska Raceway Park                       | 1999 5/1 - 10/31           | Outside City Limits | Matanuska-Susitna Borough    | Sullivan Rd @ Mile 10.4 Old Glenn Hwy | Provide food & beverage to car racing spectators            | 2014     |
| 39    | Alaska State Fair                         | 1975 Full Year             | Palmer              | Matanuska-Susitna Borough    | 1 Mile South of Palmer                | Areas of food & beverage service within fairgrounds         | 2014     |
| 4881  | Alaska Travel Adventures                  | 2009 Full Year             | Juneau, City & Bor  |                              | 9999 Glacier Highway                  | Provide food & beverage in conjunction with tour activities | 2014     |
| 4722  | Alaska Wild Berry Products                | 2008 Full Year             | Anchorage, Mun. of  |                              | 5225 Juneau St                        | Provide beverage to theater attendees & tour lunch groups.  | 2014     |
| 4700  | Alaska Zipline Adventures                 | 2009 4/15 - 10/15          | Juneau, City & Bor  |                              | 3000 Fish Creek Rd                    | Provide beer and snacks after zipline and other activities  | 2014     |
| 3209  | Alaskalanes                               | 1992 Full Year             | Kenai               | Kenai Peninsula Borough      | 10639 Spur Hwy                        | Provide food & beverage to bowlers                          | 2013     |
| 1747  | Anchorage Bucs                            | 1982 5/1 - 10/31           | Anchorage, Mun. of  |                              | Mulchay Stadium - A St & 16th Ave.    | Provide food & beverage to baseball game attendees          | 2014     |
| 1314  | Anchorage Glacier Pilots                  | 1956 5/1 - 10/31           | Anchorage, Mun. of  |                              | Mulchay Stadium                       | Provide food & beverage to baseball game attendees          | 2013     |
| 4850  | Arctic Valley Ski Area                    | 2010 11/01 - 5/01          | Anchorage, Mun. of  |                              | 18800 Arctic Valley Road              | Skiing, snowboarding, snowshoeing, hiking and biking        | 2013     |
| 5009  | Beluga Billiards                          | 2010 Full Year             | Anchorage, Mun. of  |                              | 3841 W Dimond Blvd Ste 200            | Provide food & beverage to billiard players                 | 2013     |
| 196   | Capitol Speedway                          | 1978 5/1 - 10/31           | Outside City Limits | Matanuska-Susitna Borough    | Mile 75.5 Parks Hwy                   | Provide food & beverage to car racing spectators            | 2014     |
| 2982  | Carlson Community Center                  | 1990 Full Year             | Fairbanks           | Fairbanks North Star Borough | 2010 Second Ave                       | Provide food & beverage to arena event customers            | 2014     |
|       |   |                            |                     |                              |                                       |   |          |

**Recreational Licenses**

**June 2013**

| <b>Lic #</b> | <b>Establishment Name</b>                              | <b>Issue Year /Seasonal</b> | <b>City Name</b>                 | <b>Borough Description</b>   | <b>Service Location</b>                | <b>License Activity</b>  | <b>Exp Year</b> |
|--------------|--|-----------------------------|----------------------------------|------------------------------|--|--|-----------------|
| 4730         | Coming Attraction Theatres                             | 2011 - Transfer Full        | Wasilla                          | Matanuska-Susitna Borough    | 3331 E. Old Matanuska Road             | Provide food & beverage to cinema theater customers                            | 2014            |
|              | Transferred from Alaska Avalanche Hockey Club 11/19/09 |                             |                                  |                              |  |  |                 |
| 4897         | Denali Arts Council                                    | 2009 Full Year              | Outside City Limits              | Matanuska-Susitna Borough    | 22249 S D Street                       | Provide beverage to theater attendees  | 2014            |
| 4674         | Dimond Bowl  | 2008 Full Year              | Anchorage, Mun. of               |                              | 800 E Dimond Blvd #3-023               | Provide food & beverage to bowlers   | 2013            |
| 4678         | Fairbanks Junior Ice Dogs                              | 2008 Full Year              | Fairbanks                        | Fairbanks North Star Borough | 1920 Lathrop Street                    | Provide food & beverage to hockey customers                                    | 2014            |
| 4969         | Fireweed Meadows                                       | 2010 5/1 - 10/31            | Outside City Limits              | Kenai Peninsula Borough      | 72749 Milo Fritz Avenue                | Provide beverage to golfers primarily  | 2013            |
| 1842         | George Sullivan Arena                                  | 1983 Full Year              | Anchorage, Mun. of               |                              | 1600 Gambell Street                    | Provide food & beverage to arena event customers                               | 2014            |
| 3409         | Gold Creek Salmon Bake                                 | 1973 4/15 - 10/15           | Juneau, City & Bor               |                              | 1061 Salmon Creek Lane                 | Provide food & beverage in conjunction with tour activities                    | 2014            |
| 3323         | Home Run Concessions                                   | 2010 - Seasonal             | Wasilla                          | Matanuska-Susitna Borough    | 3091 Meadow Lakes Drive                | Provide beverage at events held at the Bumpus Field Complex                    | 2014            |
| 2101         | Kachemak Bowl  | 1984 Full Year              | Homer                            | Kenai Peninsula Borough      | 672 East End Rd                        | Provide food & beverage to bowlers   | 2014            |
| 5023         | Kenai River Brown Bears                                | 2011 - Full Year            | Soldotna                         | Kenai Peninsula Borough      | Soldotna Sports Center 530 Arena Drive | Provide beverage during hockey games   | 2014            |
| 4567         | Liarsville   | 2006 4/15 - 10/15           | Skagway Borough, Municipality of |                              | Mile 1 Liarsville Rd                   | Provide food & beverage to patrons; activities include goldpanning and theater | 2013            |
| 2931         | Mat-Su Miners  | 1990 4/1 - 9/30             | Palmer                           | Matanuska-Susitna Borough    | Hermon Brothers Field                  | Provide food & beverage to baseball game attendees                             | 2014            |
| 5194         | Minnesota Billiards                                    | No issue year               | Anchorage, Mun. of               |                              | 3020 Minnesota Dr. #3                  | Provide food & beverage to billiard players                                    | 2013            |
| 1789         | Mitchell Raceway                                       | 1983 5/1 - 9/30             | Outside City Limits              | Fairbanks North Star Borough | 5 Mile Peger Rd                        | Provide food & beverage to car racing spectators                               | 2013            |

# Recreational License Licenses

June 2013

| Lic # | Establishment Name                | Issue Year /Seasonal Dates | City Name           | Borough Description       | Service Location                       | License Activity   | Exp Year |
|-------|-----------------------------------|----------------------------|---------------------|---------------------------|--|--|----------|
| 4021  | North Star Speedway               | 2001<br>5/31 - 9/6         | Outside City Limits | Matanuska-Susitna Borough | 2151 Jensen Rd                         | Provide food & beverage to car racing spectators   | 2013     |
| 846   | Peninsula Oilers                  | 1967<br>4/1 - 9/30         | Kenai               | Kenai Peninsula Borough   | 103 S Tinker Lane                      | Provide food & beverage to baseball game attendees   | 2014     |
| 3968  | Subway Sports Centre/Blueline Pub | 2000<br>Full Year          | Anchorage, Mun. of  |                           | 11111 O'Malley Center Dr               | Provide food & beverage to arena event customers   | 2013     |
| 5095  | Taku Lanes, LLC                   | 2007<br>Full Year          | Juneau, City & Bor  |                           | 608 W Willoughby Ave, Juneau, AK 99801 | Provide food & beverage to bowlers   | 2014     |
| 4932  | The Gardens                       | 2009<br>Full Year          | Anchorage, Mun. of  |                           | 11051 O'Malley Centre Drive            | Events include roller derby, car shows, boxing, martial arts, volley ball, basketball. Not all events have alcohol served. | 2013     |
| 5004  | The Summit                        | 2010<br>Full Year          | Anchorage, Mun. of  |                           | 11001 O'Malley Centre Dr               | Provide beer & wine in social setting after recreational activity completed  | 2013     |

**Meeting minutes of the ABC Board Special Meeting  
to Discuss Recreational Site Licenses  
June 11, 2013**

**State of Alaska**  
**Alcoholic Beverage Control Board**  
**Meeting Minutes**  
**June 11, 2013**

Teleconference Meeting to Discuss Recreational Site Liquor Licenses

**Board Members Present:**

Bob Klein, Chair  
Ellen Ganley, Vice Chair  
Marvin Yoder, Member  
Bobby Evans, Member  
Ethan Billings, Member

**Staff Members Present:**

Shirley Côté, Director  
Christine Lambert, Records & Licensing Supervisor

**ABC Board Counsel Present:**

Harriett Milks, Assistant Attorney General

Discussion was concentrated on recreational site licenses and the current policy of the ABC Board concerning the definition of a recreational site.

3:06:12 PM Harriett Milks addresses the Board regarding the recreational site license statute, legislative intent history, and ABC Board policy

3:28:01 PM Public Testimony Begins

3:55:17 PM Public Testimony Ends

3:55:47 PM Board members discussion begins

4:11:44 PM Board members discussion ends

Chair and Board members request staff begin the process of drafting regulation for the recreational site license to be presented at the July Board meeting. The regulation would encompass policy past and present, concerns presented by Board members and the public during the recreational site discussions.

4:11:50 PM Director requests motion to change wording of 5/30/13 motion from "I move to approve 3 AAC 104." to "I move to approve 3 AAC 304"

4:12:46 PM Bob Klein entertains a motion to "approve 3 AAC 304 Wine Clubs as written" Ellen Ganley moves to approve



Ethan Billings seconds the motion

4:12:53 PM Roll call vote – Approved 5-0 – Motion carried

4:13:46 PM Change next Board meeting to 7/23/13.

4:14:51 PM Meeting adjourned

Minutes reviewed & approved by:

Shirley A. Côté, Director Shirley A. Côté

Date: 7/12/13

Christine C. Lambert, Rec. & Lic. Supervisor Christine C. Lambert

Date: 7-12-13

**Relevant documents from the Board of Directors'**  
**meeting of May 30, 2013, Tab 29**





**STATE OF ALASKA**  
**Department of Public Safety**  
**Alcoholic Beverage Control Board**  
**MEMORANDUM**



**To:** All ABC Board Staff

**Date:** April 11, 2011

**Telephone:** (907) 269-0351

**From:** Shirley A. Gifford *SAG*  
Director, ABC Board

**Subject:** Policy on Recreational Site  
Licenses

At the Board of Directors' meeting held in Anchorage, December 13-14, 2010 a discussion took place regarding recreational site licenses. Two separate applications were considered and approved at that meeting (The Summit, license #5004 and Beluga Billiards, license #5009). The recreational activities did not fit neatly under AS 04.11.210; however, the Board of Directors approved the licenses and requested that Assistant Attorney John Novak draft proposed changes to the statute.

Mr. Novak provided language for a proposed change that was considered by the Board at the meeting held in Juneau, March 24, 2011. After discussion by the members Mr. Novak offered his suggestions as policy as opposed to initiating a statute change. The members of the board agreed. The following is the policy by which we will consider recreational site license applications that includes the language of AS 04.11.210.

A recreational site license authorizes the licensee to sell beer and wine on licensed premises located on the recreational site. A license may be issued only if an application is approved by the local governing body and the board, and the applicant does not hold a beverage dispensary license or a restaurant or eating place license.

An event-based recreational site license will allow the licensee to sell beer and wine one hour before and one hour after an event. An event based recreational site license includes the following spectator sporting events, or other spectator sporting events having substantially similar characteristics - baseball games, softball games, football games, soccer matches, running events, skiing events, dog sled races, hockey games, basketball games, curling matches, gymnastic meets, volleyball meets, car racing events, and snow machine races.

An activity-based recreational site license will allow the licensee to sell beer and wine during times the recreational activity is taking place. An activity-based recreational site license includes the following recreational activities, or other recreational activities having substantially similar characteristics - baseball, softball, football, soccer, running, skiing, skating, dog sledding, curling, gymnastics, zip lines, volleyball, climbing, hiking, fitness activities, golf, bowling, billiards, hiking, rafting, and boating.

A recreational site license may not be issued if the licensed premise is within 200 feet of the property line for real property that is owned by, leased to, or rented to any public or private school, church, college, or university.

cc: John Novak, Assistant Attorney General



THE STATE  
of ALASKA

State of Alaska, Department of Commerce, Community, and Economic Development

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5437  
Fax: 263-5930

March 14, 2013

The Honorable Hollis French  
Senator  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

RE: Recreational Site Licenses

Dear Senator French,

I am in receipt of your letter dated March 13, 2013 regarding the policy for issuing and approving recreational site licenses. I attended the Spenard Community Council meeting of March 6<sup>th</sup> and heard the concerns of the citizens who live in the area of Minnesota Billiards, an applicant for a recreational site license. Although the end result to the council meeting was that the attorney for Minnesota Billiards was going to present conditions at the council meeting in April, I have advised Bob Klein, the chair for the ABC Board as well as the Licensing subcommittee of the ABC Board Stakeholders Group of this issue.

I spoke with Cindy Smith in your office on March 5<sup>th</sup> and was impressed by her comment that policies (as opposed to statutes and regulations) are good only as long as they work. I assure you we are taking this issue seriously. If all steps in the local governing body process are completed on the Minnesota Billiards application by May 30<sup>th</sup> the board of directors will take this issue up at that meeting. Regardless, I will include your letter in the board packet for their consideration.

If you have any questions, please contact me. Thank you for your concern.

Sincerely,

A handwritten signature in cursive script that reads "Shirley A. Cote".

Shirley A. Cote  
Director  
(907) 263-5928  
shirley.cote@alaska.gov

cc: Robert Klein, Chair, ABC Board  
Susan Bell, Commissioner, DCCED  
Daniel Patrick O'Tierney, Deputy Commissioner, DCCED  
Crystal Koeneman, Special Assistant to the Commissioner, DCCED



# ALASKA STATE LEGISLATURE



SENATOR HOLLIS FRENCH

March 13, 2013

Ms. Shirley Cote, Director  
Alcoholic Beverage Control Board  
5848 E. Tudor Road  
Anchorage, Alaska 99507

Dear Ms. Cote:

Recently, issues before the Spenard Community Council came to my attention that highlighted the application by full-time businesses for recreational site licenses. I have reviewed the statute and the ABC board policy dated April 11, 2011, and am concerned that the policy can, and apparently is being used as a mechanism to acquire beer and wine licenses for businesses operating on a full-time, year-round basis.

Alaska Statute 04.11.210 was adopted to provide licenses for events such as baseball games, car races, and so forth. The events listed in the statute as examples are all, by nature, event-driven. There is no legislative history that would indicate that this was intended to be used by full-time businesses, for which there are already regular licenses available. I believe the board is on tenuous ground operating on a 2-year old "policy" rather than properly adopted regulations, but my main concern is that these licenses not be issued in a way that increases the total number of full-time beer and wine licenses beyond the board's population restrictions.

I am not in any way opposed to either the proper issuance of beer and wine licenses to businesses, or to licenses for recreational events, but I do not think that using the recreational site license where the recreation in question is a full-time business is appropriate.

I encourage the board to review this issue, and look forward to hearing from you regarding the Board's thoughts on the matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hollis French", written over a horizontal line.

Senator Hollis French



Date: May 20, 2013

To: Alcoholic Beverage Control Board of Directors

From: Anchorage CHARR Board of Directors

[cc:] Shirley Cote, Executive Director Alcoholic Beverage Control Board  
Sean Parnell, Governor State of Alaska  
Susan Bell, Commissioner Department of Commerce, Community and Economic Development

Re: Recreational Licenses

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The intent of this letter is to notify you about our concerns pertaining to Recreational Licenses. At the April 2013 board meeting, the Anchorage CHARR board of directors objected to the following: 1) granting Recreational Licenses to businesses who we feel do not meet the requirements of the law as written in Title 4 Sec. 04.11.210. 2) At an ABC board meeting held on December 2010 at which two separate applications were discussed, considered and approved and although the ABC board at that time felt the recreational activities did not meet or fit neatly under the code, the applications were moved forward and approved. It seemed to us the Board did not feel comfortable in issuing the licenses and requested for the Assistant Attorney at that time John Novak to draft proposed changes to the regulation (copy attached) mainly authorizing the licensee to sell beer and/or wine on licensed premise located on a recreational site and opening the qualification so broadly that just about any recreational or sports facility can qualify for a license.

Currently, we are observing more businesses applying for Recreational Licenses due to the changes made by Mr. Novak accommodating almost every recreational facility to fit under the regulation.

The Anchorage CHARR Board of Directors supports its mission which is to represent and protect the responsible owner. We represent over 200 businesses within the hospitality industry in Anchorage. Anchorage CHARR has been stalwart in defending the rights of our members by being pro-active in particular on issues which eventually would impact the industry as a whole.

We are often accused of objecting to applications because we do not like competition. This is a false statement and under no circumstances would we object to a true business applying for any type of license, we have and always will be for the growth of our industry in our city.

We are asking the ABC board of directors to review Mr. Novak's changes to the regulation, at how the changes made allows almost any facility to qualify for a license; making sure applicant meets the requirements and how the process is implemented.

Thank you for your consideration of this request.

**Tab**

**5**



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5438  
Fax: 907.263.5930

**MEMORANDUM**

TO: Robert Klein, Chair and  
Members of the Board

DATE: November 26, 2013

FROM: Shirley A. Coté *dae*  
Director, ABC Board

RE: Request for transfer of security interest, Alaska  
Roadhouse Bar & Grill (from LDG, Inc.),  
License # 838

The complexities of License #838 began in 1998. The license holder at the time was Larry Gjovig of LDG, Inc., d/b/a J Bar B Club (J Bar B) located at Mile 101.5 Sterling Highway in the Kenai Peninsula Borough. At that time an innocent bystander, Tracy Eason was assisting a J Bar B Club employee by driving the employee to the house of a customer's girlfriend. The intention was to pick the girlfriend up and take her to J Bar B in order to drive her boyfriend, R.V. Freeman home. Freeman had been heavily drinking at the bar. When the employee and Ms. Eason arrived at the house Freeman was already there and had killed his girlfriend. He then shot and killed Ms. Eason (and was convicted on both counts). In a dram shop action the two children left by Ms. Eason were awarded an amount that, with interest, exceeds one million dollars.

In 2008 Larry Gjovig died and his estate transferred the license to Alaska Roadhouse Bar & Grill. Efforts over the years by attorneys for Ms. Eason's estate and LDG, Inc. have been to keep the license alive. At the same time representatives of LDG, Inc. prefer to dissolve, or to transfer its shares of stock to the Eason estate.

I have conferred with Assistant Attorney General Harriet Milks and she could find no authority that would prevent the transfer of a security interest in a liquor license, provided that the security interest was perfected pursuant to AS 04.11.360(4)(B) and 3 AAC 304.107, and provided that the transfer of the security interest is approved by the board (AS 04.11.040), because the executor cannot transfer the interest to the estate automatically. (AS 04.11.030(d)). In the event an involuntary retransfer is necessary it is the intention that the license would be transferred.



REEVES AMODIO LLC  
ATTORNEYS AT LAW



November 25, 2013

**VIA EMAIL ([shirley.cote@alaska.gov](mailto:shirley.cote@alaska.gov))**

Ms. Shirley Cote  
Director  
Alcoholic Beverage Control Board  
5848 East Tudor Road  
Anchorage, AK 99507

Re: Request for Approval Relating to LDG, Inc.,  
Former Owner of License Number 838  
Now owned by Alaska Roadhouse Bar & Grill

Dear Shirley:

Thank you for the opportunity to present this unusual issue to the ABC Board. As you know, I represent LDG, Inc. ("LDG"), which formerly owned License No. 838 (the "License"). LDG is a corporation whose sole shareholder, Larry Gjovig, died in 2008. Thereafter, Mr. Gjovig's Estate (the "Estate") had ownership of the License until last year, when it sought and received approval from the ABC Board to transfer it to Alaska Roadhouse Bar & Grill. LDG retained a secured, reversionary interest in the License until such time as the purchase price is paid in full. LDG now seeks ABC Board approval of one of the following two options, as explained more fully below: (1) Allow LDG to dissolve, and let its assignee (if necessary) enforce its reversionary rights in and to the License; (2) Allow LDG to assign all of its shares of stock to its assignee.

As part of the transfer, LDG sought and obtained approval to assign its reversionary interest in the License to Robert Brown, the personal representative of the Estate of Tracy Eason (the "Eason Estate"), which had obtained a large judgment against LDG. Having received ABC Board approval, LDG assigned all of its rights and interests in and to the License, and payments for the purchase price therefor, to the Eason Estate. Thus, the Eason Estate is LDG's lawful assignee as to its secured interest in the License.

LDG has no assets whatsoever, other than its interest in the License, and that interest has been lawfully assigned to the Eason Estate. Furthermore, as noted, LDG's sole shareholder, Mr. Gjovig, died back in 2008, and his Estate succeeded to Mr. Gjovig's interest in the corporation. The probate court has allowed the Gjovig Estate to remain open until the Eason Estate's claims against LDG (and potentially against the Gjovig Estate) had been fully resolved. LDG has reached a settlement with the

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Suite 300  
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Alaska  
99501

*Telephone*  
(907) 222-7100  
*Facsimile*  
(907) 222-7199  
*Website*  
[www.reevesamodio.com](http://www.reevesamodio.com)



Ms. Shirley Cote  
Director, ABC Board  
November 25, 2013  
Page 2

Eason Estate, and therefore it is expected that the probate court will direct the Gjovig Estate to close out after distributing its assets to Mr. Gjovig's beneficiaries. Under the circumstances, the normal course would include dissolving LDG, the corporation. However, LDG does not want to prejudice the rights of the Eason Estate, if necessary, to foreclose on its assigned interest in the License, and transfer it to a third party, subject to ABC Board approval.

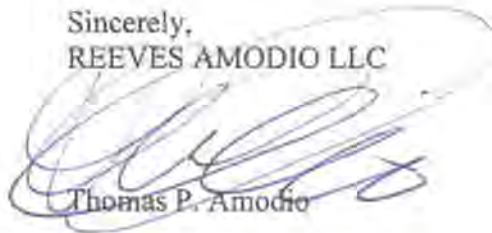
Both LDG and the Eason Estate would prefer that LDG be allowed to dissolve, but permit the Eason Estate to enforce the rights assigned to it by LDG, if necessary. The alternative would be for LDG to transfer all of its shares of stock to the Eason Estate or, if that is not feasible, to an agent or representative of the Eason Estate, such as its Personal Representative.

Accordingly, LDG seeks ABC Board guidance and approval either to:

- (1) Allow LDG to dissolve, without any prejudice to the Eason Estate's ability to enforce LDG's rights in and to the License, should it become necessary; or
- (2) Allow LDG to transfer all of its shares of stock in the corporation to the Eason Estate or its agent or representative.

Please call me if you have any questions regarding this matter.

Sincerely,  
REEVES AMODIO LLC



Thomas P. Amodio

Cc: John Hedland (via email)  
Sarah Oates, ABC (via email)  
Russell Gjovig, Personal Representative (via email)  
Erik Leroy (via email)

LAW OFFICES  
**HEDLAND, BRENNAN & HEIDEMAN**  
A PROFESSIONAL CORPORATION

FROM THE DESK OF:  
JOHN S. HEDLAND  
ATTORNEY AT LAW  
OF COUNSEL  
jhedland@hbhc.alaska.net

September 20, 2011

Ms. Shirley Gifford, Director  
Alcoholic Beverage Control Board  
Alaska Department of Revenue  
5848 E. Tudor Road  
Anchorage, Alaska 99507

Re: Application for Waiver of Operation; License No. 838; L.D.G., Inc. —J Bar B

Dear Ms. Gifford:

This office represents Robert J. Brown, personal representative of Tracy Eason, deceased, whose children were Jordan Lee Eason and Justin Terrance Eason, ages 5 and 7, respectively, at the time of her death. For the reasons set out below, I am writing to urge that the Board approve the Waiver of Operation Application filed by L.D.G., Inc. with respect to the above described license which I understand to be presently on the agenda at the December, 2011 board meeting.

In a dramshop action filed by Mr. Brown on behalf of Ms. Eason's children, judgment has been entered in favor of the children against L.D.G., Inc., that, with accrued interest, is currently in an amount that exceeds one million dollars. However, due to lack of insurance or other liquid assets, the children have, at this point, received nothing in compensation for their mother's death. Following the death of Mr. Larry Gjovig, the sole owner of the stock in L.D.G., Inc., his estate and L.D.G., Inc. entered into an agreement to the effect that the real estate upon which the licensed premises are located, and license number 838, would be sold, subject to the Board's approval and the proceeds applied to satisfaction of the judgment in favor of the children of Tracy Eason. The real estate and license are listed for sale, but due to current market conditions in the Kenai area, no sale has yet been accomplished or appears to be imminent.

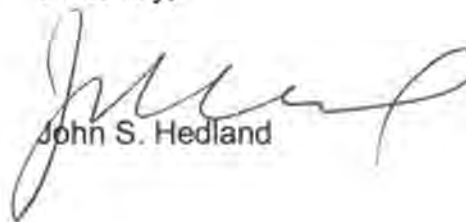
The Gjovig Estate closed the J Bar B in late 2010, and apparently believes that there is no realistic way to operate the license without incurring unnecessary hardship and inconvenience in order to comply with the 30 day operation requirement for calendar year 2011. It therefore filed an application for waiver of that requirement. If the license is revoked for dormancy, it will lose all value and the real estate where the premises are located will likely also suffer a significant decline in value. The result could well be that the children of Tracy Eason never receive any compensation for the tragic loss of their mother.

Ms. Shirley Gifford, Director  
Alcohol Beverage Control Board  
September 20, 2011  
Page 2

Thus, revocation of the license for failure to meet the 30 day operation requirement could cause hardship to the innocent children of Tracy Eason. At present, the Board is scheduled to consider the application at the December meeting which unfortunately occurs less than 30 days before the end of 2011. If the Board feels constrained to deny the application, it will be too late thereafter for L.D.G., Inc. to operate the premises such as to prevent dormancy unless operations commence prior to consideration of the waiver action. Accordingly, I urge the board to approve the application and, if there is any possible way to do it, arrange for consideration of the application sufficiently in advance of December 1 so that, if it is denied, L.D.G., Inc. can still open the premises for operations that will prevent the license from being revoked.

Thank you very much for your attention. I will be happy to provide any information or answer any questions that the board or staff may have.

Sincerely,



John S. Hedland

JSH:rs  
3327.1\042  
cc: Tom Amodio, Esq.  
Erik LeRoy, Esq.

REEVES AMODIO LLC  
ATTORNEYS AT LAW



August 31, 2011

*Direct Phone*  
(907) 222-7104

*Direct Facsimile*  
(907) 222-7199

*E-Mail*  
tom@reevesamodio.com

**VIA FACSIMILE (272-9412) AND U.S. MAIL**

Ms. Shirley Gifford  
Director  
Alcoholic Beverage Control Board  
5848 East Tudor Road  
Anchorage, AK 99507

Re: Application for Waiver of Operation  
License Number 838; LDG, Inc. – J Bar B

Dear Ms. Gifford:

I am writing on behalf of LDG, Inc. (“LDG” or the “Licensee”), License No. 838, to request a waiver of the requirement that, for a license to be renewed, the licensed premises must be operated for at least 30 days in each of the two preceding years. *See* AS 04.11.330(a)(3). However, the Board may waive this requirement if the premises “cannot be operated through no fault of the applicant.” *Id.* The Board’s regulations further note, that in an application for waiver, a licensee “must explain why the licensed premises were not operated.” 13 AAC 104.170(d) (formerly 15.104.170(d)).

In this instance, the Licensee has been unable to operate the J Bar B, the licensed premises (the “Bar”), through no fault of its own and thus qualifies for the exception to this requirement. The Licensee, LDG, is a corporation whose sole shareholder, Larry Gjovig, died in 2008. Despite his death, Mr. Gjovig’s Estate (the “Estate”) continued to operate the Bar until sometime in 2010. However, the Estate of Tracy Eason (the “Eason Estate”) obtained a large judgment against LDG and began executing against its bank accounts, leaving LDG with insufficient funds to pay its federal payroll tax withholdings and other obligations resulting from its operation of the Bar. Accordingly, the Estate had to close the Bar. In addition, the Estate is concerned that it lacks the requisite expertise and ability to continue operating the licensed premises. The Estate is currently attempting to sell the Bar and License.

Under the circumstances, LDG plainly qualifies for a waiver of the requirement that, for a license to be renewed, the licensed premises must be operated for 30 days in each of the two preceding years. As shown by the above explanation, the Estate attempted to operate the premises—and did in fact operate the premises—but had to discontinue operations through no fault of its own. LDG therefore respectfully asks that the Board grant its request for a Waiver of Operation. *See*

500 L  
STREET  
Suite 300  
ANCHORAGE  
Alaska  
99501

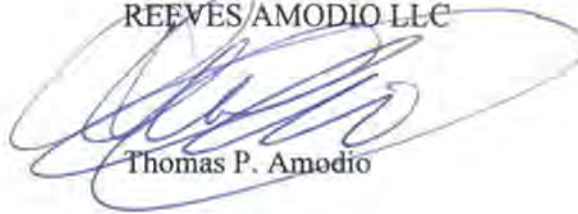
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*Facsimile*  
(907) 222-7199  
*Website*  
www.reevesamodio.com

Ms. Shirley Gifford  
Director, ABC Board  
August 31, 2011  
Page 2

enclosed Application for Waiver of Operation, which LDG hereby submits along with the applicable waiver fee of \$1,250.00. This is LDG's first request for such a waiver.

Please call me if you have any questions regarding this matter.

Sincerely,  
REEVES AMODIO LLC



Thomas P. Amodio

Enclosure

Cc: Russell Gjovig, Personal Representative  
Erik LeRoy  
Kenai Peninsula Borough



LAW OFFICES  
**HEDLAND, BRENNAN & HEIDEMAN**  
A PROFESSIONAL CORPORATION

FROM THE DESK OF:  
JOHN S. HEDLAND  
ATTORNEY AT LAW  
OF COUNSEL  
jhedland@hbhc.alaska.net

July 21, 2009

Alcohol Beverage Control Board  
Alaska Department of Revenue  
550 W. 7<sup>th</sup> Avenue  
Anchorage, Alaska 99501


Re: Beverage Dispensary License 838, J-Bar-B Club

Dear Sir/Madam:

Please refer to my prior letters of May 1, 2001 and August 7, 2006. The Alaska Supreme Court has upheld the judgment previously entered in favor of Robert J. Brown as personal representative of Tracy N. Eason against L.D.G. Inc., owner of Beverage Dispensary License 838 and operator of the J-Bar-B Club. L.D.G. Inc., v. Brown, Op. no. 6390, July 10, 2009. With interest, the judgment exceeds \$1 million. Mr. Gjovig, the owner of the stock in L.D.G. Inc., has died and the licensed facility is apparently being operated by his estate. We continue to object to any transfer of the license unless and until the judgment has been satisfied, and expect to commence formal proceedings to execute against it in the near future.

Thank you for your attention.

Sincerely,

  
John S. Hedland

JSH:kms  
3327.1\ABCB3

LAW OFFICES  
**HEDLAND, BRENNAN & HEIDEMAN**  
A PROFESSIONAL CORPORATION

FROM THE DESK OF:  
JOHN S. HEDLAND  
ATTORNEY AT LAW  
OF COUNSEL  
jhedland@hbhc.alaska.net

August 7, 2006

Alcohol Beverage Control Board  
Alaska Department of Revenue  
550 W. 7<sup>th</sup> Avenue  
Anchorage, Alaska 99501

Re: Beverage Dispensary License 838, J-Bar-B Club

Dear Sir/Madam:

Please refer to my letter of May 7, 2001. Enclosed for your records is a copy of a judgment in favor of Robert J. Brown, personal representative of Tracy Eason, and against L.D.G., Inc, holder of Beverage Dispensary License 838. We hereby reiterate Mr. Brown's objection to the transfer of the license unless and until the judgment has been satisfied.

I would appreciate being kept informed of any attempt to transfer the license. Please let me know if you have any questions. Thank you for your cooperation.

Sincerely,



John S. Hedland

Enclosure  
JSH/rs  
3327.1\ABCB2



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT J. BROWN, Personal Representative )  
of Tracy N. Eason, Deceased, )  
Plaintiff, )

v. )

L.D.G., INC., an Alaska Corporation, and )  
LARRY GJOVIG, )  
Defendants. )

Case No. 3KN-00-513 CI

Final Judgment

It is ordered that judgment is entered as follows:

1. Justin Eason (d/o/b 12/13/1990) shall recover from and have judgment  
against Defendant L.D.G., Inc., as follows:

a. Principal Amount \$ 350,970.00

b. Prejudgment interest on \$98,726.00  
(computed at the annual rate of 8.25% from  
May 5, 2000 to July 25, 2006) \$ 50,699.18

c. Sub-Total \$ 401,669.18

d. Attorney's Fees \_\_\_\_\_

Date Awarded:

Judge:

e. Costs \_\_\_\_\_

Date Awarded:

Clerk:

f. Total Judgment: \_\_\_\_\_

g. Post-Judgment Interest Rate: 8.25%

2. Jordan Eason (d/o/b 7/10/1993) shall recover from and have judgment against Defendant L.D.G., Inc., as follows:

a. Principal Amount \$ 394,140.00

b. Prejudgment interest on \$ 98,726.00  
(computed at the annual rate of 8.25% from  
May 5, 2000 to July 25, 2006) \$ 50,699.18

c. Sub-Total \$ 444,839.18

d. Attorney's Fees \_\_\_\_\_

Date Awarded:

Judge:

e. Costs \_\_\_\_\_

Date Awarded:

Clerk:

f. Total Judgment: \_\_\_\_\_

g. Post-Judgment Interest Rate: 8.25%

3. Defendant Larry Gjovig is awarded judgment against Plaintiff.

DATED 7/25/06

Morgan Christen  
Morgan Christen  
Superior Court Judge

I certify that on this 25 day of  
7, 2006, a true and correct  
copy of the foregoing was served by  
(X) mail ( ) fax ( ) hand upon:  
Hedland; Robinson

Hilary Williams  
Hilary Williams  
Administrative Assistant

I hereby certify that this is a true and correct  
copy of the original on file in my office.

ATTEST:

By [Signature] Clerk of the Trial Court:  
Deputy: 7-28-06

LAW OFFICES

**HEDLAND, BRENNAN, HEIDEMAN & COOKE**  
A PROFESSIONAL CORPORATION

**ANCHORAGE:**

JOHN S. HEDLAND  
JAMES T. BRENNAN  
SARA E. HEIDEMAN  
AMY L. VAUDREUIL  
PATRICK M. ANDERSON

1227 WEST NINTH AVENUE, SUITE 300

ANCHORAGE, ALASKA 99501-3218

TELEPHONE (907) 279-5528

TELEFAX (907) 278-0877

**BETHEL OFFICE:**

251 SEVENTH AVENUE

P. O. BOX 555

BETHEL, ALASKA 99559

(907) 543-2744

**BETHEL:**

CHRISTOPHER R. COOKE  
JIM J. VALCARCE

May 7, 2001

VIA FACSIMILE & U.S. MAIL

Alcohol Beverage Control Board  
Alaska Department of Revenue  
550 W. 7<sup>th</sup> Avenue  
Anchorage, Alaska 99501

Re: Beverage Dispensary License 838, J-Bar-B Club

Dear Sir/Madam:

This office represents Robert J. Brown, personal representative of Tracy Eason who was murdered near Soldotna, Alaska, on July 17, 1998. R.V. Freeman has been convicted of first degree murder of Ms. Eason and also of Jeannie Iwaszko.

On behalf of Ms. Eason's children, the personal representative has brought an action against the J-Bar-B's owner, LDG, Inc., and its principal, Larry D. Gjovig. At the time of her death, Ms. Eason was assisting an LDG, Inc. employee to deal with Mr. Freeman, who had been drinking heavily at the J-Bar-B and was in no condition to drive. Ms. Eason drove the bartender to Mr. Freeman's house to bring his girlfriend back to the bar to drive him home. However, when they arrived at the Freeman house, Mr. Freeman was already there and killed his girlfriend, Ms. Iwaszko, and Ms. Eason in a drunken rage. Ms. Eason was an innocent bystander, the target of his rage being Ms. Iwaszko.

We believe that LDG, Inc. and Mr. Gjovig are liable under dram shop principles for serving a drunken person, and under the workers' compensation statute, for failure to secure workers compensation benefits on behalf of Ms. Eason who was, at the time in question, an emergency employ of LDG, Inc. See A.S. 23.30.080. Trial of the case is scheduled for this fall. Mr. Brown, as personal representative, thus has unliquidated claims against LDG, Inc.

Under AS 04.11.360(4), a liquor license may not be transferred unless the transferor has paid all debts arising from the conduct of the licensed business. We believe the contingent liability arising out of the above-described claim is a debt within the meaning

Alcohol Beverage Control Board  
May 7, 2001  
Page 2

of that section, which cannot be liquidated until trial. Accordingly, Mr. Brown objects to the transfer of the license issued to LDG, Inc., No. 838, unless and until the obligations arising out of the litigation have been satisfied.

I would appreciate being kept informed of any attempt to transfer the license. Please let me know if you have any questions. Thank you very much for your cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "John S. Hedland", is written over the printed name.

John S. Hedland

JSH/tw

cc: Robert J. Brown  
3327.1\ABCB

**Tab**

**6**



THE STATE  
of ALASKA  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5438  
Fax: 907.263.5930

MEMORANDUM

TO: Robert Klein, Chair and  
Members of the Board

DATE: December 2, 2013

FROM: Shirley A. Coté *SAC*  
Director, ABC Board

RE: Pioneer Bar Transfer with Security Interest,  
License #866

I received Attorney Dan Coffey's Memo and Notice of Security Interest in Beverage Dispensary Liquor License via e-mail from his secretary on November 27, 2013. Because what Mr. Coffey was suggesting was the responsibility of the Board and the Director was contrary to how we have dealt with security interests over the years I contacted Assistant Attorney General Harriet Milks.

3 AAC 304.107 governs the compelled retransfer of a license. There are two triggering events: (1) a promise under AS 04.11.670 (or .360(4)(B)) given as collateral in the course of a transfer and (2) default. If those things don't happen – followed by a request to the board for approval of a compelled retransfer, the board has no authority to get involved in examining the status of licensee's security interests. In this case, there is no mention of a default and we have no way to know whether the claimed secured interest will ever be raised in a request for approval of a compelled retransfer. So, there is no statutory authority or regulatory precedent for doing what Mr. Coffey is asking you to do.

The regulatory provision Mr. Coffey cites – 3 AAC 307.107(b) relates to the director's discretionary recognition on the agenda of applications for transfer that are secured as described in that section – the director "may," but need not identify applications. I am not authorized by this section, much less obligated, to identify any transfer as being secured. For the same reasons, the Board has no obligation – outside of a request for compelled transfer – to make a finding that any transfer was a secured transaction, as Mr. Coffey suggests it does.

I advised Mr. Coffey that I would be in touch with our counsel, AAG Milks and he posed the following questions in an email on November 28<sup>th</sup>:

1. Should the staff know during the application process whether or not the transfer if intended to be a secured transaction?
2. Shouldn't the staff review the transfer application to insure that all of the requirements have been met?
3. If the requirements have not been met shouldn't the staff tell the applicant and the Board that there requirements have not been met?
4. If there is full compliance with the requirements, then shouldn't the staff tell the Board that the transfer does comply and is a secured transaction?



DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

*Sean Parnell, Governor*  
*Susan K. Bell, Commissioner*

5. If there is full compliance with the requirements, then what is the harm in the Board finding, at the time of the approval of the transfer, that the transaction is, in fact, a secured transaction?

The answers to the first four questions are "No" because there is no statutory authority for such responsibility. The answer to the fifth question is that the harm is that if the Board did as Mr. Coffey suggests, the Board would be acting without statutory authority.



# **MEMO**

## **LAW OFFICES OF Ernouf & Coffey, P.C.**

**3606 Rhone Circle, Suite 100  
Anchorage, Alaska, 99508**

Facsimile: (907) 274-4258

Phone: (907) 274-3385

E mail: [dancoffey@gci.net](mailto:dancoffey@gci.net)

TO: Alcoholic Beverage Control Board  
CC: Shirley Gifford & Sarah Oates  
FROM: Ernouf & Coffey, P.C.  
Dan Coffey  
RE: Pioneer Bar Stock Sale  
DATE: 11-27-13

I represent Denny and Connie French and Bill Seltenreich, the prior shareholders in the corporation that owns the Pioneer Bar. The purpose of this Memo is to address an issue related to the transfer of all of the stock in Old Timers, Incorporated and to insure that the Board has recognizes this license transfer as a secured transaction.

Attached to this Memo is a Notice of Security Interest. As required, a copy of this Notice, along with all of the other Transaction Documents, was filed with the Board at the time the application for transfer was filed, long before this matter was placed on the Board's delegated consent agent. Because this transfer was put on the delegated consent agenda, pending notification of non-protest by the Municipality of Anchorage, the director never identified this transfer as a secured transaction as permitted under 13 AAC 104.107 (b).

This regulatory provision states as follows:

*(b) The director may identify, in board meeting agendas, those applications for transfer of ownership that are secured as described in this section.*

Since this transfer was never identified by the director as a secured transaction, the Board never made a finding that this transfer was a secured transaction. The purpose of my appearance is to request that the Board make the finding that this transfer is a secured transaction.

I am making this request for a specific finding in order to eliminate the risk of any future problems for my clients. It is very important that the director identify every transfer that is intended to be a secured transfer and for the Board to find that, in fact, the transfer is a secured transaction. The fact that the Board, at the time of the initial transfer, makes a finding that transfer is a secured transaction, there can be no subsequent confusion or uncertainty about that issue. In addition, if there is some deficiency in the transfer process that makes the transfer other than a secured transaction, that deficiency can be corrected prior to the initial transfer.

If the director is required to give notice to the Board as provided in the regulation cited above, the staff will scrutinize the transfer before the Board considers it and any deficiency can, and hopefully, will be identified and corrected so that the parties, having fulfilled all of the statutory and regulatory requirements for a secured transaction, will have the protections intended by the law and the regulations.

As stated, the purpose of my appearance request is to allow the Board to make the specific finding as set out in the Notice of Security Interest that is attached to the effect that the sale of the stock in the Pioneer Bar transaction is a secured transaction and that the Notice of Security Interest that was filed with the Board accurately reflects the Board's determination that this transfer was a secured transaction.

Thank you for your consideration of this matter.

DATED at Anchorage, Alaska this 27 day of November 2013.

Ernouf & Coffey, P.C.

By: 

Dan K. Coffey, Of Counsel  
Ak Bar No. 75-05011

## **NOTICE OF SECURITY INTEREST IN BEVERAGE DISPENSARY LIQUOR LICENSE**

NOTICE IS HEREBY GIVEN to the Alcoholic Beverage Control Board and to any and all present or future creditors of Old Timers, Incorporated, hereinafter "Licensee, operating Beverage Dispensary Liquor License # 866;

THAT the Prior Shareholders of the Licensee, Dennis French, Connie French and William Seltenreich and the Seltenreich Family Trust, (hereinafter "Prior Shareholders") sold 100% of the stock in the Corporation to David Croffut and Michael Ward, (hereinafter "Current Shareholders"; and

THAT the Prior Shareholders financed the sale of the stock in the Licensee and, as a result, retain a Purchase Money Security Interest in the License under the terms of AS 04.11.670, AS 04.11.360(4)(B), and 13 AAC 104.107, which interest was created concurrent with the prior transfer of the stock in the Licensee; and

THAT the transfer of the stock from the Prior Shareholders to the Current Shareholders was recognized and approved by the Board on \_\_\_\_\_, 2013 as a secured transaction under the provisions of the statutes and regulation cited herein; and

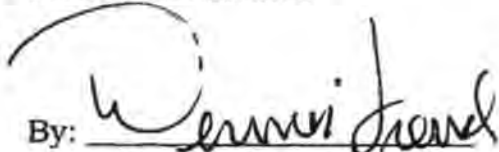
THAT the Board also determined that the Prior Shareholder's security interest in the license is not subject to the ten (10) year limitation on personal property as provided in 13 AAC 104.104 (c) (2) because the security interest is based on the sale of stock and the transaction also involved real property, i.e. the land and building wherein the Licensee conducts its business; and

THAT, as a result of the transfer of all of the corporate stock, under the terms of AS 04.11.670, AS 04.11.360(4)(B), and 13 AAC 104.107, the Prior Shareholders, in the event of the Current Shareholders' default in their obligations to the Prior Shareholders, have the absolute right to retransfer of the stock and to transfer the License without satisfaction of other creditors.

The documents pertinent to this transfer are on file at the Alcoholic Beverage Control Board.

DATED this 18 day of October 2013 at Anchorage, Alaska.

Prior Shareholders

By:   
Dennis French

By:   
Connie French


By:   
William Seltenreich

The Seltenreich Family Trust

By:   
William Seltenreich  
Trustee

Current Shareholders

By:   
David Croft

By:   
Michael Ward

**Tab**

**7**

| LICENSEE SANCTIONS UNDER AS 04.16.180 |                             |                |  |                 |                       |   |
|---------------------------------------|-----------------------------|----------------|--|-----------------|-----------------------|---|
| Licensee                              | Business                    | License Number | Offense  | Statute         | Date of Board Meeting | Sanction  |
| Jimmy Zhou                            | Jimmy Sushi Restaurant      | 5033           | Furnishing alcohol to persons under 21         | AS 04.16.052(5) | 10/2/2013             | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year. |
| Kwang Su Yoon, SOE, LLC               | Roma's                      | 4595           | Licensee responsible for violations            | AS 04.16.150    | 10/2/2013             | 30 Days Suspension of License with 23 Days Suspended. Must have no new violations for 1 year.                   |
| Chong Pak                             | Seoul Gate Restaurant       | 4941           | Licensee responsible for violations            | AS 04.16.150    | 5/30/2013             | 30 Days Suspension of License with 30 Days Suspended. Must have no new violations for 1 year.                   |
| Anna Maria Markos Kaloumenou          | Angelo's Restaurant         | 3458           | Failure to have proper alcohol server training | 04.21.025(c)    | 2/12/2013             | 30 Days Suspension of License with 30 Days Suspended. Must have no new violations for 1 year.                   |
| Francisco Barajas                     | Aztecs Sports Bar and Grill | 5042           | Furnishing alcohol to persons under 21         | AS 04.16.052(5) | 9/5/2012              | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year. |
| Arturo & Gloria Esparza               | Las Margaritas              | 4752           | Furnishing alcohol to persons under 21         | AS 04.16.052(5) | 5/16/12               | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year. |



|                             |                                     |      |  |                 |         |   |
|-----------------------------|-------------------------------------|------|--|-----------------|---------|---|
| Duane LeFleur               | Tustemena Lodge                     | 207  | Furnishing alcohol to persons under 21               | AS 04.16.052(5) | 2/21/12 | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year.   |
| Sivisay & Malada Vongsamath | Thai House Restaurant               | 4752 | Furnishing alcohol to persons under 21               | AS 04.16.052(5) | 2/21/12 | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year.   |
| Nancy Elkins                | Creekside Liquor                    | 1119 | Furnishing alcohol to persons under 21               | AS 04.16.052(5) | 2/21/12 | \$500 Fine. Must have no new violations for 1 Year.   |
| John Pattee                 | Avenue Bar                          | 1184 | Conduct contrary to the best interests of the public |                 | 12/7/11 | 90 Days suspension of alcohol sales with 76 days suspended. \$2,000 fine. Must have no new violations for 1 year. |
| Sarah Lee Lo                | Chiang Mai Ultimate Thai Restaurant | 4459 | Furnishing alcohol to persons under 21               | AS 04.16.052(5) | 12/7/11 | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year.   |
| Levitta Lee Burks           | Anchor Bar                          | 61   | Furnishing alcohol to persons under 21               | AS 04.16.052(5) | 5/24/11 | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year.   |

|                               |                           |      |   |                 |          |   |
|-------------------------------|---------------------------|------|---|-----------------|----------|---|
| Gerald Berryman               | H & H Lakeview Restaurant | 3904 | Furnishing alcohol to persons under 21  | AS 04.16.052(5) | 5/24/11  | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year.   |
| Peter & Sherryl Scott         | Inn Café                  | 4351 | Failure to have proper alcohol server training  | AS 04.16.150    | 3/24/11  | 30 Days suspension of alcohol sales with 30 days suspended. Must have no new violations for 1 year.               |
| Wesley J. & Linda M. Sherrill | Moose Pass Inn            | 752  | Furnishing alcohol to persons under 21  | AS 04.16.052(5) | 3/24/11  | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year.   |
| Hye Suk Min                   | Peking Restaurant         | 4215 | Furnishing alcohol to persons under 21  | AS 04.16.052(5) | 3/24/11  | 60 Days suspension of alcohol sales. \$3,000 fine.  |
| Ming Tze Chen                 | 168 E-Lu-Fa Restaurant    | 4936 | Furnishing alcohol to persons under 21  | AS 04.16.052(5) | 12/13/10 | 45 Days suspension of alcohol sales with 38 days suspended. \$1,000 fine. Must have no new violations for 1 year. |
| Monica S. Wirtz               | Peking Wok Restaurant     | 2813 | Failure to have proper alcohol server training & allowing employee to work without alcohol server training. | AS 04.16.150    | 12/13/10 | 30 Days suspension of alcohol sales with 30 days suspended. Must have no new violations for 1 year.               |

|                           |                       |      |  |                 |         |   |
|---------------------------|-----------------------|------|--|-----------------|---------|---|
| Dennis Freeman            | West Rib Café and Pub | 3667 | No server card, pricing and marketing violations | AS 04.16.052(5) | 9/30/10 | 45 Days suspension of alcohol sales with 40 days suspended. \$1,000 fine for no server card. \$500 fine for pricing and marketing violations. Must have no new violations for 1 year. |
| Fernando and Mary Nicolas | The Galley            | 1557 | Furnishing alcohol to persons under 21           | AS 04.16.052(5) | 9/30/10 | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. \$250 fine for having underage employees. Must have no new violations for 1 year.                             |
| Masahide & Kazuko Yamada  | Yamaya Restaurant     | 3728 | Furnishing alcohol to persons under 21           | AS 04.16.052(5) | 7/6/10  | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year.   |
| Michael G. West           | Dexter Roadhouse      | 1863 | Furnishing alcohol to persons under 21           | AS 04.16.052(5) | 5/4/10  | 45 Days suspension of alcohol sales with 21 days suspended. \$1,000 fine. Must have no new violations for 1 year.   |
| Nancy Ida Milani-Henson   | Bush Bottle Inn       | 2729 | Furnishing alcohol to persons under 21           | AS 04.16.052(5) | 5/4/10  | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year.   |

|                                  |                            |      |  |                           |          |   |
|----------------------------------|----------------------------|------|--|---------------------------|----------|---|
| James D. West                    | Board of Trade Saloon      | 144  | Violation of Conditions imposed 2/26/13  |                           | 9/30/10  | 35 Days previously suspended of the 45 days imposed to be served.   |
| Albert W. Gartz                  | Northern Liquors           | 785  | Furnishing Alcohol to persons under 21   | AS 04.16.150              | 2/26/10  | 45 Days suspension of alcohol sales with 38 days suspended. \$1,000 fine. Must have no new violations for 1 year. |
| Dong J. Yi                       | Tokyo Japanese Steakhouse  | 4731 | Business name change without approval or transfer  |                           | 2/26/10  | \$2,500 fine.   |
| Catarino & Maria Patricia Robles | Chico's Mexican Restaurant | 4326 | Furnishing Alcohol to persons under 21   | AS 04.16.150              | 2/26/10  | 45 Days suspension of alcohol sales with 38 days suspended. \$1,000 fine. Must have no new violations for 1 year. |
| Howard & Chum Sim                | Tips Bar                   | 1142 | Failure to have proper alcohol server training   | AS 04.16.150              | 2/26/10  | 45 Days suspension of alcohol sales with 40 days suspended. \$1,000 fine. Must have no new violations for 1 year. |
| James D. West                    | Board of Trade Saloon      | 144  | Allowing impaired person to serve alcohol. Allowing drunken persons to remain on premises. | AS 04.16.030 AS 04.16.040 | 2/26/10  | 45 Days suspension of alcohol sales with 35 days suspended. \$2,000 fine. Must have no new violations for 1 year. |
| Juan Carlos Macias               | Agave Restaurant           | 4854 | Furnishing Alcohol to persons under 21   | AS 04.16.180(b)           | 11/19/09 | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year.   |

|                           |                                 |      |  |              |         |   |
|---------------------------|---------------------------------|------|--|--------------|---------|---|
| Nohemi Reyes De Zambrano  | La Fiesta Dos                   | 3913 | Failure to have proper alcohol server training   | AS 04.16.150 | 7/14/09 | 30 Days Suspension of License with 15 Days Suspended  |
| Filameno & Ana Bravos     | El Chicano                      | 3299 | Furnishing Alcohol to persons under 21   | AS 04.16.150 | 5/7/09  | 45 Days suspension of alcohol sales with 38 days suspended. \$500 fine. Must have no new violations for 1 year. |
| Carlos Carillo            | Carlos' Fine Mexican Restaurant | 3538 | Furnishing Alcohol to persons under 21   | AS 04.16.150 | 5/7/09  | 45 Days suspension of alcohol sales and \$2,000 fine. Must have no new violations for 1 year.                   |
| Deanna Peterson           | FOE Aerie #4200                 | 3133 | Violating municipal ordinance (smoking)  | AS 04.16.150 | 11/6/08 | 35 Days suspension of alcohol sales with 30 days suspended. \$1,000 fine.                                       |
| Mayo                      | How How, Inc.                   | 3796 | Furnishing Alcohol to persons under 21   | AS 04.16.150 | 8/28/08 | 45 Days suspension of alcohol sales with 30 days suspended. \$2,000 fine.                                       |
| Minas Charalambous        | Froso's                         | 1540 | Failure to have proper alcohol server training   | AS 04.16.150 | 8/28/08 | 45 Days suspension of alcohol sales with 40 days suspended. \$1,000 fine.                                       |
| Gary & Franchesca Cogdill | Big Lake Liquor                 | 118  | Furnishing Alcohol to persons under 21, and failure to have proper alcohol server training | AS 04.16.150 | 7/10/08 | 45 Days suspension of license with 38 days suspended. \$1,000 Fine.   |
| Russell Wimmer, Jr.       | Mendeltna Creek Lodge           | 2579 | Furnishing Alcohol to persons under 21   | AS 04.16.150 | 7/10/08 | 45 Days suspension of license with 38 days suspended. \$500 Fine.   |
| Hye Suk Min               | Peking Restaurant               | 4215 | Furnishing Alcohol to persons under 21   | AS 04.16.150 | 7/10/08 | 30 Days Suspension of License. \$1,500 Fine.  |

|                                |                               |      |  |              |         |  |
|--------------------------------|-------------------------------|------|--|--------------|---------|--|
| Richard Solis                  | 3 Amigos Restaurant           | 3811 | Failure to have proper alcohol server training | AS 04.16.150 | 7/10/08 | 4 Days Suspension of License.  |
| Tuyen & Tran Thuy Dinh         | Airport Restaurant & Lounge   | 3759 | Failure to have proper alcohol server training | AS 04.16.150 | 7/10/08 | 4 Days Suspension of License.  |
| C. Scott Bald & Carol Lallatin | Marina Restaurant             | 3021 | Failure to have proper alcohol server training | AS 04.16.150 | 7/10/08 | 4 Days Suspension of License.  |
| Konstantinos Kanaras           | Appollo Restaurant            | 3230 | Failure to have proper alcohol server training | AS 04.16.150 | 7/10/08 | 4 Days Suspension of license with 4 days suspended.                                      |
| Dana Ma                        | Fu Do                         | 4109 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 4/17/08 | 45 Days suspension of license with 38 days suspended.                                    |
| Barbara Abbott                 | Tundra Lodge and R/V Park     | 1176 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 4/17/08 | 45 Days suspension of license with 35 days suspended. \$1,000 Fine.                      |
| Dennis Selman                  | Club Paris                    | 258  | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 4/17/08 | 45 Days suspension of license with 38 days suspended. \$1,000 Fine.                      |
| Si Cha Sin                     | Nikko Garden                  | 2069 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 7/11/07 | 30 Days suspension of license with 15 days suspended. \$1,000 fine with \$500 suspended. |
| Jennifer Lee                   | New Peking Chinese Restaurant | 3239 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 4/18/07 | 45 Days suspension of license with 38 days suspended. \$500 Fine.                        |
| James S. Yang                  | Mr. D's                       | 2457 | Failure to have proper alcohol server training | AS 04.16.150 | 4/18/07 | 7 Days suspension of license and \$500 fine.   |
| Tami Kilbourn                  | Sunset Strip                  | 1098 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 4/18/07 | 7 Days suspension of license (all 7 days suspended) and \$500 fine.                      |



|                               |                                 |      |  |              |          |  |
|-------------------------------|---------------------------------|------|--|--------------|----------|--|
| Carlos Carillo                | Carlos' Fine Mexican Restaurant | 3538 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 2/21/07  | 5 Days suspension of license. License suspension for alcohol sales only.                                     |
| Benito Herrera                | Jamico's Pizzeria               | 3889 | Failure to have proper alcohol server training | AS 04.16.150 | 2/21/07  | 45 Days suspension of license with 38 days suspended. \$500 Fine.  |
| Thomas Kirkman, Administrator | Craig Moose Lodge #1206         | 746  | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 2/21/07  | 45 Days suspension of license with 38 days suspended. \$1,000 Fine.  |
| James Bass                    | Bing Brown's                    | 126  | Failure to have proper alcohol server training | AS 04.16.150 | 11/29/06 | 1 Hour suspension of license.  |
| John Riblett                  | Pizza Man                       | 1533 | Failure to have proper alcohol server training | AS 04.16.150 | 11/29/06 | 45 Days suspension of license with 38 days suspended. License suspension for alcohol sales only.             |
| Sandra Ramos                  | Jalapeno's Mexican Restaurant   | 3766 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 11/29/06 | 45 Days suspension of license with 38 days suspended. License suspension for alcohol sales only. \$500 Fine. |
| Dennis Shaw                   | Salcha River Lodge              | 3487 | Failure to have proper alcohol server training | AS 04.16.150 | 11/29/06 | 5 Days Suspension  |
| Alfred Sousa                  | Talkeetna Motel                 | 1287 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 10/4/06  | 5 Days Suspension  |
| Byron Yang                    | Golden Pond                     | 2845 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 10/4/06  | 45 Days Suspension of License with 38 Days suspended, \$1,000 fine with \$500 suspended.                     |

|                        |                             |      |  |              |         |   |
|------------------------|-----------------------------|------|--|--------------|---------|---|
| Itsuro Tamaki          | Kumagoro Restaurant         | 2276 | Failure to have proper alcohol server training | AS 04.16.150 | 10/4/06 | 45 Days Suspension of License with 38 Days suspended, \$1,000 fine. |
| Mary Lou Redmond       | Diamond Jim's Package Store | 2926 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 10/4/06 | 45 Days Suspension of License with 38 Days suspended, \$500 fine.   |
| Ying Po Liu            | Golden Shanghai             | 3467 | Failure to have proper alcohol server training | AS 04.16.150 | 8/9/06  | 15 Days Suspension and \$1,000 Fine.                                |
| Charlampos Alefantinos | Bella Vista                 | 107  | Failure to have proper alcohol server training | AS 04.16.150 | 6/15/06 | 7 Days Suspension and \$1,000 fine.                                 |
| Robert Clutts          | Anchor River Inn            | 1309 | Failure to have proper alcohol server training | AS 04.16.150 | 6/15/06 | 4 Days Suspension beginning 10/16/06.                               |
| Carlos Gomez           | Pancho's Villa Restaurant   | 74   | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 6/15/06 | 7 Days Suspension beginning 6/30/06 and \$500 fine.                 |
| Emmanual Xeninkakis    | Nero's Pizza                | 3369 | Failure to have proper alcohol server training | AS 04.16.150 | 6/15/06 | 7 Days Suspension beginning 8/29/06 and \$500 fine.                 |
| Jose Nanez             | Chepo's Fiesta              |      | Failure to have proper alcohol server training | AS 04.16.150 | 6/15/06 | 7 Days Suspension and \$500 Fine.                                   |
| Lewis T. Johnson       | Galena Liquor Store         | 433  | Licensee responsible for violations            | AS 04.16.150 | 4/20/06 | 45 Days Suspension of License with 38 Days Suspended. \$500 fine    |
| Patricia Estrada       | Mangia! Mangia!             | 4281 | Furnishing Alcohol to persons under 21         | AS 04.16.150 | 4/20/06 | 45 Days Suspension of License with 38 Days Suspended.               |
| Marlene Marshall       | Yukon Inn                   | 1804 | Licensee responsible for violations            | AS 04.16.150 | 4/20/06 | 45 Days Suspension and \$1,000 fine.                                |
| Arturo Esparza         | Las Margaritas              | 3363 | Furnishing Alcohol to persons under 21         | AS 04.16.051 | 2/9/06  | 30 Days Suspension of License with 15 Days Suspended                |

|              |                      |      |   |              |        |   |
|--------------|----------------------|------|---|--------------|--------|---|
| John Kartesz | Sheep Creek<br>Lodge | 1033 | Furnishing Alcohol to persons<br>under 21 | AS 04.16.051 | 2/9/06 | Licensee said he had<br>sold business, but not<br>transferred license.<br>Board suspended<br>licenses for package<br>store (1032) &<br>beverage dispensary<br>(1033). |
|--------------|----------------------|------|---|--------------|--------|---|

**Tab**

**8**



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5438  
Fax: 907.263.5930

**MEMORANDUM**

TO: Robert Klein, Chair and  
Members of the Board

DATE: November 26, 2013

FROM: Shirley A. Coté *SAC*  
Director, ABC Board

RE: Chepo's Fiesta, License #2616

On Thursday, January 10, 2013 a Chepo's Fiesta Restaurant employee furnished an alcoholic beverage to a 19 year-old underage buyer during a compliance check. The employee had been working at the restaurant for approximately three-months and presented an alcohol server card that expired on June 3, 2012 – a month prior to her employment at Chepo's.

The licensee, Jose Nanez stated that when he hired the individual she had told him she had a valid alcohol server education card. He said that although his usual practice is to review the card and make a copy for the file he did not do it in this case. Mr. Nanez certified on his renewal applications for the past four biennial periods that all his agents and employees tasked with patron identification verification have received alcohol server training and that their certification was currently valid.

During a check of the licensee file, #2616 it was discovered the licensee, Mr. Nanez, had been charged in December 2005 with having no valid alcohol server card and for licensee furnishing alcohol to a person under the age of 21. Court records reveal Mr. Nanez was convicted on the furnishing alcohol to a person under the age of 21 on February 2, 2006. The alcohol server education charge was dismissed.





# STATE OF ALASKA ALCOHOLIC BEVERAGE CONTROL

|                           |               |
|---------------------------|---------------|
| Case No.                  |               |
| 13-0049                   |               |
| Detach                    | UnitID        |
| A                         | ABCA          |
| Date Reported             | Time Reported |
| 1-10-13                   | 1919          |
| Date Occurred             | Time Occurred |
| 1-10-13                   | 1919          |
| Patrol Zone               | Dom Viol.     |
| HECE                      |               |
| Alcohol or Drugs Involved | A             |
| D.O.B / Approx. Age       |               |
| 1-20-73                   |               |
| State                     |               |
| AK                        |               |
| VCCB OVR                  |               |
| <input type="checkbox"/>  |               |
| Juv. Dispo                |               |
| <input type="checkbox"/>  |               |

|   |                |                           |                        |  |    |                     |               |               |                          |
|---|----------------|---------------------------|------------------------|--|----|---------------------|---------------|---------------|--------------------------|
| Reporting Officer                             |                | PermitID                  |                        | Investigating Agency                         |    | Date Reported       |               | Time Reported |                          |
| INV F.R. HAMILTON                             |                | FRH0                      |                        | ALCOHOL BEVERAGE CONTROL                     |    | 1-10-13             |               | 1919          |                          |
| ACT#  | Activity Code  | UCR No                    | Statute / Regulation   | Type of Activity                             |    |                     | Date Occurred | Time Occurred |                          |
| 1   | 9931           | 22                        | AS 04.16.052(5)        | Furnishing Alcohol to a Person Under 21      |    |                     | 1-10-13       | 1919          |                          |
| Location of Activity                          |                |                           |                        | N  |    | W                   |               | Patrol Zone   | Dom Viol.                |
| Chepo's Fiesta, 731 W. Parks Hwy              |                |                           |                        |  |    |                     |               | HECE          |                          |
| Alcohol or Drugs Involved                     |                |                           |                        | A  |    |                     |               |               |                          |
| ACT#  | Activity Code  | UCR No                    | Statute / Regulation   | Type of Activity                             |    |                     | Date Occurred | Time Occurred |                          |
| 2   | 4102           | 22                        | AS 04.21.025(c)        | Failure to Maintain Alcohol Server Education |    |                     | 1-10-13       | 1919          |                          |
| Location of Activity                          |                |                           |                        | N  |    | W                   |               | Patrol Zone   | Dom Viol.                |
| Chepo's Fiesta, 731 W. Parks Hwy              |                |                           |                        |  |    |                     |               | HECE          |                          |
| Alcohol or Drugs Involved                     |                |                           |                        | A  |    |                     |               |               |                          |
| Pers No                                       | Role(s)        | Name                      | Sex                    | Race   | Ht | Weight              | Hair          | Eyes          | D.O.B / Approx. Age      |
| 1   | DI             | Theresa Lynn Burton       | F                      | W  | 65 | 120                 | BRO           | GRN           | 1-20-73                  |
| Residence Address                             |                |                           | Residence / Cell Phone |  |    | Driver's License No |               |               | State                    |
| 6360 Fuller Lake, Wasilla, AK                 |                |                           | 353-2223               |  |    | 1065599             |               |               | AK                       |
| Place of Employment                           |                |                           | Work Phone             |  |    | Occupation          |               |               | VCCB OVR                 |
| Chepo's Fiesta, 731 W. Parks Hwy, Wasilla, AK |                |                           | 373-5656               |  |    | Waitress            |               |               | <input type="checkbox"/> |
| APSIN ID NO                                   | E-Mail Address | ATN / NCIC / Other ID No. | Charged With           | 1S   | 2S |                     | Susp Act No.  |               | Juv. Dispo               |
| 1065599                                       |                | 114 147 378               |                        |  |    |                     |               |               |                          |
| Pers No                                       | Role(s)        | Name                      | Sex                    | Race   | Ht | Weight              | Hair          | Eyes          | D.O.B / Approx. Age      |
| 2   | DI             | Jose Nanez                | M                      | W  | 69 | 230                 | BRO           | BRO           | 3-19-58                  |
| Residence Address                             |                |                           | Residence / Cell Phone |  |    | Driver's License No |               |               | State                    |
| 16751 Theodore Drive, Eagle River, AK         |                |                           | 373-5656               |  |    | 0420201             |               |               | AK                       |
| Place of Employment                           |                |                           | Work Phone             |  |    | Occupation          |               |               | VCCB OVR                 |
| Chepo's Fiesta, 731 W. Parks Hwy, Wasilla, AK |                |                           | 373-5656               |  |    | Licensee            |               |               | <input type="checkbox"/> |
| APSIN ID NO                                   | E-Mail Address | ATN / NCIC / Other ID No. | Charged With           | 3C   | 4C |                     | Susp Act No.  |               | Juv. Dispo               |
| 0420201                                       |                | 114 147 387               |                        |  |    |                     |               |               |                          |



**SYNOPSIS:** On 1-10-13, at about 1919 hours, Chepo's Fiesta waitress Theresa Lynn Burton, a three month employee, furnished an alcoholic beverage to a person under the age of 21. When asked to present proof of current alcohol server education, she presented a TAM which had expired 6-3-12. A check of the license file revealed the establishment has received a prior notice of violation for licensee Jose Nanez and employees not having server education.

**OBSERVATION:** On 1-10-13, at about 1915 hours, Underage Buyer 11-005; age 19, herein referred to as UB, entered Chepo's Fiesta. I remained outside. At about 1919 hours, UB sent me a text message essentially relating he had been furnished an Alaskan Amber beer, ID was checked, age was not asked. The ID presented was a valid military dependant card which has the date of birth on the back of the card in the upper left corner.

**OFFICER ACTION:** At about 1923 hours, Inv. Ed Smyers, DHSS, and I entered the establishment and located UB seated in a booth with a glass of beer in front of him. I took a photograph of UB with the beer. UB identified his server, gave me his ID card and exited the establishment. I then made contact with the server and advised her UB was 19. The server was identified as Theresa L. Burton.

**INTERVIEW #1, DI, T.L. BURTON:** Conducted in a non-custodial manner. Burton noticed that UB's year of birth was "93". Because of the new year, Burton got mixed up what the on or before date to furnish was. She thought it was "93", not "92". Note, the cash register used to input orders had an age verification aid posted of "92". When asked to present a server card, she stated hers was expired. When asked why she was still serving, she stated she was told by someone at "ABC" that the card was still good for 6 months after expiration. She later stated it was CHARR that told her that she had six months after starting a job to get a new card. The card was expired by more than 6 months. Burton stated she was hired with an expired server card and has been able to get it renewed. Burton further added that tonight she had been "slammed" busy and that UB looked familiar to her and she may have waited on him in the past. She also made the statement to Inv. Smyers that she has waited on him also. Burton has been working at Chepo's Fiesta for about 3 months but has been serving alcoholic beverages for about 23 years. She doesn't recall who hired her but it may have been manager Salvador Orozco-Salinas.

**OFFICER ACTION:** Burton was issued summonses for furnishing alcohol to a person under 21 and failing to maintain server education. A mandatory court date of 2-5-13, 0830 hours, Palmer District Court was assigned. She was also advised not to serve any alcoholic beverage until she attended current server training. I then spoke with manager Orozco-Salinas.

**INTERVIEW #2, S. OROZCO-SALINAS:** Salinas essentially related he did not hire Burton nor has he verified that she had current education. About the middle of January he stated he checks all employees' server cards.

**OFFICER ACTION:** Inv. Smyers and I then departed the establishment. On 1-14-13, I reviewed the license file and noted that in December of 2005, the establishment received a notice of violation for server card issues. Specifically, Jose Nanez was summonsed for failing to have server education. Also noted in the file was a December 14, 2012 document signed by Nanez and notarized, that all of his agents and employees tasked with patron identification verification have received alcohol server training and their certification is currently valid. At about 1345 hours, I made telephone contact with licensee Jose Nanez.

**INTERVIEW #3, J. NANEZ:** Nanez essentially related when he hired Burton, she told him she had a server card but he did not verify this prior to letting her work. His usual practice is to review the card and make copies of them for the files. He doesn't know what happened in this instance.

**OFFICER ACTION:** A charge of licensee responsible for violations and penalty for making false statements is forwarded to the DAO for prosecution.

**NOTE:** UB completed 16 compliance checks on 1-10-13. Two establishments sold/furnished UB an alcoholic beverage.

**EVIDENCE:** Digital audio/photos, Burton's expired alcohol server card, and two 4-oz canning jars partially filled with Alaskan Amber beer.

**CASE STATUS:** Closed by issuance of summonses and referral of charges for prosecution.

|              |    |   |   |                 |                        |
|--------------|----|---|---|-----------------|------------------------|
| CASE CLOSURE | CA | COPIES TO<br>District Attorney's Office, Palmer | REVIEWED AND APPROVED BY<br>Robert L. Beasley, Enforcement Supervisor | PermiID<br>RLB8 | DATE CLOSED<br>1/16/13 |
|--------------|----|---|---|-----------------|------------------------|



IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT PALMER  
JUDGMENT

State of Alaska

vs.

Defendant: Jose IvanovDOB: 3/19/58ATN: 114-147-367 CTN: 001APSN: 0420201CASE NO. 3PA-1132 CROffense Date: 1-10-13Address: 16751 THEODORE DR. EAGLE RIVER AK 99577DL/ID 0420201 AK ST AK

Defendant is:

☒ **GUILTY** of Licensee Responsible for Alcohol ViolationsStatute/Ordinance: AS 04.16.150☐ **NOT GUILTY** of

It is ordered that defendant is acquitted and discharged.

☐ **CHARGES DISMISSED**PLEA: ☒ Guilty ☐ No ContestRULE 11(e) PLEA: ☒ Yes ☐ No ☐ PartialTRIAL: ☐ Court ☐ JuryDV Offense per AS 18.66.990(3)&(5): ☐ Yes ☒ No


Sex Offender Registration per AS 12.63.010 Required:

☐ Yes ☒ No☐ **SUSPENDED IMPOSITION OF SENTENCE.** Imposition of sentence is suspended and defendant is placed on probation for \_\_\_\_\_, subject to the orders and conditions listed below.**SENTENCE IS IMPOSED AS FOLLOWS:****DIRECT COURT ORDERS**

1. FINE: \$ 1250 with \$ 0 suspended. Due 10 days Bail to Fine \$ \_\_\_\_\_
2. POLICE TRAINING SURCHARGE due within 10 days: ☒ \$50 (Misd) ☐ \$10 (Infraction) ☐ None (Fine Under \$30)
3. JAIL \_\_\_\_\_ days with \_\_\_\_\_ days suspended. Report at 7:30 a.m. on \_\_\_\_\_ to the Cordova Center, 130 Cordova Street, Anchorage or a bench warrant may be issued for your arrest.
4. JAIL SURCHARGE: ☐ \$150 with \$100 suspended (if probation ordered) ☒ \$50 (if no probation ordered) — Pay to Attorney General's Office, 1031 W. 4<sup>th</sup> Ave., Suite 200, Anchorage, AK 99501.
5. ☐ Defendant is ordered to complete the treatment recommended by an Alcohol Safety Action Program (ASAP) and pay costs. Report to MAT-SU/Anchorage ASAP within 5 days. This may include residential treatment up to \_\_\_\_\_ days plus required aftercare in addition to any jail time ordered above.
6. ☐ Defendant is ordered to pay restitution as stated in the Restitution Judgment and to apply for an Alaska Permanent fund dividend, if eligible, each year until restitution is paid in full.  
☐ The amount of restitution will be determined as provided in Criminal Rule 32.6(c)(2).
7. ☐ Defendant is ordered to \_\_\_\_\_

**CONDITIONS OF PROBATION.** Defendant is placed on probation for \_\_\_\_\_ years/months, subject to the following conditions:

8. ☒ Comply with all direct court orders listed above by the deadlines stated.
9. ☐ Commit no jailable offenses during the period of probation.
10. ☐ Perform \_\_\_\_\_ hours Community Work Service (CWS). Proof to the court by \_\_\_\_\_
11. ☐ Complete ☐ a state-approved domestic violence intervention program: \_\_\_\_\_  
☐ anger management program. Pay required fees. Contact the above program within five days after sentencing. Provide proof of completion to the court by \_\_\_\_\_
12. ☐ Have no contact, direct or indirect, with \_\_\_\_\_ unless that person's written consent has been supplied to the court.
13. Other: \_\_\_\_\_

I certify that on 9/9/13 a copy of this judgment was given to
☒ Def/Atty ☒ Prosecutor ☐ DPS ☐ AGO  
☐ MSASAP or AASAP ☐ DMV ☐ Other  
☐ MSPT ☐ Anch Jail  
 In-Court Clerk: PC
  
 District Court Judge/Magistrate
Print Name: Zuska
9/9/13  
 Effective Date



# STATE OF ALASKA ALCOHOLIC BEVERAGE CONTROL

Case No. 13-0049

Detach A UnitID ABCA

Reporting Officer INV F.R. HAMILTON PermlD FRH0 Investigating Agency ALCOHOL BEVERAGE CONTROL Date Reported 1-10-13 Time Reported 1919

ACT# 1 Activity Code 9931 UCR No. 22 Statute / Regulation AS 04.16.052(5) Type of Activity Furnishing Alcohol to a Person Under 21 Date Occurred 1-10-13 Time Occurred 1919

Location of Activity Chepo's Fiesta, 731 W. Parks Hwy N: W: Patrol Zone HECE Dom Viol. Alcohol or Drugs Involved A

ACT# 2 Activity Code 4102 UCR No. 22 Statute / Regulation AS 04.21.025(c) Type of Activity Failure to Maintain Alcohol Server Education Date Occurred 1-10-13 Time Occurred 1919

Location of Activity Chepo's Fiesta, 731 W. Parks Hwy N: W: Patrol Zone HECE Dom Viol. Alcohol or Drugs Involved A

Pers No. 1 Role(s) DI Name Theresa Lynn Burton Sex F Race W Ht 65 Weight 120 Hair BRO Eyes GRN D.O.B./Approx. Age 1-20-73

Residence Address 6360 Fuller Lake, Wasilla, AK Residence / Cell Phone 353-2223 Driver's License No. 1065599 State AK

Place of Employment Chepo's Fiesta, 731 W. Parks Hwy, Wasilla, AK Work Phone 373-5656 Occupation Waitress VCCB OVR

APSIN ID NO. 1065599 E-Mail Address. ATN / NCIC / Other ID No. 114 147 378 Charged With 1S 2S Susp Act No. Juv. Dispo

Pers No. 2 Role(s) DI Name Jose Nanez Sex M Race W Ht 69 Weight 230 Hair BRO Eyes BRO D.O.B./Approx. Age 3-19-58

Residence Address 16751 Theodore Drive, Eagle River, AK Residence / Cell Phone 373-5656 Driver's License No. 0420201 State AK

Place of Employment Chepo's Fiesta, 731 W. Parks Hwy, Wasilla, AK Work Phone 373-5656 Occupation Licensee VCCB OVR

APSIN ID NO. 0420201 E-Mail Address. ATN / NCIC / Other ID No. 114 147 387 Charged With 3C 4C Susp Act No. Juv. Dispo



**SYNOPSIS:** On 1-10-13, at about 1919 hours, Chepo's Fiesta waitress Theresa Lynn Burton, a three month employee, furnished an alcoholic beverage to a person under the age of 21. When asked to present proof of current alcohol server education, she presented a TAM which had expired 6-3-12. A check of the license file revealed the establishment has received a prior notice of violation for licensee Jose Nanez and employees not having server education.

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**OFFICER ACTION:** At about 1923 hours, Inv. Ed Smyers, DHSS, and I entered the establishment and located UB seated in a booth with a glass of beer in front of him. I took a photograph of UB with the beer. UB identified his server, gave me his ID card and exited the establishment. I then made contact with the server and advised her UB was 19. The server was identified as Theresa L. Burton.

**INTERVIEW #1, DI, T.L. BURTON:** Conducted in a non-custodial manner. Burton noticed that UB's year of birth was "93". Because of the new year, Burton got mixed up what the on or before date to furnish was. She thought it was "93", not "92". Note, the cash register used to input orders had an age verification aid posted of "92". When asked to present a server card, she stated hers was expired. When asked why she was still serving, she stated she was told by someone at "ABC" that the card was still good for 6 months after expiration. She later stated it was CHARR that told her that she had six months after starting a job to get a new card. The card was expired by more than 6 months. Burton stated she was hired with an expired server card and has been able to get it renewed. Burton further added that tonight she had been "slammed" busy and that UB looked familiar to her and she may have waited on him in the past. She also made the statement to Inv. Smyers that she has waited on him also. Burton has been working at Chepo's Fiesta for about 3 months but has been serving alcoholic beverages for about 23 years. She doesn't recall who hired her but it may have been manager Salvador Orozco-Salinas.

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**OFFICER ACTION:** A charge of licensee responsible for violations and penalty for making false statements is forwarded to the DAO for prosecution.

**NOTE:** UB completed 16 compliance checks on 1-10-13. Two establishments sold/furnished UB an alcoholic beverage.

**EVIDENCE:** Digital audio/photos, Burton's expired alcohol server card, and two 4-oz canning jars partially filled with Alaskan Amber beer.

**CASE STATUS:** Closed by issuance of summonses and referral of charges for prosecution.

|              |    |   |   |                 |                           |
|--------------|----|---|---|-----------------|---------------------------|
| CASE CLOSURE | CA | COPIES TO<br>District Attorney's Office, Palmer | REVIEWED AND APPROVED BY<br>Robert L. Beasley, Enforcement Supervisor | PermiID<br>RLB8 | DATE<br>CLOSED<br>1/10/13 |
|--------------|----|---|---|-----------------|---------------------------|





# STATE OF ALASKA ALCOHOLIC BEVERAGE CONTROL

| Case No. 13-0049   |                       |                                 |                                      |  |  |                     |                                 |                           |                                   |                                |  |
|--|-----------------------|---------------------------------|--------------------------------------|--|--|---------------------|---------------------------------|---------------------------|-----------------------------------|--------------------------------|--|
| Reporting Officer<br>Inv. F.R. Hamilton                                  |                       |                                 | PermiD<br>FRH0                       |  | Investigating Agency<br>Alcoholic Beverage Control |                     |                                 | Detach<br>A               |                                   | UnitID<br>ABCA                 |  |
| ACT#<br>3  | Activity Code<br>4102 | UCR No.<br>22                   | Statute / Regulation<br>AS 04.16.150 | Type of Activity<br>Licensee Responsible for Violations  |  |                     | Date Occurred<br>1-10-13        |                           | Time Occurred<br>1919             |                                |  |
| Location of Activity<br>Chepo's Fiesta, 731 W. Parks Hwy                 |                       |                                 |                                      | N: W:  |  | Patrol Zone<br>HECE | Dom Viol.                       | Alcohol or Drugs Involved |                                   | A                              |  |
| ACT#<br>4  | Activity Code<br>4102 | UCR No.<br>22                   | Statute / Regulation<br>AS 04.16.210 | Type of Activity<br>Penalties for Making False Statement |  |                     | Date Occurred<br>12-14-12       |                           | Time Occurred<br>Unk              |                                |  |
| Location of Activity<br>5848 E. Tudor Road                               |                       |                                 |                                      | N: W:  |  | Patrol Zone<br>UEBA | Dom Viol.                       | Alcohol or Drugs Involved |                                   | A                              |  |
| ACT#   | Activity Code         | UCR No.                         | Statute / Regulation                 | Type of Activity   |  |                     | Date Occurred                   |                           | Time Occurred                     |                                |  |
| Location of Activity   |                       |                                 |                                      | N: W:  |  | Patrol Zone         | Dom Viol.                       | Alcohol or Drugs Involved |                                   |                                |  |
| ACT#   | Activity Code         | UCR No.                         | Statute / Regulation                 | Type of Activity   |  |                     | Date Occurred                   |                           | Time Occurred                     |                                |  |
| Location of Activity   |                       |                                 |                                      | N: W:  |  | Patrol Zone         | Dom Viol.                       | Alcohol or Drugs Involved |                                   |                                |  |
| Pers No.<br>3  | Role(s)<br>I          | Name<br>Salvador Orozco-Salinas |                                      | Sex<br>M   | Race<br>W  | Ht.<br>67           | Weight<br>220                   | Hair<br>BRO               | Eyes<br>BRO                       | D.O.B / Approx. Age<br>1-2-53  |  |
| Residence Address<br>11930 Copper Mountain Drive, Eagle River, AK        |                       |                                 |                                      | Residence / Cell Phone<br>351-1181                       |  |                     | Driver's License No.<br>6572824 |                           | State<br>AK                       |                                |  |
| Place of Employment<br>Chepo's Fiesta, 731 W. Parks Hwy, Wasilla, AK     |                       |                                 |                                      | Work Phone<br>373-5656                                   |  |                     | Occupation<br>Manager           |                           | VCCB OVR <input type="checkbox"/> |                                |  |
| APSIN ID NO.<br>6572824  |                       | Social Security No.             |                                      | ATN / NCIC / Other ID No.                                |  | Charged With        | Susp Act No.                    | Juv. Dispo.               |                                   |                                |  |
| Pers No.<br>4  | Role(s)<br>W          | Name<br>Underage Buyer 11-005   |                                      | Sex  | Race   | Ht.                 | Weight                          | Hair                      | Eyes                              | D.O.B / Approx. Age<br>7-30-93 |  |
| Residence Address  |                       |                                 |                                      | Residence / Cell Phone                                   |  |                     | Driver's License No.            |                           | State                             |                                |  |
| Place of Employment<br>Alcoholic Beverage Control Board Enforcement Team |                       |                                 |                                      | Work Phone<br>269-0063                                   |  |                     | Occupation<br>Buyer             |                           | VCCB OVR <input type="checkbox"/> |                                |  |
| APSIN ID NO.   |                       | Social Security No.             |                                      | ATN / NCIC / Other ID No.                                |  | Charged With        | Susp Act No.                    | Juv. Dispo.               |                                   |                                |  |
| Pers No.   | Role(s)               | Name                            |                                      | Sex  | Race   | Ht.                 | Weight                          | Hair                      | Eyes                              | D.O.B / Approx. Age            |  |
| Residence Address  |                       |                                 |                                      | Residence / Cell Phone                                   |  |                     | Driver's License No.            |                           | State                             |                                |  |
| Place of Employment  |                       |                                 |                                      | Work Phone   |  |                     | Occupation                      |                           | VCCB OVR <input type="checkbox"/> |                                |  |
| APSIN ID NO.   |                       | Social Security No.             |                                      | ATN / NCIC / Other ID No.                                |  | Charged With        | Susp Act No.                    | Juv. Dispo.               |                                   |                                |  |
| Pers No.   | Role(s)               | Name                            |                                      | Sex  | Race   | Ht.                 | Weight                          | Hair                      | Eyes                              | D.O.B / Approx. Age            |  |
| Residence Address  |                       |                                 |                                      | Residence / Cell Phone                                   |  |                     | Driver's License No.            |                           | State                             |                                |  |
| Place of Employment  |                       |                                 |                                      | Work Phone   |  |                     | Occupation                      |                           | VCCB OVR <input type="checkbox"/> |                                |  |
| APSIN ID NO.   |                       | Social Security No.             |                                      | ATN / NCIC / Other ID No.                                |  | Charged With        | Susp Act No.                    | Juv. Dispo.               |                                   |                                |  |
| NUMB   | REGISTRATION NO.      | STATE                           | VIN / SERIAL NO.                     |  | COLOR  | YEAR                | MAKE                            | MODEL                     |                                   |                                |  |
| BODY STYLE/TYPE  |                       |                                 | ADF&G NUMBER                         |  | NAME OF WATERCRAFT                                 |                     |                                 | LENGTH                    |                                   |                                |  |
| NUMB   | REGISTRATION NO.      | STATE                           | VIN / SERIAL NO.                     |  | COLOR  | YEAR                | MAKE                            | MODEL                     |                                   |                                |  |
| BODY STYLE/TYPE  |                       |                                 | ADF&G NUMBER                         |  | NAME OF WATERCRAFT                                 |                     |                                 | LENGTH                    |                                   |                                |  |



# STATE OF ALASKA ALCOHOLIC BEVERAGE CONTROL

Case No.  
**ABC 13-0049**  
**AST**

|  |  |                             |                       |   |
|--|--|-----------------------------|-----------------------|---|
| Location / Evidence Locker<br><b>Anchorage</b> |  | Property Status<br><b>E</b> |                       | APSIM Status Codes<br><b>S = Stolen, R = Recovered, F = Found, E = Evidence, K = Safekeeping, M = Missing</b>   |
| Submitting Officer<br><b>INV F.R. HAMILTON</b> |  | PermiD<br><b>FRH0</b>       | UnitID<br><b>ABCA</b> | UCR Type Codes<br><b>A = Currency, B = Jewelry, C = Clothing, D = Vehicles, E = Office Eq., F = Electronic Eq., G = Firearms, H = Household, I = Consumables, J = Livestock, K = Misc</b> |
| Case Officer<br><b>INV F.R. HAMILTON</b>       |  | PermiD<br><b>FRH0</b>       | UnitID<br><b>ABCA</b> |   |

|                      |                      |                    |                               |  |            |             |       |   |         |
|----------------------|----------------------|--------------------|-------------------------------|--|------------|-------------|-------|---|---------|
| Item No.<br><b>1</b> | UCR Code<br><b>K</b> | NCIC Code          | Estimated Value<br><b>NCV</b> | Type of Article<br><b>Digital Audio / Photos</b>                   | Brand Name | Model       | Color | Model Year  | Caliber |
| Serial No.           |                      |                    |                               | Other Information<br><b>Audio of contact and photos of contact</b> |            |             |       | Owner APSIN ID  |         |
| Place Stored         |                      | APSIM / NCIC Entry |                               | Submitted To   |            | Return Date |       | Final Disposition of Article (If Destroyed Sign Here) |         |

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same. Signature or P.O. Reg. No. **X** Date:

|                      |                      |                    |                               |  |                               |             |       |   |         |
|----------------------|----------------------|--------------------|-------------------------------|--|-------------------------------|-------------|-------|---|---------|
| Item No.<br><b>2</b> | UCR Code<br><b>I</b> | NCIC Code          | Estimated Value<br><b>NCV</b> | Type of Article<br><b>Alcoholic Beverage</b>                                   | Brand Name<br><b>AK Amber</b> | Model       | Color | Model Year  | Caliber |
| Serial No.           |                      |                    |                               | Other Information<br><b>2 partially filled 4-oz canning jars with AK Amber</b> |                               |             |       | Owner APSIN ID  |         |
| Place Stored         |                      | APSIM / NCIC Entry |                               | Submitted To   |                               | Return Date |       | Final Disposition of Article (If Destroyed Sign Here) |         |

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same. Signature or P.O. Reg. No. **X** Date:

|                      |                      |                    |                               |  |                          |                        |       |   |         |
|----------------------|----------------------|--------------------|-------------------------------|--|--------------------------|------------------------|-------|---|---------|
| Item No.<br><b>3</b> | UCR Code<br><b>K</b> | NCIC Code          | Estimated Value<br><b>NCV</b> | Type of Article<br><b>Server Card</b>                        | Brand Name<br><b>TAM</b> | Model<br><b>#71932</b> | Color | Model Year  | Caliber |
| Serial No.           |                      |                    |                               | Other Information<br><b>expired issued to Theresa Burton</b> |                          |                        |       | Owner APSIN ID  |         |
| Place Stored         |                      | APSIM / NCIC Entry |                               | Submitted To   |                          | Return Date            |       | Final Disposition of Article (If Destroyed Sign Here) |         |

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same. Signature or P.O. Reg. No. **X** Date:

|              |          |                    |                 |                   |            |             |       |   |         |
|--------------|----------|--------------------|-----------------|-------------------|------------|-------------|-------|---|---------|
| Item No.     | UCR Code | NCIC Code          | Estimated Value | Type of Article   | Brand Name | Model       | Color | Model Year  | Caliber |
| Serial No.   |          |                    |                 | Other Information |            |             |       | Owner APSIN ID  |         |
| Place Stored |          | APSIM / NCIC Entry |                 | Submitted To      |            | Return Date |       | Final Disposition of Article (If Destroyed Sign Here) |         |

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same. Signature or P.O. Reg. No. **X** Date:

|              |          |                    |                 |                   |            |             |       |   |         |
|--------------|----------|--------------------|-----------------|-------------------|------------|-------------|-------|---|---------|
| Item No.     | UCR Code | NCIC Code          | Estimated Value | Type of Article   | Brand Name | Model       | Color | Model Year  | Caliber |
| Serial No.   |          |                    |                 | Other Information |            |             |       | Owner APSIN ID  |         |
| Place Stored |          | APSIM / NCIC Entry |                 | Submitted To      |            | Return Date |       | Final Disposition of Article (If Destroyed Sign Here) |         |

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same. Signature or P.O. Reg. No. **X** Date:

| RECORD OF CUSTODY |   |   |
|-------------------|---|---|
| ITEM#             | REC. FROM: SIGNATURE - PermiD / P.O. REG NO | REC. BY: SIGNATURE - PermiD / P.O. REG NO |
|                   | <b>FRH0</b>                                 |   |
|                   |   |   |
|                   |   |   |
|                   |   |   |
|                   |   |   |
|                   |   |   |



ALCOHOLIC BEVERAGE CONTROL BOARD  
UNDERAGE BUYER NOTES

ABC Case No. 13-0049

Date: 1-10-13 Time In: 1915 Time Sold: 1919 Time Out: 1923

Name of Business: Chepos

Store #: \_\_\_\_\_ Alcohol License #: 2616

Address: 731 W. Parics Hwy

CLERK DESCRIPTION

The seller is: (Height/Weight/Age are approximates) Name Tag: \_\_\_\_\_

Male ( ) Female (☒) Hair Color Black <sup>Brunette</sup> Eye Color \_\_\_\_\_

Height 5' 11" Weight 110 Age 28 Glasses: Yes or ☒ No

Wearing Black pants, Black shirt, white T-shirt & Golden Heart necklace

PURCHASE

I purchased AK Amber 16oz, an alcoholic beverage and paid \$ 0.00  
Describe Alcohol Purchased

I was not questioned as to my age (INSERT WAS OR WAS NOT)

I was asked for my identification (INSERT WAS OR WAS NOT)

NOTES:

I walked in to Chepos & had a seat in a booth in the back. I was brought chips & salsa. I looked over the menu for a minute then asked the waitress for a AK Amber, she asked for ID which I provided. She had a hard time finding DOB so I told her top right corner. She then checked handed my ID back went to the bar & came back asking if I wanted a 16 or 22 oz drink. I said 16 & she brought me the drink. I then texted my investigator who arrived moments later.

I have read the above statement and all the facts are true and correct

Buyer # 11-005 Age 19 DOB: 07-30-1993

In the District Court of the State of Alaska

13-0049

Agency Number

Third Judicial District in Palmer, Alaska

State of Alaska,

Plaintiff

vs.

Jose Nanez

DOB/ 3-19-58

ID/ 0420201

ATN: 114 147 387

Defendant

Misdemeanor  
Criminal Complaint

No. \_\_\_\_\_ Cr.

CTN 001

LICENSEE RESPONSIBLE

FOR VIOLATIONS

A.S. 04.16.150

VRA CERTIFICATION I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

DOMESTIC VIOLENCE OFFENSES Per AS 18.66.990(3) and (5)

☐ ALL COUNTS ☒ NONE ☐ SPECIFIED BELOW

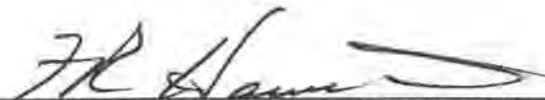
Complainant states that on or about the 10th day of January, 2013, at or near Wasilla in the Third Judicial District, State of Alaska, Jose Nanez, a licensee,

Did either knowingly allow agents or employees to violate this title or regulation adopted under this title nor recklessly or with criminal negligence fail to act in accordance with the duty prescribed under AS 04.21.030 with the result that an agent or employee of this licensee violates a law or regulation.

All of which is a class A misdemeanor offense being contrary to and in violation of A.S. 04.16.150 and against the peace and dignity of the State of Alaska.

This complaint is based upon Investigator F.R. Hamilton, Alcoholic Beverage Control Board. The Defendant is the licensee for Chepo's Fiesta, an establishment licensed by the Alcoholic Beverage Control Board to sell alcoholic beverages. One of the Defendants employees, Theresa L. Burton, a three month employee, failed a compliance check and furnished an alcoholic beverage to a person under 21. As a result of the failure, Burton was asked to provide proof of current alcohol server education to which she did not have. The Defendant stated when he hired Burton, she told him she had alcohol server education but he did not verify or get a copy of her server card. This failure to verify his employees qualifications, allowed her to work two months in violation of Alaska Statute 04.21.025(c), which requires employees to obtain server education within thirty days of employment.

I certify under penalty of perjury that the above information is true.



Signature of Complainant (F.R. Hamilton)

In the District Court of the State of Alaska

13-0049

Agency Number

Third Judicial District in Palmer, Alaska

State of Alaska,

Plaintiff

vs.

Theresa Lynn Burton

DOB/ 1-20-73

ID/ 1065599

Defendant

ATN: 114 147 378

Misdemeanor  
Criminal Complaint

No. \_\_\_\_\_ Cr.

VRA CERTIFICATION I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

DOMESTIC VIOLENCE OFFENSES Per AS 18.66.990(3) and (5)

☐ ALL COUNTS ☒ NONE ☐ SPECIFIED BELOW

CTN 001

FURNISHING OF ALCOHOLIC  
BEVERAGES TO PERSONS UNDER  
THE AGE OF 21 BY LICENSEES  
A.S. 04.16.052(5)

Complainant states that on or about the 10th day of January, 2013, at or near Wasilla in the Third Judicial District, State of Alaska, Theresa Lynn Burton, a licensee or an agent or an employee of the licensee, did with criminal negligence, while working on a licensed premises, furnish or deliver an alcoholic beverage to a person under the age of 21.

All of which is a class A misdemeanor offense being contrary to and in violation of A.S. 04.16.052(5) and against the peace and dignity of the State of Alaska.

CTN 002

ALCOHOL SERVER EDUCATION COURSE  
A.S. 04.21.025(c)

Complainant states that on or about the 10th day of January, 2013, at or near Wasilla, in the Third Judicial District, State of Alaska, Theresa Lynn Burton, a licensee, agent, or employee who sells or serves alcoholic beverages, did not complete an approved alcohol server education course within 30 days after being employed at a licensed liquor establishment.

All of which is a class A misdemeanor offense being contrary to and in violation of A.S. 04.21.025(c) and against the peace and dignity of the State of Alaska.

This complaint is based upon the statement of Underage Buyer 11-005; age 19, herein referred to as UB. UB was conducting an alcohol compliance check at the Defendant's place of employment, Chepo's Fiesta, a licensed liquor establishment in Wasilla, where the Defendant furnished UB a glass of Alaskan Amber beer. The Defendant, a three month employee of Chepo's Fiesta, was asked to provide proof of current alcohol server training. The Defendant provided a "TAM" card which had expired on 6-3-12. Finally, UB was a person whose age was verified by Investigator F.R. Hamilton, Alcoholic Beverage Control Board, prior to the furnishing and UB was working as an undercover operative for the Alcoholic Beverage Control Board.

I certify under penalty of perjury that the above information is true.

A handwritten signature in dark ink, appearing to read "F.R. Hamilton", is written over a horizontal line.

Signature of Complainant



Defendant

BURTON, Theresa Lynn

Last

First

Middle

Suffix

Plaintiff

Acced

Agency

ABC

Agency Case #

13-004900173427  
0173427CITATION FOR ☐ MINOR OFFENSE ☒ MISDEMEANOR ☐ AS 04.16.050

District Court at

Palmer

Judicial District:

3

Court Case #

DEFENDANT

DOB 1-20-73 Age \_\_\_\_\_ Driver's Lic 1065599 State AK Class D APSIN ID 1065599  
 Hair BRO Eyes BRN Race C Sex F Ht 66 Wt 120 Hm Ph 232 2223 Wk Ph 373-5656  
 Res Addr 6360 Fuller Lake Washila 99687  
 Mail Addr ☐ Same Box 87-2337, Washila 99687 Employer Chepps.

VEHICLE

Lic/Reg \_\_\_\_\_ St \_\_\_\_\_ Expires \_\_\_\_\_ Yr \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_ ADF&G \_\_\_\_\_  
 Commercial: ☐ Over 10,000 lbs ☐ Over 26,000 lbs ☐ Over 15 psngr ☐ HazMat DOT INSP# \_\_\_\_\_ USDOT# \_\_\_\_\_

OFFENSE

Date 1-10-13 Time 1919 ATN 114 147 378 CTN 001 Code 9931  
 Location 731 W. PARKS Hwy Loc. Code HECE ☐ Hwy Work Zone ☐ Safety Corridor  
☒ Statute ☐ Regulation ☐ Ordinance ☐ Adopted by reference Section 04-16.052(S)  
 Offense: FURNISHING ALCOHOL TO A PERSON UNDER 21  
 Over Limit \_\_\_\_\_ MPH in a \_\_\_\_\_ MPH Zone ☐ Damage Only ☐ Injury ☐ Fatality  
COMPLAINT TO FOLLOW

Item(s) Seized per AS 16.05.190 \_\_\_\_\_

PENALTY Driver License Points \_\_\_\_\_ Bail/Fine \$ \_\_\_\_\_ Surcharge \$ \_\_\_\_\_ Total Due \$ \_\_\_\_\_

I have reasonable grounds to believe the defendant committed the above offense. I certify under penalty of perjury that the above information is true and that I personally served this citation on the defendant.

FR Hamilton  
 Officer's Signature

FR Hamilton  
 Officer's Printed Name

FR118 1-10-13  
 ID Date Served on Defendant

## REQUIRED RESPONSE

☒ MANDATORY COURT APPEARANCE. You must appear in court as shown below. If you fail to appear for a misdemeanor or AS 04.16.050 a warrant will be issued for your arrest. For a minor offense, see consequences on back. I promise to appear in court. + you

Defendant's Signature

☐ CORRECTABLE. This citation will be dismissed if you correct the defect and present the vehicle for inspection by \_\_\_\_\_ at any Alaska State Trooper Post or ☐ \_\_\_\_\_ If you do not, you must either appear in court or mail/deliver your plea as instructed under OPTIONAL APPEARANCE.

☐ OPTIONAL COURT APPEARANCE. You must either (1) appear in court as shown below, or (2) fill out the back of this form and mail/deliver it before then, to:  
 Address (if different from court address): \_\_\_\_\_

COURT APPEARANCE: ☐ within \_\_\_\_\_ days. ☒ on 2-5-13 at 0830 AM PMFeb 5, 2013Court Address: 435 S. Denali ST Palmer

Bring this citation with you to court. If you are under 18, you must bring your parent or legal guardian.



Defendant BURTON, Theresa Lynn Agency ID ABCA **P** 00173428  
Plaintiff DCCED Agency ABC Agency Case # 13-0049 0173428

CITATION FOR ☐ MINOR OFFENSE ☒ MISDEMEANOR ☐ AS 04.16.050

District Court at Palmer Judicial District: 3 Court Case # \_\_\_\_\_

DOB 1-20-73 Age \_\_\_\_\_ Driver's Lic 1065599 State AK Class J APSIN ID 1065599  
Hair BRO Eyes GRN Race W Sex F Ht 65 Wt 120 Hm Ph 252-2225 Wk Ph 373.5656  
Res Addr 6360 Fuller Lake, Wasilla 99687  
Mail Addr ☐ Same Box 872337 Wasilla Employer Chepo's

Lic/Reg \_\_\_\_\_ St \_\_\_\_\_ Expires \_\_\_\_\_ Yr \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_ ADF&G \_\_\_\_\_  
Commercial: ☐ Over 10,000 lbs ☐ Over 26,000 lbs ☐ Over 15 psngr ☐ HazMat DOT INSP# \_\_\_\_\_ USDOT# \_\_\_\_\_

Date 1-10-13 Time 1919 ATN 114147378 CTN 002 Code 9102  
Location 731 W. Parks Hwy Loc. Code HERE ☐ Hwy Work Zone ☐ Safety Corridor  
☒ Statute ☐ Regulation ☐ Ordinance ☐ Adopted by reference Section 04-21.025 (C)  
Offense: No Server Education (NOT CURRENT)  
Over Limit \_\_\_\_\_ MPH in a \_\_\_\_\_ MPH Zone ☐ Damage Only ☐ Injury ☐ Fatality  
Expanded 6-3-12  
Complaint To Follow

Item(s) Seized per AS 16.05.190 \_\_\_\_\_

PENALTY Driver License Points \_\_\_\_\_ Bail/Fine \$ \_\_\_\_\_ Surcharge \$ \_\_\_\_\_ Total Due \$ \_\_\_\_\_

I have reasonable grounds to believe the defendant committed the above offense. I certify under penalty of perjury that the above information is true and that I personally served this citation on the defendant.

FR Hamilton  
Officer's Signature

F.R. Hamilton  
Officer's Printed Name

FRH  
ID

1-10-13  
Date Served on Defendant

#### REQUIRED RESPONSE

☒ MANDATORY COURT APPEARANCE. You must appear in court as shown below. If you fail to appear for a misdemeanor or AS 04.16.050 a warrant will be issued for your arrest. For a minor offense, see consequences on back.

I promise to appear in court. [Signature]

Defendant's Signature

☐ CORRECTABLE. This citation will be dismissed if you correct the defect and present the vehicle for inspection by \_\_\_\_\_ at any Alaska State Trooper Post or ☐ \_\_\_\_\_ If you do not, you must either appear in court or mail/deliver your plea as instructed under OPTIONAL APPEARANCE.

☐ OPTIONAL COURT APPEARANCE. You must either (1) appear in court as shown below, or (2) fill out the back of this form and mail/deliver it before then, to:  
Address (if different from court address): \_\_\_\_\_

COURT APPEARANCE: ☐ within \_\_\_\_\_ days. ☒ on Feb 5, 2013 at 830 AM/PM

Court Address: 435 S. Denali St Palmer

Bring this citation with you to court. If you are under 18, you must bring your parent or legal guardian.


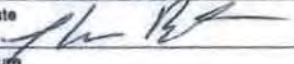




800-478-2427 or  
274-8133  
www.alaskacharr.com

**Nº 71932**  
**ALCOHOL MANAGEMENT**  
**Certificate**

*(Not valid for use as identification)*

|   |   |
|---|---|
| <br>Instructor | Name <u>Theresa Burton</u>  |
| <u>10/3/12</u><br>Expires   | Birthdate <u>1-20-73</u>  |
|   | Signature  |



Alcoholic Beverage Control Board  
5848 East Tudor Road  
Anchorage, AK 99507

Date: 1-15-13  
Number 13-0049  
Page 1 of 1 Page

## Notice of Violation

(13AAC 104.525)

|                    |  |                           |
|--------------------|--|---------------------------|
| Licensee           | License Number   | Type of License           |
| Jose Nanez         | 2616   | Beverage Dispensary       |
| D.B.A.             | How Delivered<br>[ X ] Certified Mail # On File<br>[ ] In Person | Law Enforcement Agency    |
| Chepo's Fiesta     |  | Wasilla Police Department |
| Street or P.O. Box | City, State  | Zip                       |
| 731 W. Parks Hwy   | Wasilla, AK  | 99687                     |

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

**VIOLATION:** On 1-10-13, at about 1919 hours, Chepo's Fiesta waitress Theresa Lynn Burton, a three month employee, furnished an alcoholic beverage to a person under the age of 21. When asked to present proof of current alcohol server education, she presented a TAM card which had expired on 6-3-12. A check of the license file revealed the establishment has received a prior notice of violation for licensee Jose Nanez and employees not having server education. Burton was issued summonses for furnishing alcohol to a person under 21 and failing to maintain server education. A mandatory court date of 2-5-13, 0830 hours, Palmer District Court was assigned. She was also advised not to serve any alcoholic beverage until she attended current server training. Also noted in the file was a December 14, 2012 document signed by Nanez and notarized, that all of his agents and employees tasked with patron identification verification have received alcohol server training and their certification is currently valid. A charge of licensee responsible for violations and penalty for making false statements is forwarded to the DAO for prosecution.

Your attention is directed to **AS 04.16.052: Furnishing of alcoholic beverages to persons under the age of 21 by licensees, AS 04.21.025: Server education, AS 04.16.150: Licensee responsible for violations and AS 04.16.210: Penalty for making a false statement.**

**You are directed to respond to the Director of the Alcohol Beverage Control Board in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a reoccurrence of this violation. \*Please include your Alcohol License Number in your response.**

Shirley A. Cote', Director  
Alcoholic Beverage Control Board  
5848 E. Tudor Road  
Anchorage, Alaska 99507

### A Response is Required

13 AAC 104.525 (B) provides that upon receipt of a Notice of Violation, a licensee may request to appear before the Director and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice and the Director must grant an appearance within ten days after receipt of a request. A Licensee shall respond, either orally or in writing, to the Notice.

|                              |   |
|------------------------------|---|
| Receipt:                     | Violation Observed By:<br>Underage Buyer 11-005 and F.R. Hamilton |
| Filed By: <i>FR Hamilton</i> | Title:<br>Investigator III  |

|  |            |
|--|------------|
| License Fee  | \$ 2500.00 |
| Filing Fee   | \$ 200.00  |
| TOTAL  | \$         |
| Late Fee – If Received or Postmarked after 12/31/12                | \$         |
| Fingerprint Fee – \$51.50 per person (only for new owners/members) | \$         |
| GRAND TOTAL  | \$         |

By affixing my signature below:

I declare under penalty of perjury that I have examined this application and to the best of my knowledge and belief state it is true, correct and complete.

I certify that I have read and am familiar with Title 4 of the Alaska statutes and its regulations.

I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

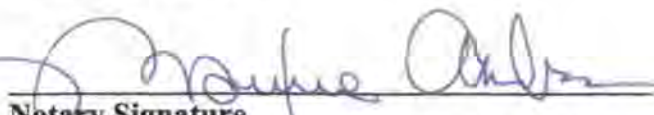
As a licensee (a sole proprietor or partner), I certify that I have received alcohol server training and my certification is currently valid.

As a Corporate/LLC licensee, I certify that all agents and employees, who serve, sell or are otherwise responsible for the service/sale/storage of alcoholic beverages have received alcohol server training and their certification is currently valid. I further certify that certain shareholders/officers/directors/members of the entity that are *not directly or indirectly responsible* for the service/sale/storage of alcoholic beverages are not alcohol server training certified, and will not be required to be certified.

As a licensee, I certify that all my agents and employees tasked with patron identification verification have received alcohol server training and their certification is currently valid.

  
\_\_\_\_\_  
Licensee Signature

JOSE NAVEZ OWNER  
\_\_\_\_\_  
Printed Name & Title

  
\_\_\_\_\_  
Notary Signature  
Notary Public in and for the State of AK

Subscribed and sworn to before me this

14 day of December 2012

My commission expires: w/office





| License Fee | Application Fee | Late Fee | Fingerprint Fee | TOTAL |
|-------------|-----------------|----------|-----------------|-------|
| \$2500.00   | \$200.00        |          |                 | 2700- |

By affixing my signature below:

I declare under penalty of perjury that I have examined this application and to the best of my knowledge and belief state it is true, correct and complete.

I certify that I have read and am familiar with Title 4 of the Alaska statutes and corresponding regulations.

I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

As a licensee (a sole proprietor, partner or officer, director, shareholder, member, of the entity to which license is issued), I certify that I have received alcohol server training and my certification is currently valid.

As a licensee, I certify that all other persons named as partners, officers, directors, shareholders, or members have received alcohol server training and their certification is currently valid.

As a licensee, I certify that all my agents and employees tasked with patron identification verification have received alcohol server training and their certification is currently valid.

[Signature]  
Licensee Signature

JOSE NUNEZ OWNER -  
Printed Name & Title

[Signature]  
Notary Signature  
Notary Public in and for the State of Alaska

Subscribed and sworn to before me this

29<sup>th</sup> day of December 2010

My commission expires: W/O



State of Alaska  
Department of Public Safety  
**Alcoholic Beverage Control Board**

Sarah Palin, Governor  
Joseph A. Masters, Commissioner

**ALCOHOL SERVER TRAINING CERTIFICATION**

As required under AS 04.21.025

*This certification must be submitted with your renewal, or your renewal will not be accepted. If new or transfer application, submit within 30 days after a temporary approval or liquor license has been issued. If you do not comply with this requirement, you will be in violation of Title 4, and your license may be suspended.*

1. As a sole licensee or partner, or as officer, director, shareholder, member, or managing member of the entity to which this license is issued ("licensee"), I certify that I have received alcohol server training and my certification is currently valid.
2. As licensee, I certify that all other persons named as my partners, or officers, directors, shareholders, members or managing members of the entity to which this license is issued, have received alcohol server training and their certification is currently valid.
3. As licensee, I certify that all of my agents, employees who serve/sell alcoholic beverages, their supervisors, and anyone employed to check a patron's identification, have received alcohol server training and their certification is currently valid. (This applies within 30 days of employment)

**EXCEPTION:**

☐ As a Corporate/LLC licensee (entity), I certify that all agents and employees who serve, sell, or are otherwise responsible for the service/sale/storage of alcoholic beverages have received alcohol server training and their certification is currently valid. I further certify that certain shareholders/officers/directors/members of the entity that are ***not directly or indirectly responsible*** for the service/sale/storage of alcoholic beverages are not alcohol server training certified, and will not be required to be certified.

Licensee: \_\_\_\_\_

Signature

Owner

Printed Name/Title

Date: \_\_\_\_\_

12-30-08

Name:

***Chepo's Fiesta***

Owner:

***Jose Nanez***

License #:

***2616***



# State of Alaska

Department of Public Safety

## Alcoholic Beverage Control Board

Frank H. Murkowski, Governor  
William Tandeske, Commissioner

### ALCOHOL SERVER TRAINING CERTIFICATION

As required under AS 04.21.025

*This certification must be submitted with your renewal, or it will not be accepted.*

*If new or transfer application, submit within 30 days after a temporary approval or liquor license has been issued. If you do not comply with this requirement, you will be in violation of Title 4, and your license may be suspended.*

1. As sole licensee or partner, or as officer, director, shareholder, member, or managing member of the entity to which this license is issued ("licensee"), I certify that I have received alcohol server training and my certification is currently valid.
2. As licensee, I certify that all other persons named as my partners, or officers, directors, shareholders, members or managing members of the entity to which this license is issued, have received alcohol server training and their certification is currently valid.
3. As licensee, I certify that all of my agents, employees who serve/sell alcoholic beverages, their supervisors, and anyone employed to check a patron's identification, have received alcohol server training and their certification is currently valid. (This applies within 30 days of employment)

Licensee: \_\_\_\_\_

Signature

Printed Name/Title

License #: \_\_\_\_\_

Date: \_\_\_\_\_

2616

JOSE NAVEZ

12-29-06





Alcoholic Beverage Control Board  
5848 East Tudor Road  
Anchorage, AK 99507

Date: 12-5-05  
Number: 05-1142  
Page 1 of 2 Pages

## Notice of Violation

(15AAC 104.525)

| Licensee                               | License Number  | Type of License                                 |
|--|---|---|
| Jose Nanez                             | 2616  | Restaurant/Eating                               |
| D.B.A.<br>Chepo's Mexican Restaurant   | How Delivered<br>[ X ] Certified Mail # 7001 1940 0004<br>[ ] In Person 1063 9078 | Law Enforcement Agency<br>ALASKA STATE TROOPERS |
| Street or P.O. Box<br>731 W. Parks Hwy | City, State<br>Wasilla, AK  | Zip<br>99687                                    |

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note:** This is not an accusation or a criminal complaint.

**VIOLATION:** On 12-2-05, at about 1900 hours, Dany Orlando Arellano-Bugarin, waiter at Chepo's Mexican Restaurant, served an alcoholic beverage to a person under the age of 21. The sale occurred during a compliance check. After the sale, Arellano-Bugarin let the under 21 person remain on the licensed premises. Due to a language barrier, Lucia Angelica Nanez, who identified herself as the co-owner of the restaurant, assisted in translation with Arellano-Bugarin. When asked to show proof of attending an alcohol server's education course, Lucia did not have a server's card. Contact was also made with Jose Nanez, co-owner and person listed on the liquor license. Jose was asked to produce an alcohol server's card to which he stated he didn't have. Dany Orlando Arellano-Bugarin was issued summonses for furnishing or delivering alcohol to a person under the age of 21 and allowing an under age person to remain on a licensed premises. Lucia Angelica Nanez was issued a summons for failing to show her alcohol server's course card. Jose Nanez was issued summonses for furnishing or delivering alcohol to a person under the age of 21 and not having an alcohol server's card. All three were given mandatory court dates of 12-20-05, 0830 hours, Palmer District Court.

Your attention is directed to **AS 04.16.051: Furnishing or delivery of alcoholic beverage to person under the age of 21.**

- (a) A person may not furnish or deliver an alcoholic beverage to a person under the age of 21 years
- (b) This section does not prohibit the furnishing or delivery of an alcoholic beverage
  - (1) by a parent to the parent's child, by a guardian to the guardian's ward, or by person to be the legal spouse of the person if the furnishing or delivery occurs of the licensed

- premises; or  
(2) by a licensed physician or nurse to a patient in the course of administering medical treatment.

(c) Acts unlawful under AS11.51.130 are not made legal by (b) of this section.

- (d) A person acting with criminal negligence who violates this section is guilty of a class C felony if, within five (5) years preceding the violation, the person has been previously convicted under this section.

Your attention is directed to **AS 04.16.052: Furnishing of alcoholic beverages to persons under the age of 21 by licensees.** A licensee or an agent or employee of the licensee may not with criminal negligence

- (2) allow a person under the age of 21 years to enter and remain within licensed premises;

Your attention is directed to **13AAC104.465(a):** While selling or serving alcoholic beverages, a person required under AS 04.21.025 to complete an alcohol server education course and the person's on-duty supervisor shall carry a current course card certifying completion of an approved alcohol server education course. .... The card must be shown upon request of a peace officer or board representative.

Your attention is directed to **AS 04.16.052: Furnishing of alcoholic beverages to persons under the age of 21 by licensees.** A licensee or an agent or employee of the licensee may not with criminal negligence

- (1) allow another person to sell, barter, or give an alcoholic beverage to a person under the age of 21 years within a licensed premises;

Your attention is directed to **AS 04.21.025: Alcohol Servers Education Course**


- (a) As a condition of issuance or renewal of a license and selling alcoholic beverages under a license, the board shall require a licensee who sells or serves alcoholic beverages and a licensee's agents and employees who sell or serve alcoholic beverages or check the identification of a patron to complete an alcohol server education course approved by the board, .....

- (c) A licensee, agent, or employee shall complete the course required under (a) of this section not more than 30 days after being licensed or employed.

You are directed to respond to this notice of violation within 10 days to explain what action you have taken to prevent a reoccurrence of this violation.

**A Response Is Required**

15 AAC 104.525 (B) provides that upon receipt of a Notice of Violation, a licensee may request to appear before the Director and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice and the Director must grant an appearance within ten days after receipt of a request. A Licensee shall respond, either orally or in writing, to the Notice.

|   |  |
|---|--|
| Receipt:  | Violation Observed By:<br>Investigator F.R. (Joe) Hamilton |
| Filed By:  F.R. (Joe) Hamilton | Title Corporal, Department of Public Safety                |

**Tab**

**9**



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5438  
Fax: 907.263.5930

**MEMORANDUM**

TO: Robert Klein, Chair and  
Members of the Board

DATE: September 13, 2013

FROM: Shirley A. Coté *Sae*  
Director, ABC Board

RE: Violation by Licensee, Martin Kim, d/b/a  
In and Out Bush Liquor #2, License #688

On March 1, 2013 Martin Moochan Kim, d/b/a In and Out Bush Liquor #2 sold an alcoholic beverage to an underage person during a compliance check. Although Mr. Ernouf's letter of response to the notice of violation indicated Mr. Kim asked the underage buyer his age our underage buyer said he did not. Mr. Kim did ask for identification. The identification presented was a military dependent card with the date of birth on the back. Mr. Kim looked at the front of the card and then sold a 6-pack of beer to the underage buyer. Mr. Kim failed to provide proof of attending an alcohol server education course.

Mr. Kim was convicted of furnishing alcohol to a minor and was sentence to one-year suspended imposition of sentence and a \$50 police training surcharge. He has no prior convictions.



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5437

October 3, 2013

Martin Moochan Kim  
Kay, Inc.  
d/b/a In and Out Bush Liquor #2  
1100 W. Benson Blvd.  
Anchorage, Alaska 99503

RE: Sanctions on License # 688 Postponed

Dear Mr. Kim,

The Alcoholic Beverage Control Board met in Nome on October 2, 2013 and deliberated on your conviction of June 5, 2013 for furnishing an alcoholic beverage to an underage person on March 1, 2013. A motion was made to suspend liquor sales from your licensed premises for a period of 45 days with 45 days suspended and a \$500 fine. One board member had an excused absence and the board vote was split two/two. Therefore, your conviction will be reheard at the meeting of December 10, 2013 in Anchorage when it is anticipated all members will be present.

As the time draws near we will contact you regarding the time set for your or your representative's testimony. If you have any questions please don't hesitate to contact me.

Sincerely,

  
Shirley A. Coté  
Director

cc: W. Sherman Ernouf, The Law Offices of Ernouf & Coffey  
Christine Lambert, ABC Board Records and Licensing Supervisor



## IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT ANCHORAGE

## JUDGMENT

Plaintiff ☒ State of Alaska☐ Municipality of Anchorage

CASE NO. 3AN-

13-3418R

ATN:

CTN:

Defendant Martin Machan KimDOB: 1-25-31

APSIN:

DL: \_\_\_\_\_ ST: \_\_\_\_\_ ☐ Comm. Lic. Address: \_\_\_\_\_

Defendant is:

☒ **GUILTY** of Furnishing Alcohol to Minor  
Statute/Ordinance: AS 4.16.052(5)☐ **NOT GUILTY.** It is ordered that defendant is acquitted and discharged.PLEA: ☒ Guilty☐ No Contest

RULE 11 PLEA:

☒ Yes☐ No☐ PartialTRIAL: ☐ Court ☐ Jury

DV Offense per AS 18.66.990(3)&amp;(5):

☐ Yes☒ No

Sex Offender Registration

Required by AS 12.63.100:

☐ Yes☒ No☒ **SUSPENDED IMPOSITION OF SENTENCE.** Imposition of sentence is suspended and defendant is placed on probation for 1 year, subject to the orders and conditions listed below.**SENTENCE IS IMPOSED AS FOLLOWS:****DIRECT COURT ORDERS**

1. FINE: \$ \_\_\_\_\_ with \$ \_\_\_\_\_ suspended. Due \_\_\_\_\_ Bail to Fine \$ \_\_\_\_\_  
☐ Fees paid to court-ordered programs will be credited to fine if defendant presents proof of payment to clerk by above due date.
2. POLICE TRAINING SURCHARGE due within 10 days: ☒ \$50 (Misd) ☐ \$10 (Infraction) ☐ None (Fine Under \$30)
3. JAIL \_\_\_\_\_ days with \_\_\_\_\_ days suspended. Report at 7:45 a.m. on \_\_\_\_\_ to the Cordova Center, 130 Cordova Street, Anchorage or a bench warrant may be issued for your arrest.
4. ☐ Initial Jail Surcharge: ☐ \$50 per case. Due now to AG's Office, 1031 W. 4<sup>th</sup> Ave., #200, Anchorage, AK 99501
5. ☐ Suspended Jail Surcharge: \$100 per case with \$100 suspended. Surcharge must be paid if probation is revoked and, in connection, defendant is arrested and taken to jail or is sentenced to jail.
6. ☐ Report now to the Anchorage Alcohol Safety Action Program (AASAP). Follow all recommendations including residential treatment up to \_\_\_\_\_ days plus required aftercare in addition to any jail time ordered. Pay costs \*
7. ☐ Defendant is ordered to perform \_\_\_\_\_ hours Community Work Service (CWS) within/by \_\_\_\_\_ and pay any required fee. ☐ CWS not completed will convert to 3 hours of jail per CWS hour.
8. ☐ Defendant is ordered to make restitution ☐ as stated in the Restitution Judgment ☐ in an amount to be determined as provided in Criminal Rule 32.6 (c)(2).\*
9. ☐ Defendant must give DNA sample if requested by an officer on state's behalf. (AS 11.41 offense)
10. ☒ Defendant is ordered to prov. a proof of TAN class
11. Orders are imposed ☐ consecutive to ☐ concurrent with other counts and cases. [Periods of probation are concurrent.]

**CONDITIONS OF PROBATION.** Defendant is placed on probation for 1 years/months, subject to the following conditions:

12. ☒ Comply with all the above direct court orders by the deadlines stated, and follow the "After Sentencing Instructions."
13. ☒ Commit no jailable offenses during the period of probation.
14. ☐ Contact a state-approved batterer's intervention program within ten days for assessment and to follow all recommendations.  
☐ Complete \_\_\_\_\_ anger management program; supply proof to the prosecutor by \_\_\_\_\_
15. ☐ Have no contact, direct or indirect, with \_\_\_\_\_ unless that person's written consent has been supplied to the Prosecutor.
16. OTHER: \_\_\_\_\_

\* Refer to "After Sentencing Instructions."

**JUDGMENT FOR COST OF COUNSEL (If Appointed).** IT IS ORDERED that defendant pay to plaintiff ☐ \$500 (Trial)☐ \$200 (Change of Plea) ☐ \$ \_\_\_\_\_ for the cost of court-appointed counsel. Interest accrues on the judgment at the annual rate of 3.75% from the date of judgment until paid. Defendant is ordered to apply for the PFD every year defendant is eligible until the judgment is paid in full. This judgment has the same force and effect as a judgment in a civil action.I certify that on 11-5-13 a copy of this judgment was given to:
☐ Def ☒ Def Atty ☒ Prosecutor ☐ Jail  
☐ AASAP ☐ DV Monitor ☐ CWS ☐ DMV  
☐ CPEC  
 In-Court Clerk: OK

District Court Judge/Magistrate

Print Name: T. Chung11-6-5-13  
Effective Date

See CR-120CV for APSIN Information



# STATE OF ALASKA ALCOHOLIC BEVERAGE CONTROL

|                                |                              |
|--------------------------------|------------------------------|
| Case No.<br><b>13-0203</b>     |                              |
| Detach<br><b>A</b>             | UnitID<br><b>ABCA</b>        |
| Date Reported<br><b>3-1-13</b> | Time Reported<br><b>1357</b> |

|   |                              |   |  |  |                                       |
|---|------------------------------|---|--|--|---------------------------------------|
| Reporting Officer<br><b>INV F.R. HAMILTON</b>   |                              | PermID<br><b>FRH0</b>                           |  | Investigating Agency<br><b>ALCOHOL BEVERAGE CONTROL</b>            |                                       |
| ACT#<br><b>1</b>  | Activity Code<br><b>9931</b> | UCR No.<br><b>22</b>                            | Statute / Regulation<br><b>AS 04.16.052(5)</b> | Type of Activity<br><b>Furnishing Alcohol to a Person Under 21</b> |                                       |
| Location of Activity<br><b>In and Out Bush Liquor #2, 1100 W. Benson Blvd</b>               |                              |   |  | N: _____ W: _____  | Patrol Zone<br><b>UEBA</b>            |
|   |                              |   |  | Dom. Viol.   | Alcohol or Drugs Involved<br><b>A</b> |
| ACT#<br><b>2</b>  | Activity Code<br><b>4102</b> | UCR No.<br><b>22</b>                            | Statute / Regulation<br><b>13AAC104.465(a)</b> | Type of Activity<br><b>No Proof of Current Server Education</b>    |                                       |
| Location of Activity<br><b>In and Out Bush Liquor #2, 1100 W. Benson Blvd</b>               |                              |   |  | N: _____ W: _____  | Patrol Zone<br><b>UEBA</b>            |
|   |                              |   |  | Dom. Viol.   | Alcohol or Drugs Involved<br><b>A</b> |
| Pers No.<br><b>1</b>  | Role(s)<br><b>DI</b>         | Name<br><b>Martin Moochan Kim</b>               |  | Sex<br><b>M</b>  | Race<br><b>A</b>                      |
|   |                              | Ht.<br><b>67</b>                                |  | Weight<br><b>160</b>   | Hair<br><b>BLK</b>                    |
|   |                              | Eyes<br><b>BRO</b>                              |  | D.O.B./Approx. Age<br><b>1-25-31</b>                               |                                       |
| Residence Address<br><b>1129 Covington Court, Anchorage, AK</b>                             |                              |   |  | Residence / Cell Phone   |                                       |
| Place of Employment<br><b>In and Out Bush Liquor #2, 1100 W. Benson Blvd, Anchorage, AK</b> |                              |   |  | Work Phone<br><b>561-5112</b>                                      |                                       |
| Driver's License No.<br><b>7181315</b>  |                              |   |  | State<br><b>AK</b>   |                                       |
| VCCB<br><input type="checkbox"/>  |                              |   |  | OVR<br><input type="checkbox"/>                                    |                                       |
| APSIN ID NO.<br><b>7270468</b>  | E-Mail Address.              | ATN / NCIC / Other ID No.<br><b>114 147 441</b> |  | Charged With<br><b>1S 2S</b>                                       | Susp Act No.                          |
|   |                              |   |  | Juv. Dispo   |                                       |
| Pers No.<br><b>2</b>  | Role(s)<br><b>W</b>          | Name<br><b>Underage Buyer 11-005</b>            |  | Sex  | Race                                  |
|   |                              | Ht.   |  | Weight   | Hair                                  |
|   |                              | Eyes  |  | D.O.B./Approx. Age<br><b>7-30-93</b>                               |                                       |
| Place of Employment<br><b>Alcoholic Beverage Control Enforcement Team</b>                   |                              |   |  | Work Phone<br><b>263-5925</b>                                      |                                       |
| Occupation<br><b>Buyer</b>  |                              |   |  | VCCB<br><input type="checkbox"/>                                   |                                       |
|   |                              |   |  | OVR<br><input type="checkbox"/>                                    |                                       |

## SYNOPSIS / DETAILS:

### SYNOPSIS:

On 3-1-13, at about 1357 hours In and Out Bush Liquor #2 licensee Martin Moochan Kim sold an alcoholic beverage to a person under the age of 21. The sale occurred during a compliance check.

### OBSERVATION:

On 3-1-13, at about 1355 hours, Underage buyer 11-005; age 19, herein referred to as UB, entered In and Out Bush Liquor #2. I remained outside. About two minutes later, UB exited the establishment carrying a plastic bag. Upon arriving at the vehicle, UB advised me he had purchased a 6-pk of Budweiser beer. Age was not asked but ID was asked for. The ID presented was a valid military dependant card which has the date of birth on the back of the card in the upper left corner. The date of birth read "1993JUL30". UB advised me that the clerk did not turn the card over to look at the date of birth. UB then described the clerk to me. UB paid for the beer with a recorded ten dollar bill and received change.

### OFFICER ACTION:

I took a photo of UB with the purchased product. I then went into the establishment and made contact with the clerk who was identified as Martin M. Kim, owner. I provided Kim with UB's ID and asked if he recalled UB. Kim was also asked to provide proof of current server education. The buy bill was recovered from the register.

### INTERVIEW #1, DI, M.M. KIM:

Conducted in a non-custodial manner. Kim essentially related he did not recall waiting on UB. I asked Kim to tell me what UB's date of birth was. After looking at the ID for about 10 seconds, he stated he didn't know. I asked UB to verify that I had the correct clerk. UB looked into the store and confirmed Kim was the person who had sold to him. Kim could not provide me proof he had server education.

### OFFICER ACTION:

Kim was told to stop selling alcoholic beverages until he could provide proof of server education. Kim was issued summonses for furnishing alcohol to a person under 21 and failing to provide proof of server education. I then departed the establishment.

### NOTE:

UB completed 11 compliance checks on 3-1-13. Two establishments sold/furnished UB an alcoholic beverage.

### EVIDENCE:

Digital audio and photos, one 6-pk of Budweiser beer, 12-oz bottles and \$1.50 change from the transaction. The buy bill was returned to buy funds.

### CASE STATUS:

Closed by issuance of summonses. Referred to the DAO for prosecution.

|                           |   |  |                       |                                |
|---------------------------|---|--|-----------------------|--------------------------------|
| CASE CLOSURE<br><b>CA</b> | COPIES TO<br><b>District Attorney's Office, Anchorage</b> | REVIEWED AND APPROVED BY<br><b>Robert L. Beasley, Enforcement Supervisor</b> | PermID<br><b>RLB8</b> | DATE CLOSED<br><b>3/4/2015</b> |
|---------------------------|---|--|-----------------------|--------------------------------|



In the District Court of the State of Alaska  
Third Judicial District in Anchorage, Alaska

13-0203  
Agency Number

State of Alaska,

Plaintiff

vs.

Martin Moochan Kim

DOB/ 1-25-31

ID/ 7270468

ATN: 114 147 441

Defendant

Misdemeanor  
Criminal Complaint

No. \_\_\_\_\_ Cr.

VRA CERTIFICATION I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

DOMESTIC VIOLENCE OFFENSES Per AS 18.66.990(3) and (5)  
☐ ALL COUNTS ☒ NONE ☐ SPECIFIED BELOW

CTN 001  
FURNISHING OF ALCOHOLIC  
BEVERAGES TO PERSONS UNDER  
THE AGE OF 21 BY LICENSEES  
A.S. 04.16.052(5)

Complainant states that on or about the 1<sup>st</sup> day of March, 2013, at or near Anchorage in the Third Judicial District, State of Alaska, Martin Moochan Kim, a licensee or an agent or an employee of the licensee, did with criminal negligence, while working on a licensed premises, furnish or deliver an alcoholic beverage to a person under the age of 21.

All of which is a class A misdemeanor offense being contrary to and in violation of A.S. 04.16.052(5) and against the peace and dignity of the State of Alaska.

CTN 002  
ALCOHOL SERVERS EDUCATION COURSE  
13AAC104.465(a)

Complainant states that on or about the 1<sup>st</sup> day of March, 2013, at or near Anchorage in the Third Judicial District, State of Alaska, Martin Moochan Kim while selling or serving alcoholic beverages, a person required under AS 04.21.025 to complete an alcohol server education course, failed to produce a current alcohol servers card when asked by a peace officer to show proof of attending an approved server's course.

All of which is a class A misdemeanor offense being contrary to and in violation of 13AAC104.465(a) and against the peace and dignity of the State of Alaska.

This complaint is based upon the statement of Underage Buyer 11-005; age 19, herein referred to as UB. UB was conducting an alcohol compliance check at the Defendant's place of employment, In and Out Bush Liquor #2, a licensed liquor establishment in Anchorage, where the Defendant sold UB a 6-pk of Budweiser beer. The Defendant who is also the owner of 9 years, was asked to provide proof of current alcohol server training to which he could not. UB was a person whose age was verified by Investigator F.R. Hamilton, Alcoholic Beverage Control Board, prior to the furnishing and UB was working as an undercover operative for the Alcoholic Beverage Control Board.

I certify under penalty of perjury that the above information is true.

  
\_\_\_\_\_  
Signature of Complainant

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

MARTIN MOOCHAN KIM,

DOB: 1/25/1931

APSIN ID: 7270468

DMV NO. 7181315 AK

ATN: 114-147-441

Defendant.

3AN-13-3418 CR

FILED IN THE DISTRICT COURT  
State of Alaska Third Judicial District

MAR 23 2013  
Clerk of the Third Judicial District

INFORMATION

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990: None

Count I - AS 04.16.052(5)

Licensee Furnish And/Or Deliver Alcohol To Minor

Martin Moochan Kim - 001

THE DISTRICT ATTORNEY CHARGES:

**COUNT I**

That on or about the 1st day of March, 2013, at or near Anchorage in the Third Judicial District, State of Alaska, MARTIN MOOCHAN KIM, being a licensee or an agent or employee of the licensee, did with criminal negligence furnish and/or deliver alcoholic beverage(s) to a person under the age of 21 years.

All of which is a class A misdemeanor offense being contrary to and in violation of AS 04.16.052(5) and against the peace and dignity of the State of Alaska.



The undersigned swears under oath this Information is based upon a review of police report 13-203 submitted to date.

On 3/1/13 at 1357 hours, the defendant MARTIN KIM sold alcohol at In and Out Bush Liquor #2 to an underage (age 19) purchaser.

BAIL INFORMATION:

The defendant has no current criminal convictions within the State of Alaska according to APSIN.

Dated at Anchorage, Alaska, this 26<sup>th</sup> day of March, 2013.

MICHAEL C. GERAGHTY  
ATTORNEY GENERAL

By: 

Florina Altshiler  
Assistant District Attorney  
Alaska Bar No. NA16155

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE.

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MARTIN MOOCHAN KIM, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

No. 3AN-S13-03418 CR

TRANSCRIPT OF PROCEEDINGS

June 5, 2013 - Pages 2 through 11

***TRANSCRIPTION SUPPORT SERVICES***

4782 Mills Drive  
Anchorage, Alaska 99508-4733  
(907) 333-6256 or (907) 337-0243 (fax)  
(907) 223-6003 (cell)  
[lsfoley@acsalaska.net](mailto:lsfoley@acsalaska.net)

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COP HEARING

BEFORE THE HONORABLE JO-ANN M. CHUNG  
District Court Judge

Anchorage, Alaska  
June 5, 2013  
2:28 o'clock p.m.

APPEARANCES:

FOR THE PLAINTIFF:

UNKNOWN  
Assistant District Attorney  
District Attorney's Office  
310 K Street, Suite 520  
Anchorage, Alaska 99501

FOR THE DEFENDANT:

W. SHERMAN ERNOUF  
ERNOUF & COFFEY, P.C.  
3606 Rhone Circle, Suite 110  
Anchorage, Alaska 99508

P R O C E E D I N G S

201

02:28:30

MR. ERNOUF: Good afternoon, Your Honor. My name is Sherman Ernouf. I'm here on behalf of Martin Kim, K-i-m.

THE COURT: K-i-m?

MR. ERNOUF: He's here, Your Honor. We're here to accept a Rule 11 agreement today.

THE COURT: All right. This is case number 13-3418. Come on up.

MR. ERNOUF: Your Honor, Mr. Kim's 83 years old and English is his second language so I'm going to talk slowly and maybe we can talk a little bit louder, Your Honor.

THE COURT: Does he understand English?

MR. ERNOUF: Yes, ma'am.

THE COURT: Okay. Do you understand English?

MR. KIM: English? Yeah, a little bit.

THE COURT: Okay. We -- does he need an interpreter? Does he have someone here that's -- or behind him?

MR. ERNOUF: His -- I could interpret. That was an option.

THE COURT: Okay. Why don't you come on up here and sit next to him so he's comfortable about what we're doing and understands what we're doing here and you had an opportunity to speak with him before?

1 MR. ERNOUF: Oh, yes, ma'am, with an.....  
2 THE COURT: Okay.  
3 MR. ERNOUF: .....with a translator and in English so.....  
4 THE COURT: Okay.  
5 MR. ERNOUF: .....he does understand. He's just a little  
6 hard of hearing.  
7 THE COURT: Okay. You can sit down and, ma'am, you can  
8 sit next to him.  
9 THE CLERK: Mr. Ernouf?  
10 MR. ERNOUF: Yes.  
11 THE CLERK: (Indiscernible - away from microphone)?  
12 MR. ERNOUF: That'd be great.  
13 (Whispered conversation)  
14 THE COURT: Can you hear me?  
15 MR. KIM: Yes. Yes.  
16 MR. ERNOUF: Can you hear?  
17 THE COURT: Can you hear?  
18 MR. KIM: Yes, sir, I hear.  
19 MR. ERNOUF: Can you hear right now?  
20 MR. KIM: Yes, sir. I don't know.  
21 MR. ERNOUF: If you can't hear it though, we got to  
22 (indiscernible) on right. I can't -- I think they're on. Now  
23 see if you can hear.  
24 THE COURT: Can you hear now?  
25 MR. KIM: Mm-hmm.



1 THE COURT: Okay. You can hear me? You need to raise  
2 your hand and say you cannot hear if you don't hear. Okay?  
3 When I'm talking or your attorney, Mr. Ernouf, is talking.  
4 Okay?

5 MR. KIM: Yes.

6 MR. ERNOUF: He understands.

7 MR. KIM: Yeah.

8 THE COURT: Okay. Go ahead, Mr. Ernouf, what's the  
9 agreement?

10 MR. ERNOUF: Your Honor, the agreement is my client will  
11 plead guilty to furnishing alcohol to a minor. It's his first  
12 offense in 83 years, Your Honor, so it's a one-year SIS and we  
13 were to provide notice that we've re -- completed the TAM  
14 service class. We did provide that to the district attorney,  
15 Your Honor, and I guess there's the \$10 surcharge.

16 THE COURT: It's a \$50 police surcharge?

17 MR. ERNOUF: Fifty, yes, ma'am.

18 THE COURT: Okay. Is that the agreement, Ms. Kalker (ph)?

19 DISTRICT ATTORNEY: Yes, Your Honor.

20 THE COURT: Mr. Kim, your attorney has just told me about  
21 an agreement. The agreement is that you're going to be  
22 pleading guilty to furnishing alcohol to a minor.

23 MR. KIM: Yes.

24 THE COURT: And you're be -- going to get a one-year  
25 suspended imposition of sentence.

1 MR. KIM: Yes.

2 THE COURT: Do you have any questions about the agreement?

3 MR. KIM: Hmm?

4 (Whispered conversation)

5 MR. KIM: No.

6 THE COURT: No questions? Okay. And I see that you're  
7 getting help from -- is this your -- a family member? This is  
8 your family member?

9 MR. ERNOUF: It's his wife.

10 THE COURT: Okay. His wife. The charge is furnishing  
11 alcohol to a minor which is Class A misdemeanor and the  
12 maximum penalty is one year in jail and a \$10,000 fine.  
13 That's the maximum. You're not getting that. Do you have any  
14 questions about the charge or the minimum or maximum penalty?

15 MR. KIM: No.

16 THE COURT: Okay. And I probably have to go over the  
17 rights again with him. So, Mr. Kim, the first thing that I  
18 want to tell you is that if you are not a citizen of the  
19 United States, then pleading guilty to this crime could cause  
20 you to be deported or denied reentry or naturalization. You  
21 understand that?

22 MR. KIM: Yes.

23 THE COURT: Okay. You have any questions or need more  
24 time with your attorney regarding that issue?

25 MR. KIM: No.

1           THE COURT: There are a number of trial rights that you're  
2 giving up by pleading today. You're -- you have a right to  
3 say not guilty, ask for a trial and if you had a trial, then a  
4 jury or a judge could decide your case and if they decided  
5 your case, they'd all have -- a jury would all have to agree  
6 that you're guilty or not guilty.

7           You have a right to be in -- thought of as innocent  
8 unless proven guilty beyond a reasonable doubt so the state  
9 has to prove your case and then you have a right to question  
10 all the witnesses against you. You understand so far?

11          MR. KIM: Yes.

12          THE COURT: You also have a right to bring in your own  
13 evidence and you can make witnesses testify and they -- you  
14 can make them come to court with the help of your attorney.  
15 You understand that?

16          MR. KIM: Yes.

17          THE COURT: You also have a right at your trial to testify  
18 or you could say nothing and do nothing at the trial. You  
19 understand that?

20          MR. KIM: Yes.

21          THE COURT: Okay. You also have a right to complain about  
22 any mistakes that might have been made and you have a right to  
23 complain about your sentence too but you're agreeing to the  
24 sentence.

25          MR. KIM: Yes.

1 THE COURT: So you -- you're giving up your appeal --  
2 they're called appeal rights by pleading today.

3 MR. KIM: Yes.

4 THE COURT: Okay. Any questions about your rights?

5 MR. KIM: No.

6 THE COURT: And do you understand that you'd be giving all  
7 those rights up by taking this deal today?

8 MR. KIM: Yes.

9 THE COURT: Have you had enough time to talk to your  
10 attorney about the case?

11 MR. KIM: Yes.

12 THE COURT: Okay. And do you need any more time with your  
13 attorney?

14 MR. KIM: No.

15 THE COURT: Has anybody threatened you or promised you  
16 anything to force you to take this deal today?

17 MR. KIM: No.

18 THE COURT: Are you under the influence of anything like  
19 drugs or medication, any alcohol?

20 MR. KIM: No.

21 THE COURT: Are you sick or not feeling well?

22 MR. KIM: No.

23 THE COURT: Okay. Any questions at all for the court or  
24 your attorney before I take your plea?

25 MR. KIM: No.

1 THE COURT: To the charge of furnishing alcohol to a  
2 minor, how do you plead?

3 MR. KIM: Guilty.

4 THE COURT: Guilty. Okay. There's a factual basis in the  
5 document, charging document, and no history?

6 DISTRICT ATTORNEY: No, Your Honor.

7 THE COURT: Any sentencing comments?

8 DISTRICT ATTORNEY: No, Your Honor.

9 THE COURT: Mr. Ernouf, any sentencing comments?

10 MR. ERNOUF: Just a really quick one, Your Honor. My  
11 client's been working in the alcohol industry for many, many  
12 years. He's 83 years old. There's not even a parking ticket  
13 on his record. We would have fought this one a little bit.  
14 It was a -- it wasn't just an overt sale to a minor. He  
15 actually carded the person. It was a military ID. It was a  
16 sting operation by the ABC Board and, quite frankly, my client  
17 asked the person if he was in the military instead of checking  
18 the date and -- because he respects those in the military. So  
19 we're taking this deal. We think it's a good one and I don't  
20 expect that you'll see Mr. Kim back here at all, Your Honor.  
21 Nothing further on that.

22 THE COURT: Mr. Kim, is there anything that you want to  
23 say before I sentence you?

24 MR. KIM: No.

25 THE COURT: Okay. This is a good deal in that you're on



1 probation for one year and when you're working at the store,  
2 you need to check the identification and the dates of birth  
3 and so you need to know when people are of age because there  
4 is -- it's called the ABC Board, the Alcohol Beverage and  
5 Control Board that go in and they check and they send people  
6 in to check. So in order to get your case conviction -- it's  
7 called set aside meaning you won't have this on your record  
8 after a year, then you need to make sure you check people's  
9 dates of birth. You understand that?

10 MR. KIM: Hmm?

11 THE COURT: You understand that you need to check people's  
12 dates of birth when they buy alcohol?

13 MR. KIM: Yes.

14 THE COURT: Okay. I'll accept the agreement, impose one  
15 year suspended imposition of sentence. What is your address,  
16 Mr. Kim?

17 MR. KIM: 1100 West Benson Boulevard.

18 THE COURT: Did you get that?

19 THE CLERK: Mm-hmm.

20 THE COURT: Can you.....

21 MR. ERNOUF: West Benson.

22 FEMALE: 1100 West Benson, yeah.

23 THE COURT: You're on probation for one year and the only  
24 condition was to follow the conditions which is a \$50 police  
25 training surcharge due within 10 days and then provide proof

1 of the TAM class which I understand you have already done.

2 MR. KIM: Yes.

3 THE COURT: Okay. Any questions about anything?

4 MR. KIM: No.

5 THE COURT: All right. Then that takes care of your case  
6 then, Mr. Kim.

7 MR. ERNOUF: Thank you, Your Honor.

8 THE COURT: Sure, and if you can come and collect the  
9 paper work and then you can be excused unless you have other  
10 cases.

11 MR. KIM: Yes. Yeah.

12 02:38:50

13 END OF REQUESTED PORTION

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August 3, 2013

Linda S. Foley, Transcriber



Alcoholic Beverage Control Board  
5848 East Tudor Road  
Anchorage, AK 99507

Date: 3-4-13  
Number 13-0203  
Page 1 of 1 Page

## Notice of Violation

(13AAC 104.525)

|  |   |  |
|--|---|--|
| Licensee<br><b>Kay Inc.</b>                      | License Number<br><b>688</b>  | Type of License<br><b>Package Store</b>                      |
| D.B.A.<br><b>In and Out Bush Liquor #2</b>       | How Delivered<br><input checked="" type="checkbox"/> [ X ] Certified Mail # On-File<br><input type="checkbox"/> [ ] In Person | Law Enforcement Agency<br><b>Anchorage Police Department</b> |
| Street or P.O. Box<br><b>1100 W. Benson Blvd</b> | City, State<br><b>Anchorage, AK</b>   | Zip<br><b>99503</b>  |

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

**VIOLATION:** On 3-1-13, at about 1357 hours In and Out Bush Liquor #2 licensee Martin Moochan Kim sold an alcoholic beverage to a person under the age of 21. The sale occurred during a compliance check. Kim was told to stop selling alcoholic beverages until he could provide proof of server education. Kim was issued summonses for furnishing alcohol to a person under 21 and failing to provide proof of server education.

Your attention is directed to **AS 04.16.052: Furnishing of alcoholic beverages to persons under the age of 21 by licensees** and **13AAC104.465: Alcohol server education course**.

**You are directed to respond to the Director of the Alcohol Beverage Control Board in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a reoccurrence of this violation.**

**\*Please include your Alcohol License Number in your response.**

**Shirley A. Cote', Director**  
**Alcoholic Beverage Control Board**  
**5848 E. Tudor Road**  
**Anchorage, Alaska 99507**

### A Response is Required

13 AAC 104.525 (B) provides that upon receipt of a Notice of Violation, a licensee may request to appear before the Director and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice and the Director must grant an appearance within ten days after receipt of a request. A Licensee shall respond, either orally or in writing, to the Notice.

|                              |  |
|------------------------------|--|
| Receipt:                     | Violation Observed By:<br><b>UB 11-005</b> |
| Filed By: <i>JL Hamilton</i> | Title:<br><b>Investigator III</b>          |



THE LAW OFFICES OF  
ERNOUF & COFFEY

*A Professional Corporation*

3606 Rhone Circle  
Suite 110  
Anchorage, AK 99508  
t: 907/274-3385  
f: 907/274-4258

March 21, 2013

Ms. Shirley Coté  
Executive Director  
Alcoholic Beverage Control Board  
2400 Viking Dr.  
Anchorage, Alaska, 99501

**Re: Notice of Violation  
No. 13-0203  
Kay Inc.**

Dear Ms. Coté:

This firm represents Kay Inc. Please let this letter serve as a response to the notice of violation ("NOV") issued on March 4, 2013. The NOV refers to two (2) violations: service to a minor and failure to have proof of completion of an approved alcohol served education course.

Kay Inc, and Mr. Martin Kim, take these matters very seriously. Responding first to the service to a minor violation, I am advised by Mr. Kim that what happened was simply a mistake. It should be known that Mr. Kim is an elderly gentleman with great respect for the military, and those that serve. Mr. Kim was confused because the identification furnished by the informant was a military identification card, but it did not have a date of birth on it. To this end, Mr. Kim asked the patron his age, and the patron represented that he was over the age of 21. This is where my client made his mistake.

I have spoken to Mr. Kim regarding this incident. He understands that in the future, he must adequately ensure that the patron furnishes their date of birth via a proper identification card, so that he can establish whether they are of the legal age. He will not make this mistake in the future. Kay Inc. has held a meeting of all its employees to discuss this issue, and how to assure it does not happen again in the future.

Further, on the date in question Mr. Kim did not have his TAM card on his person. He did, however, have valid TAM training. As a result of this incident, I have spoken with Kay Inc and Mr. Kim regarding ways to prevent

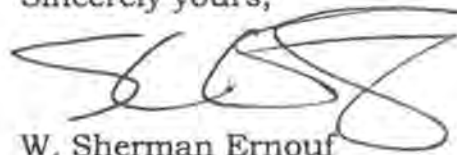


this mistake in the future. We have discussed that the business should keep a binder containing copies of the TAM cards for all employees. This will help to ensure that this will never happen again.

Finally, as you are aware, Mr. Kim has been a licensee for over nine years. He has no criminal record. Mr. Kim accepts and realizes that he made a mistake in this instance.

My client and I would be glad to come down and talk to you about this NOV should you wish for us to do so. If further action is required, please contact me directly. Thank you for your time and consideration in this regard.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'W. Sherman Ernouf', written over a horizontal line.

W. Sherman Ernouf

cc: Kay Inc.  
Martin Kim

**Tab**

**10**



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive  
Anchorage, Alaska 99501  
Main: 907.263.5900  
TDD: 907.465.5438  
Fax: 907.263.5930

**MEMORANDUM**

TO: Robert Klein, Chair and  
Members of the Board

DATE: September 13, 2013

FROM: Shirley A. Coté *SAC*  
Director, ABC Board

RE: Violation by Licensee, Tomio Demura,  
Representing Ocean Enterprises of Alaska Inc,  
License #4325

On April 14, 2012 Investigator Olsen conducted an inspection on Ocean Enterprises of Alaska Inc. d/b/a Old Power House Restaurant in Kodiak. Mr. Demura, represented Ocean Enterprises of Alaska Inc. in court where Ocean Enterprises was convicted of a violation of **AS 04.21.030 Responsibility of licensees, agents, and employees** for failing to exercise the degree of care that a reasonable person would observe to insure that a business under the person's control is lawfully conducted. This was related to the failure of employees and management taking the required alcohol server education course. The corporation was also convicted of altering the floor plan without approval which was in violation of **3 AAC 304.185(c). Licensed premises**. Ocean Enterprises was sentenced to a suspended imposition of sentence for one year on each count and a fine of \$2,500.

LAW OFFICES

**BIRCH HORTON BITTNER & CHEROT**

A PROFESSIONAL CORPORATION

1127 WEST SEVENTH AVENUE • ANCHORAGE, ALASKA 99501-3301 • TELEPHONE 907.276.1550 • FACSIMILE 907.276.3680

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OF COUNSEL:  
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1155 CONNECTICUT AVE. N.W.  
SUITE 1200  
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\*\* D.C. AND ALASKA BAR  
\* MARYLAND BAR  
\* VIRGINIA BAR  
\* D.C. BAR  
ALL OTHERS ALASKA BAR

WRITER'S DIRECT DIAL 907.263.7267 • mgarner@bhb.com

September 26, 2013

Ms. Shirley Gifford, Director  
Alcoholic Beverage Control Board  
5848 E. Tudor Road  
Anchorage, AK 99507

**VIA FACSIMILE**

RE: Notice of Violation  
Case No. 12-1279  
Our File No.: 507,183.1

Dear Ms. Gifford:

Thank you again for our telephone conversation this afternoon regarding a Notice of Violation ("NOV") received by my client, Ocean Enterprises of Alaska, Inc., d/b/a Old Power House Restaurant in Kodiak (License No. 4325). My client was notified just recently (specifically, September 24) that this matter would be appearing on the agenda for the Board's upcoming meeting on October 2, 2013.

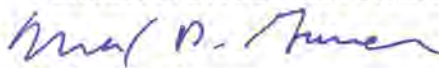
As we discussed, I am unable to attend this meeting due to a prior commitment to make a presentation that date at the CHARR convention in Kodiak. I write to request that consideration of this matter be rescheduled to the Board's December 2013 meeting in Anchorage, which will afford me the opportunity to appear before the Board in person.

Please advise promptly if any further action on my part is required to obtain this requested postponement. I would be available to call in at the designated time if any further explanation was needed in support of this requested postponement.

I thank you in advance for your time and attention to this matter. Do not hesitate to contact me if you have any further questions.

Very truly yours,

BIRCH HORTON BITTNER & CHEROT

  
Max D. Garner

MDG/mkm

cc: Power House Restaurant, Inc.





# STATE OF ALASKA DEPT. OF PUBLIC SAFETY

Case No. 12-0482  
Detach "A" UnitID ABCA

|   |                       |  |  |   |                           |  |
|---|-----------------------|--|--|---|---------------------------|--|
| Reporting Officer<br>Inv. Eric T. Olsen   |                       | PermitID<br>ETO9                       | Investigating Agency<br>Alcoholic Beverage Control |   | Date Reported<br>04-14-12 | Time Reported<br>1700                    |
| ACT #<br>1  | Activity Code<br>4102 | UCR No.<br>22                          | Statute / Regulation<br>AS 04.21.025(c)            | Type of Activity<br>Alcohol Server Education Course | Date Occurred<br>04-14-12 | Time Occurred<br>1700                    |
| Location of Activity<br>516 East Marine Way, Kodiak, AK 99615                       |                       |  |  | N: W:   | Patrol Zone<br>HCAA       | Dom. Viol. N Alcohol or Drugs Involved A |
| ACT #<br>2  | Activity Code<br>4102 | UCR No.<br>22                          | Statute / Regulation<br>13 AAC 104.185(c)          | Type of Activity<br>Licensed Premises               | Date Occurred<br>04-14-12 | Time Occurred<br>1700                    |
| Location of Activity<br>516 East Marine Way, Kodiak, AK 99615                       |                       |  |  | N: W:   | Patrol Zone<br>HCAA       | Dom. Viol. N Alcohol or Drugs Involved A |
| Pers No.<br>1   | Role(s)<br>DI         | Name<br>Tomio Thomas Demura            | Sex<br>M   | Race<br>A   | Ht.<br>72                 | Weight<br>190                            |
| Residence Address<br>1519 Yanovsky Street, Kodiak, AK 99615                         |                       |  | Residence / Cell Phone<br>486-8334                 | Driver's License No.<br>7088181                     |                           | State<br>AK                              |
| Place of Employment<br>Old Power House Rest., 516 East Marine Way, Kodiak, AK 99615 |                       |  | Work Phone<br>481-1088                             | Occupation<br>Owner                                 |                           | VCCB OVR <input type="checkbox"/>        |
| ASPIN ID No.<br>7145759   | Social Security No.   | ATN / NCIC / Other ID No.<br>113007744 | Charged With<br>1C 2C                              | Susp Act No.  | Juv. Dispo.               |  |
| Pers No.<br>2   | Role(s)<br>DI         | Name<br>Naomi Françoise Franquelin     | Sex<br>F   | Race<br>W   | Ht.<br>65                 | Weight<br>135                            |
| Residence Address<br>318 Cope Street / PO Box 150, Kodiak, AK 99615                 |                       |  | Residence / Cell Phone<br>486-6936                 | Driver's License No.<br>7065942                     |                           | State<br>AK                              |
| Place of Employment<br>Old Power House Rest., 516 East Marine Way, Kodiak, AK 99615 |                       |  | Work Phone<br>481-1088                             | Occupation<br>Server                                |                           | VCCB OVR <input type="checkbox"/>        |
| ASPIN ID No.<br>7116711   | Social Security No.   | ATN / NCIC / Other ID No.<br>113007726 | Charged With<br>1C                                 | Susp Act No.  | Juv. Dispo.               |  |
| NUMB.<br>1  | REGISTRATION NO.      | STATE                                  | VIN / SERIAL NO.                                   | COLOR   | YEAR                      | MAKE                                     |
| BODY STYLE/TYPE   |                       |  | ADF&G NUMBER                                       | NAME OF WATERCRAFT                                  |                           | LENGTH                                   |

NOPSIS / DETAILS:

On 04-14-12 at approximately 1652 hours, Alcoholic Beverage Control (hereinafter referred to as "ABC") board investigator, Eric Olsen, arrived at the Old Power House Restaurant in Kodiak, AK to conduct a routine inspection of the licensed premises located at 516 E. Marine Way in Kodiak, AK. This particular establishment was issued an ABC "beverage dispensary" type of liquor license; specifically, license number "4325". Inv. Olsen subsequently made contact with Tomio Demura, who identified himself as the manager of the restaurant. Further investigation revealed Mr. Demura is the "president" of the corporation, Ocean Enterprises of Alaska Inc., which owns the Old Power House Restaurant.

Upon arrival to the establishment, Inv. Olsen asked Mr. Demura and his employees for their alcohol server education course (hereinafter referred to as "ASEC") cards. Inv. Olsen learned that Mr. Demura was in possession of an ASEC card that had expired on 01-26-09. Mr. Demura admitted that he had not renewed his ASEC card since it had expired and had been managing the restaurant since that particular date. Inv. Olsen also made contact with a waitress / server, Naomi Franquelin, who had been serving alcohol at the restaurant since August of 2011. Ms. Franquelin advised Inv. Olsen that although she has been serving alcohol to the public since August of 2011, she has never received any training nor has she acquired an ASEC card.

While walking through the licensed establishment, it was noted the licensed premises was expanded to include a new dining area and a new deck on the southern end of their building. In addition, a new storage area for alcohol was located during the inspection. A check of the main licensee file indicated the physical changes to the licensed establishment and the new area in which they were storing alcohol were not submitted to the ABC board, nor were either one of those changes approved by the ABC board.

The following charges were submitted to the Kodiak District Attorney's Office. 1) Alcohol Server Education Course, AS 04.21.025(c), against a) Tomio Demura, b) Naomi Franquelin, c) Ocean Enterprises of Alaska, Inc.; 2) Licensed Premises, 13 AAC 104.185(c), against a) Tomio Demura, and b) Ocean Enterprises of Alaska, Inc.; and 3) Responsibility of Licensees, Agents, and Employees, AS 04.21.030, against a) Ocean Enterprises of Alaska, Inc.

No summons or arrests were made during this investigation. A "notice of violation" was issued to Ocean Enterprises of Alaska Inc. regarding the observations and investigation of Inv. Olsen on 08-07-12.

|                    |   |   |                  |                        |
|--------------------|---|---|------------------|------------------------|
| CASE CLOSURE<br>CA | COPIES TO<br>ABC enforcement file, Kodiak DAO | REVIEWED AND APPROVED BY<br>Robert L. Beasley, enforcement supervisor | PermitID<br>RLB8 | DATE CLOSED<br>6/28/12 |
|--------------------|---|---|------------------|------------------------|





12-202 (REV. 1/00)

**STATE OF ALASKA  
DEPT. OF PUBLIC SAFETY**

|                   |          |
|-------------------|----------|
| Case No.          | 12-0482  |
| Date Investigated | 04-14-12 |
| Detach            | UnitID   |
| "A"               | ABCA     |

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| Reporting Officer  | PermitID | Investigating Agency             |
| Inv. Eric T. Olsen | ETO9     | Alcoholic Beverage Control Board |

**INFORMATION:**

On 04-14-12 at approximately 1652 hours, as an investigator representing the Alcoholic Beverage Control Board (*hereinafter referred to as "ABC"*), I arrived at the Old Power House Restaurant in Kodiak, AK to conduct a routine inspection of their licensed premises located at 516 E. Marine Way in Kodiak, AK.

This particular establishment was issued an ABC "beverage dispensary" type of liquor license; specifically, license number "4325".

Due to the fact this particular establishment did not open to the public until 1700 hours, I waited in my vehicle for the restaurant to open their doors. At 1700 hours, I entered the establishment and noted there were patrons already seated inside of the restaurant.

**OBSERVATIONS / INITIAL CONTACT:**

Upon entry, I met a person wearing an all-white colored "chefs" uniform. I asked that person if I could speak with the manager of the establishment. That individual, later identified as Tomio Demura, advised me he was the manager. I advised Mr. Demura that I was an investigator with the Alcohol Beverage Control Board and that I was at his restaurant to conduct a routine inspection of his premises as well as to look at their paperwork.

For privacy reasons, I asked Mr. Demura if there was a location in the restaurant in which we could speak and look at documents. Mr. Demura said there was a location in his restaurant in which we could speak. While I was speaking with Mr. Demura, I observed other employees standing nearby. I asked for everyone to provide me with their alcohol server education course (*hereinafter referred to as "ASEC" cards and photo identification cards (hereinafter referred to as "ID")*).

One employee, later identified as Jacqueline Deal, advised me that her ID card was expired (she later provided me with her ASEC card, which was not expired), while another employee, later identified as Naomi Franquelin advised me she has not obtained an ASEC card. I then asked Ms. Franquelin how old she was. Ms. Franquelin said she was 21 years old. I asked Ms. Franquelin how long she had worked at the restaurant and if she had ever served alcohol at the restaurant. Ms. Franquelin admitted she has been serving alcohol to the public and that she has been working at the Old Power House Restaurant (*hereinafter referred to as "OPHR"*) for the last year and a half. Ms. Franquelin added that she has been serving alcohol at the OPHR since August of 2011. When asked why she hasn't taken the required ASEC class yet, Ms. Franquelin said she works two jobs, she works all day, and she wasn't exactly told when to take the class. I advised Ms. Franquelin that we would discuss this matter further at a later time tonight and that she was to immediately stop serving alcohol until she was properly licensed to do so.

After speaking with Ms. Franquelin, I approached Mr. Demura and asked him to provide me with the ABC restaurant liquor license and the ABC restaurant designation permit (*hereinafter referred to as "RDP"*).

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| REVIEWED AND APPROVED BY | PERM ID | DATE    |
| <i>[Signature]</i>       | RUB8    | 6/25/12 |





12-202 (REV. 1/00)

# STATE OF ALASKA DEPT. OF PUBLIC SAFETY

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| "A"               | ABCA   |

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| Reporting Officer  | PermitID | Investigating Agency             |
| Inv. Eric T. Olsen | ETO9     | Alcoholic Beverage Control Board |

## OBSERVATIONS / INITIAL CONTACT: continued

I noted the ABC liquor license covered up the RDP as the liquor license had been placed over the top of the RDP. Therefore, the RDP was not properly displayed as required by ABC rules and regulations.

While asking Mr. Demura for those documents, I asked again for everyone's ASEC cards and ID cards. Shortly thereafter, Mr. Demura provided me with his Alaska Driver's License and his ASEC. I noted Mr. Demura's ASEC card was expired, specifically on 01-26-09 (see attached photocopy). I asked Mr. Demura if he had an ASEC card that was not expired. Mr. Demura replied that he was a sous chef. I then asked Mr. Demura if he was a licensee representative of the OPHR. Mr. Demura replied "yeah" and admitted that he was the owner of the OPHR. I then told Mr. Demura that one of his servers also did not have a valid ASEC card as well, however, I would take care of both problems in a few minutes.

Mr. Demura led me to the rear area of the restaurant (*southern end*). While walking back to this area, I noted the restaurant had been changed, specifically, there were new decks on the outside portion of the building and there was a new room added to the most southern area of the restaurant.

## INTERVIEW: # 1DI, PG. 1, TOMIO THOMAS DEMURA

On 4-14-12 at approximately 1705 hours, I interviewed Tomio Demura at the OPHR in Kodiak, AK. The interview was digitally recorded.

Tomio said he was sorry about his expired TAM card (*aka "Training for Alcohol Management", the liquor industry acronym for ASEC*) and for Naomi not taking the ASEC course; as he didn't know she didn't take the course.

I began going over Mr. Demura's paperwork and I found out the OPHR is owned by a corporation, aka "Ocean Enterprises of Alaska, Inc. (*Note - later on when I returned to Anchorage, I examined the main ABC liquor license file for OPHR and my investigation revealed Mr. Demura is the "president" of the corporation, Ocean Enterprises of Alaska, Inc., which owns the Old Power House Restaurant. Mr. Demura stated on his 2011/2012 ABC liquor license renewal that he owns 100% of the shares assigned to the corporation - see attached*).

I asked Mr. Demura when was the last time he took an ASEC training course. Mr. Demura agreed it was around the year 2006, as ASEC cards are valid for a 3 year period. Mr. Demura then told me he doesn't serve alcohol, however, he is the owner, chef and person in charge of the restaurant. Mr. Demura has been the owner of the OPHR for almost 9 years, since the time he opened the restaurant. I asked Mr. Demura if there was any reason why he has not renewed his ASEC card or retaken the course. Mr. Demura replied he didn't know he needed to. I then showed Mr. Demura his ASEC card and pointed to the date of expiration, i.e., "1-26-09".

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| REVIEWED AND APPROVED BY | PERM ID | DATE    |
| <i>RLB</i>               | RLB     | 4/28/12 |

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|--------------------|--------|----------------------------------|
| Reporting Officer  | PermID | Investigating Agency             |
| Inv. Eric T. Olsen | ETO9   | Alcoholic Beverage Control Board |

## INTERVIEW: # 1DI, PG. 1, TOMIO THOMAS DEMURA - continued

Mr. Demura said he has 4 employees serving alcohol to the public in his restaurant. Mr. Demura identified those persons as follows and the approximately date when those employees began serving alcohol to the public at his restaurant:

- |                    |   |
|--------------------|---|
| ➤ Joon Sun Yoo     | serving alcohol since July – August of 2011         |
| ➤ Chelsea Lau      | serving alcohol for the last 3 to 4 years           |
| ➤ Jackie Deal      | serving alcohol since she turned 21 (Nov. of 2009)  |
| ➤ Naomi Franquelin | serving alcohol since she turned 21(August of 2011) |

Mr. Demura said he did not keep any copies of either his own or his employees ASEC cards on the licensed premises. Mr. Demura said he forgot and didn't know why Ms. Franquelin did not have an ASEC card or that she did not take the course. I asked Mr. Demura if he ever told Ms. Franquelin to take the course and be certified prior to acting as a server. Mr. Demura said he did not, however, he doesn't specifically remember. Mr. Demura added "this is my fault" as there was too much excitement when Ms. Franquelin turned 21 (*sic. "years of age"*).

I then asked Mr. Demura where he stored his alcohol. Mr. Demura said he had a storage area on the side of the building, specifically, on the north side of the restaurant. Mr. Demura said the key hangs near the front desk and only employees have access to the key. (*Note, due to the fact Mr. Demura has employees 18 years of age, those employees have access to the alcohol storage key*).

I asked Mr. Demura if he submitted a new licensed premises diagram to show the area where he stored the alcohol. Mr. Demura said he did and wrote a new form with a red colored outline (*See attached diagram that was submitted to the ABC board as showing where alcohol is sold, served, stored, consumed, as outlined in red colored ink – this licensed premises diagram was received by our office on 7-3-10*). Mr. Demura proceeded to take me back to the storage area and I took photographs of the room (*see attached*). I noted there were two rooms that were utilized to store alcohol. One room was contained within the other room. One room was locked while the other room was not; therefore both rooms containing alcohol were accessible by employees under the age of 21 as the key was accessible by all employees. (*Note, it was during this portion of the inspection that Ms. Franquelin provided me with her Alaska ID card that she had previously left at home. When I first made contact with Ms. Franquelin, I asked for her ID card, but she had to call her boyfriend to bring in her ID to the OPHR in order for me to properly identify her*).

After taking photos of the alcohol storage areas, I asked Mr. Demura if the deck construction I had observed earlier was newly built. Mr. Demura said it was and that he built it for 3 new emergency exits for people sitting in the dining areas (*Note, the deck is most likely used for summertime guests to eat their food in an outdoor setting to watch boats, birds and mammals pass by in the channel*). Mr. Demura also said he built a new addition to the most southern area of the building to expand the main hall / eating area (*see photos*).

REVIEWED AND APPROVED BY

PERM ID

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6/28/12

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**STATE OF ALASKA  
DEPT. OF PUBLIC SAFETY**

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| "A"               | ABCA   |

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| Reporting Officer  | PermID | Investigating Agency             |
| Inv. Eric T. Olsen | ETO9   | Alcoholic Beverage Control Board |

**INTERVIEW: # 1DI, PG. 1, TOMIO THOMAS DEMURA – continued**

I then began training Mr. Demura on various topics related to ABC rules and regulations. As the training session continued, I noted the restaurant was becoming very busy and staff members were telling Mr. Demura he was needed to start cooking for patrons. Due to the extenuating circumstances, I told Mr. Demura I would need to speak with him at a later time to discuss his expired ASEC card and Ms. Franquelin's lack of obtaining training or an ASEC card.

**INFORMATION:**

After speaking with Mr. Demura, I made contact with Ms. Franquelin and asked to speak with her in a private area. Ms. Franquelin and I walked back to the same area in which I had previously spoken with Mr. Demura.

**INTERVIEW: # 2DI, PG. 1, NAOMI FRANCOISE FRANQUELIN**

On 4-14-12 at approximately 1745 hours, I interviewed Naomi Franquelin at the OPHR in Kodiak, AK. The interview was digitally recorded.

Ms. Franquelin said she has been working at the OPHR since January or February of 2011. Ms. Franquelin confirmed the first time she began serving alcohol to the public at the OPHR in August of 2011. Ms. Franquelin said she works 4 days a week at the OPHR.

*Note: therefore, based on that statement, Ms. Franquelin may have served alcohol to the public without being trained or properly licensed to do so for the following amount of days:*

- *Ms. Franquelin turned 21 years of age on 8-19-11*
- *19 weeks (August 19, 2011 to December 31, 2011) x 4 (days worked each week) = 76 days*
- *15 weeks (January 1, 2012 to April 14, 2012) x 4 (days worked each week) = 60 days*
- *A total of **136** days (or 76 + 60) serving alcohol without taking an ASEC course or possessing a valid ASEC card*

I asked Ms. Franquelin if there was any reason at all why she did not take the required ASEC training. Ms. Franquelin said "I just went from being a hostess to (unintelligible) to just being a server". I asked Ms. Franquelin if any of the management staff told Ms. Franquelin to take the ASEC training. Ms. Franquelin said Mr. Demura is the owner and boss, however, he did not directly tell Ms. Franquelin to take the course. Instead, a past employee – floor supervisor whom she identified as "Annie" who no longer works at OPHR, may have told Ms. Franquelin to take the course. Ms. Franquelin believes that Mr. Demura may have assumed that Annie told Ms. Franquelin to take the ASEC training.

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**STATE OF ALASKA  
DEPT. OF PUBLIC SAFETY**

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| Case No.          |        |
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| 04-14-12          |        |
| Detach            | UnitID |
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|--------------------|--------|----------------------------------|
| Reporting Officer  | PermID | Investigating Agency             |
| Inv. Eric T. Olsen | ETO9   | Alcoholic Beverage Control Board |

**INTERVIEW: # 2DI, PG. 1, NAOMI FRANCOISE FRANQUELIN - continued**

At this point of the interview, I explained to Ms. Franquelin that I would be forwarding the misdemeanor charge of "failure to obtain ASEC training" to the Kodiak District Attorney's Office (hereinafter referred to as DAO"). Ms. Franquelin began to break down and start sobbing uncontrollably. I explained the State of Alaska takes it very seriously that persons who sell or serve alcohol are properly trained to serve alcohol to the Alaskan public in a legal manner. Ms. Franquelin said she understood the seriousness of the situation and agreed she would immediately stop serving alcohol, at least until she took the ASEC and was qualified to do so. Ms. Franquelin demeanor began to change and she was short and curt with me regarding any further conversation with her.

**INFORMATION:**

After speaking with Ms. Franquelin, I began taking additional photographs of the newly built construction areas, i.e., the new deck and new extended restaurant eating area (see attached photos).

After taking the photographs, I observed Mr. Demura in the "sushi" bar area making food. I explained to Mr. Demura I had to seize his expired ASEC card and that he needed to take an ASEC training course as soon as possible. I also stated I would be writing up a report and that his ASEC card was expired and that Naomi Franquelin had not have taken an ASEC course at all.

At 1800 hours, I left the premises without making any arrests or issuing a summons to appear in court. This was based upon the fact the OPHR is owned by a corporation and the violations were committed by those employed by the corporation.

**INVESTIGATION:**

On 04-16-12, I returned to the main ABC enforcement office and I pulled the ABC liquor license file for the OPHR. Upon doing so, I examined the licensed premise diagram on file. I noted the following discrepancies:

- The new deck area was built without prior approval
- The new extended dining room area was built without prior approval
- The alcohol storage area as shown to me by Mr. Demura was utilized without prior approval
  - NOTE: the above descriptions / construction are outside of the boundary area that was previously submitted as the current area in which alcohol is either sold, served, stored or consumed.

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| REVIEWED AND APPROVED BY | PERM ID | DATE    |
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| "A"               | ABCA   |

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| Reporting Officer  | PermitID | Investigating Agency             |
| Inv. Eric T. Olsen | ETO9     | Alcoholic Beverage Control Board |

## INVESTIGATION: - continued

I also examined the following documents (*see attached*):

- 2011-2012 liquor License
- Restaurant designation permit
- 2011-2012 Liquor license renewal application
  - Mr. Demura states "no" when asked on the application if "Has the licensed premises change from the last diagram submitted?"
  - Mr. Demura names himself as president and 100 percent share holder
  - Mr. Demura signs and notarizes his signature on 10-29-10 to affirm the following:
    - I declare under penalty of perjury that I have examined this application, and to the best of my knowledge and belief state it is true, correct and complete.
    - I certify that I have read and am familiar with Title 4 of the Alaska Statutes and corresponding regulations.
    - I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.
    - As a licensee (a sole proprietor, partner or officer, director, shareholder, member, of the entity to which license is issued), I certify that I have received alcohol server training and my certification is currently valid.
    - As a licensee, I certify that all other persons named as partners, officers, directors, shareholders or member have received alcohol server training and their certification is currently valid.
    - As a licensee, I certify that all my agents and employees tasked with patron identification verification have received alcohol server training and their certification is currently valid.
- 2009-2010 liquor License
- 2009-2010 liquor license renewal application
  - Same info as 2011-2012 application signed by Mr. Demura
- Alcohol Server Training Certification signed by Tomio Demura
- 2007-2008 liquor License
- 2007-2008 liquor license renewal application
  - Same info as 2009-2010 application signed by Mr. Demura
- Alcohol Server Training Certification
- 2005-2006 liquor license

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| REVIEWED AND APPROVED BY | PERM ID | DATE    |
| <i>[Signature]</i>       | R268    | 6/23/12 |



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**STATE OF ALASKA  
DEPT. OF PUBLIC SAFETY**

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| 12-0482           |        |
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| 04-14-12          |        |
| Detach            | UnitID |
| "A"               | ABCA   |

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|--------------------|--------|----------------------------------|
| Reporting Officer  | PermID | Investigating Agency             |
| Inv. Eric T. Olsen | ETO9   | Alcoholic Beverage Control Board |

**INVESTIGATION: - continued**

- 2005-2006 liquor license renewal application
  - Same as 2007-2008 application signed by Mr. Demura
- 2003-2004 liquor license
- Liquor license transfer
  - Breakers Bar & Liquor Sales to Old Power House Restaurant
- Ocean Enterprises of Alaska Inc.
  - Certificate of Incorporation, business corporation
- Old Power House Restaurant
  - Licensed premises diagram received by the ABC board on 07-03-10
- ABC RDP approval by ABC Inv. Bob Beasley signed 9-29-09
- Application for RDP, Old Power House Restaurant
  - Signed by Mr. Demura on 07-28-09
  - Accompanied by a licensed premises diagram
- Old Power House Restaurant menu
- Various memos regarding RDP and licensed premises diagram

**INFORMATION:**

Therefore, based upon my observations of the licensed establishment, it was noted the licensed premises were expanded to include a new dining area and a new deck on the southern end of their building. A check of the main licensee file for the OPHR verified the physical changes to the licensed establishment were not submitted to the ABC board, nor were those changes approved by the ABC board to allow those physical changes.

**SUMMARY:**

Due to the fact the Old Power House Restaurant is owned by a corporation, no immediate arrests were made nor were there any summons issued to the suspects involved in this case.

The following charges were forwarded to the Kodiak District Attorney's Office for further review and or prosecution.

- Alcohol Server Education Course, AS 04.21.025(c)
  - Entity / Persons charged
    - Tomio Demura
    - Naomi Franquelin
    - Ocean Enterprises of Alaska, Inc.,

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# STATE OF ALASKA DEPT. OF PUBLIC SAFETY

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| Detach            | "A"      |
| UnitID            | ABCA     |

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| Reporting Officer  | PermiD | Investigating Agency             |
| Inv. Eric T. Olsen | ETO9   | Alcoholic Beverage Control Board |

## **SUMMARY: - continued**

- Licensed premises, 13 AAC 104.185(c)
  - Entity / person charged
    - Tomio Demura
    - Ocean Enterprises of Alaska, Inc.
- Responsibility of Licensees, Agents and Employees, AS 04.21.030
  - Entity / person charged
    - Ocean Enterprises of Alaska, Inc.

## **NOTICE OF VIOLATION:**

A "notice of violation" was issued to Ocean Enterprises of Alaska Inc. regarding the observations and investigation of Inv. Olsen on 06-28-12 (see attached)

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| REVIEWED AND APPROVED BY | PERM ID | DATE |
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# STATE OF ALASKA

## ABC - DEPT. OF COMMERCE

|                   |          |
|-------------------|----------|
| Case No.          | 12-0482  |
| Date Investigated | 08-20-12 |
| Detach            | "A"      |
| UnitID            | ABCA     |

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| Reporting Officer  | PermiD | Investigating Agency             |
| Inv. Eric T. Olsen | ETO9   | Alcoholic Beverage Control Board |

### INFORMATION:

On 04-14-12, I conducted a routine inspection of the Old Powerhouse Restaurant, and while I was there, I noted several violations and as a result, criminal charges were forwarded to the Kodiak District Attorney's office.

On 8-17-12, the Alcoholic Beverage Control Board (hereinafter referred to as "ABC") received a letter from Tomio Demura, the owner / operator of the Old Powerhouse Restaurant located in Kodiak, Alaska. The Old Powerhouse Restaurant has been issued ABC liquor license "4325".

In regards to the letter received from Mr. Demura on 08-17-12, I noted the following items:

- Handwritten letter
  - NOV (notice of violation) response by Mr. Demura explaining the circumstances that occurred on 04-14-12 and the actions he took
- Page 2 of the NOV sent to Mr. Demura
- Page 3, the signed response to the aforementioned NOV in question
- Copy of Naomi Franquelin's Alaska Drivers License
- Copy of Naomi Franquelin's new alcohol server education card (hereinafter referred to as "ASEC")
- Copy of Tomio Demura's new ASEC card

On 04-14-12, while speaking with Mr. Demura, I advised him that he needed to immediately obtain a new ASEC card. While reviewing Mr. Demura's ASEC card, I noted that his card was obtained on 8-13-15.

On 8-20-12 at approximately 1036 hours, I spoke with Kodiak CHARR (cabaret, hotel and restaurant and retailers association) representative, Lynette Ponte'. Ms. Ponte' stated that Lisa Thompson taught ASEC certification training on the following dates in Kodiak:

- April 5, 2012
- May 3, 2012
- June 7, 2012
- July 5, 2012
- August 2, 2012

Therefore, even after being advised to obtain ASEC certification as soon as possible and not to operate without being certified, it appears Mr. Demura waited 4 months to obtain certification and was operate during that time period without being certified.

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| REVIEWED AND APPROVED BY | PERMID      | DATE           |
| <i>Ralonta</i>           | <i>RIBS</i> | <i>8/29/12</i> |





# STATE OF ALASKA ALCOHOLIC BEVERAGE CONTROL

Case No.  
**ABC 12-0482**  
**AST 12-45521**

|   |  |                             |                        |  |
|---|--|-----------------------------|------------------------|--|
| Location / Evidence Locker<br><b>ABC - Anchorage office</b> |  | Property Status<br><b>E</b> |                        | APSIN Status Codes<br><b>S = Stolen, R = Recovered, F = Found, E = Evidence, K = Safekeeping, M = Missing</b>  |
| Submitting Officer<br><b>Inv. Eric Olsen</b>                |  | Permit ID<br><b>ETO9</b>    | Unit ID<br><b>ABCA</b> | UCR Type Codes<br><b>A = Currency, B = Jewelry, C = Clothing, D = Vehicles, E = Office Eq., F = Electronic Eq., G = Firearms, H = Household, I = Consumables, J = Livestock, K = Misc.</b> |
| Case Officer<br><b>Inv. Eric Olsen</b>                      |  | Permit ID<br><b>ETO9</b>    | Unit ID<br><b>ABCA</b> |  |

| Item No. | UCR Code | NCIC Code | Estimated Value | Type of Article | Brand Name | Model | Color | Model Year | Caliber |
|----------|----------|-----------|-----------------|-----------------|------------|-------|-------|------------|---------|
| <b>1</b> | <b>K</b> | <b>0</b>  |                 | <b>Audio</b>    |            |       |       |            |         |

|            |   |                |
|------------|---|----------------|
| Serial No. | Other Information<br><b>Digital audio of interviews</b> | Owner APSIN ID |
|------------|---|----------------|

|                                      |                    |              |             |   |
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| Place Stored<br><b>K Drive - ABC</b> | APSIN / NCIC Entry | Submitted To | Return Date | Final Disposition of Article (If Destroyed Sign Here) |
|--------------------------------------|--------------------|--------------|-------------|---|

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same. Signature or P.O. Reg. No. **X** Date:

Printed Name: ID Number

| Item No. | UCR Code | NCIC Code | Estimated Value | Type of Article            | Brand Name   | Model | Color | Model Year | Caliber |
|----------|----------|-----------|-----------------|----------------------------|--------------|-------|-------|------------|---------|
| <b>2</b> | <b>K</b> | <b>0</b>  |                 | <b>Alcohol Server Card</b> | <b>CHARR</b> |       |       |            |         |

|                            |   |                |
|----------------------------|---|----------------|
| Serial No.<br><b>25243</b> | Other Information<br><b>Issued to Tomio Demura, DOB 5-23-50</b> | Owner APSIN ID |
|----------------------------|---|----------------|

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| Place Stored<br><b>AST HQ - ANC</b> | APSIN / NCIC Entry | Submitted To | Return Date | Final Disposition of Article (If Destroyed Sign Here) |
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This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same. Signature or P.O. Reg. No. **X** Date:

Printed Name: ID Number

| Item No. | UCR Code | NCIC Code | Estimated Value | Type of Article | Brand Name | Model | Color | Model Year | Caliber |
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| Serial No. | Other Information | Owner APSIN ID |
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| Place Stored | APSIN / NCIC Entry | Submitted To | Return Date | Final Disposition of Article (If Destroyed Sign Here) |
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| Item No. | UCR Code | NCIC Code | Estimated Value | Type of Article | Brand Name | Model | Color | Model Year | Caliber |
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| Serial No. | Other Information | Owner APSIN ID |
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| Place Stored | APSIN / NCIC Entry | Submitted To | Return Date | Final Disposition of Article (If Destroyed Sign Here) |
|--------------|--------------------|--------------|-------------|---|

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same. Signature or P.O. Reg. No. **X** Date:

Printed Name: ID Number

| Item No. | UCR Code | NCIC Code | Estimated Value | Type of Article | Brand Name | Model | Color | Model Year | Caliber |
|----------|----------|-----------|-----------------|-----------------|------------|-------|-------|------------|---------|
|          |          |           |                 |                 |            |       |       |            |         |

|            |                   |                |
|------------|-------------------|----------------|
| Serial No. | Other Information | Owner APSIN ID |
|------------|-------------------|----------------|

|              |                    |              |             |   |
|--------------|--------------------|--------------|-------------|---|
| Place Stored | APSIN / NCIC Entry | Submitted To | Return Date | Final Disposition of Article (If Destroyed Sign Here) |
|--------------|--------------------|--------------|-------------|---|

This is to certify that I, the undersigned, received the property described in this section and relieve the Dept. of Public Safety from responsibility for same. Signature or P.O. Reg. No. **X** Date:

Printed Name: ID Number

## RECORD OF CUSTODY

| ITEM#    | REC FROM: SIGNATURE - Permit / P.O. REG NO | DATE RECEIVED  | REC. BY: SIGNATURE - Permit / P.O. REG NO |
|----------|--|----------------|---|
| <b>2</b> | <b>Tomio Demura</b>                        | <b>4-14-12</b> | <b>Inv. E. Olsen (ETO9)</b>               |
| <b>2</b> | <b>Inv. E. Olsen (ETO9)</b>                |                |   |
|          |  |                |   |
|          |  |                |   |
|          |  |                |   |





Alcoholic Beverage Control Board  
5848 East Tudor Road  
Anchorage, AK 99507

Date: 08-07-12  
Number: 12-0482  
Page: 1 of 3 Pages

## Notice of Violation

(13AAC 104.525)

|  |   |   |
|--|---|---|
| Licensee<br><b>Ocean Enterprises of Alaska, Inc.</b> | License Number<br><b>4325</b>   | Type of License<br><b>Beverage Dispensary</b>             |
| D.B.A.<br><b>Old Power House Restaurant</b>          | How Delivered<br><input checked="" type="checkbox"/> By Certified Mail<br>7011 2970 0003 3312 6926<br>Number:<br><input type="checkbox"/> Personally Served | Law Enforcement Agency<br><b>Kodiak Police Department</b> |
| Street or P.O. Box<br><b>516 E. Marine Way</b>       | City, State<br><b>Kodiak, AK</b>  | Zip<br><b>99615</b>                                       |

### VIOLATION:

On 04-14-12 at approximately 1700 hours, Inv. Olsen of the ABC board conducted a routine inspection of the Old Power House Restaurant located in Kodiak, Alaska. The restaurant was issued an ABC "beverage dispensary" type of liquor license, specifically, license number 4325. During the inspection, Inv. Olsen contacted Tomio Demura, the president and manager of the restaurant, and Naomi Franquelin, who is employed as a server of the restaurant.

When Inv. Olsen asked for both of their alcohol server education course (hereinafter referred to as "ASEC") cards, Mr. Demura provided an ASEC card that expired on 01-26-09. While contacting Ms. Franquelin, Ms. Franquelin advised Inv. Olsen that she has never taken an ASEC nor was she in possession of a valid ASEC card. Therefore, Mr. Demura was acting in his capacity as an ABC licensee for almost 3 years without an ASEC card and Ms. Franquelin has been serving alcohol to the public without being properly trained or licensed to do so.

During the inspection, Inv. Olsen also learned the licensed premises had been modified, as new construction had taken place. Specifically, Inv. Olsen observed a new deck on the outer portion of the building and a newly expanded dining room. Both areas were built without those plans being properly submitted by Ocean Enterprises of Alaska, nor were the construction plans approved by the ABC board. Inv. Olsen also learned that alcohol was stored in an area that was not properly documented, submitted to the ABC board nor was it approved by the ABC board.

During this investigation, it was discovered the Old Power House Restaurant is owned by a corporation, i.e., Ocean Enterprises of Alaska. Based on Inv. Olsen's investigation and observations, no arrests or summons were issued, however, the following charges were submitted to the Kodiak District Attorney's office for prosecution:

- AS 04.21.025(c) Alcohol Server Education Course
  - Tomio Demura
  - Naomi Franquelin
  - Ocean Enterprises of Alaska, Inc.
- 13 AAC 104.185(c) Licensed Premises
  - Tomio Demura
  - Ocean Enterprises of Alaska, Inc.
- AS 04.21.030 Responsibility of Licensees, Agents and Employees
  - Ocean Enterprises of Alaska, Inc.

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

Note: This is not an accusation or a criminal complaint.

---

Your attention is directed to:

- AS 04.21.025(c) Alcohol server education course.
  - 13 AAC 104.185(c) Licensed premises
  - AS 04.21.030 Responsibility of Licensees, Agents and Employees
- 

**You are directed to respond to the Director of the Alcoholic Beverage Control Board in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a recurrence of this violation.**

**\*Please include your Alcohol License Number in your response.**

**Shirley A. Cote', Director  
Alcoholic Beverage Control Board  
5848 E. Tudor Road  
Anchorage, Alaska 99507**

---

12-0482

A Response Is Required

13 AAC 104.525 (B) provides that upon receipt of a Notice of Violation, a licensee may request to appear before the Director and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice and the Director must grant an appearance within ten days after receipt of a request. A Licensee shall respond, either orally or in writing, to the Notice.

|                                   |  |
|-----------------------------------|--|
| Receipt:                          | Violation Observed By:<br><i>Eric T. Olsen</i> |
| Filed By:<br><i>Eric T. Olsen</i> | Title:<br><i>Investigator III</i>              |

Director. MR. Shirley A. Cote!

I'm sincerely sorry about this incident.

I was misunderstood about TAP class,  
because. I am a chef owner. not server.  
so, never think about take TAP class.

It was. my mistake  
but. now.

I ~~me~~ and Naomi Franquelin get TAP card

I going to send copy of both TAP card.

Also.

I. going to send New Licensed Premises  
Diagram to. Inv. Bob Beasley.

Thank you very much

Tomio Demura

\* License number

4325



12-0482

#6664

## 2011/2012 Liquor License Renewal

|                               |  |   |
|-------------------------------|--|---|
| <b>License Number</b><br>4325 | <b>License Type</b><br>Beverage Dispensary | <b>Establishment Name</b><br>Old Power House Restaurant |
| <b>If Seasonal License</b>    | <b>Seasonal From:</b>                      | <b>Seasonal To:</b>                                     |

|   |  |
|---|--|
| <b>Mailing Address</b>  | <b>Premise Address</b>                           |
| Ocean Enterprises of Alaska Inc.<br>516 E Marine Way<br>Kodiak AK 99615 | 516 E Marine Way<br>Kodiak Kodiak Island Borough |

|                            |             |
|----------------------------|-------------|
| <b>Phone:</b> 907-481-1088 | <b>Fax:</b> |
| <b>Email:</b>              |             |

Please mark the correct box to answer:

1. Was your establishment open for business at least 30 days in 2009? ☒ Yes ☐ No
2. Was your establishment open for business at least 30 days in 2010? ☒ Yes ☐ No
3. Has the licensed premise changed from the last diagram submitted? ☐ Yes ☒ No
4. Has any person named in this application been convicted of a felony? ☐ Yes ☒ No

List all corporation members, managers and shareholders below:

| Name & Mailing Address                            | Title          | Share % | Phone        |
|---|----------------|---------|--------------|
| TOMIO DEMURA<br>1519 Yanovsky St. Kodiak AK 99615 | President      | 100%    | 907-486-8334 |
| HIROSHI OKA<br>3331 Balika Ln Kodiak AK 99615     | Vice President | 0       |              |
|   |                |         |              |

If **not** a corporation or LLC - List all individuals, spouses, or partners that own business below:

| Name & Mailing Address | Title | Phone       |
|------------------------|-------|-------------|
|                        |       | ISSUED      |
|                        |       | NOV 12 2010 |
|                        |       |             |



12-0482

|   |                  |   |       |  |  |
|---|------------------|---|-------|--|--|
| / lcoholic Beverage Control Board<br>5848 E Tudor Rd<br>Anchorage, AK 99507   |                  | <b>Renewal Liquor License</b><br>www.dps.state.ak.us/abc  |       | <b>PAGE 1 OF 2</b><br>(907) 269-0350<br>Fax: (907) 272-9412  |  |
| <b>SECTION A. LICENSE INFORMATION.</b><br>*** Please carefully review and complete all blank spaces. ***  |                  |   |       | <b>FEES</b>  |  |
| License Number:<br><b>2009/2010 - 4325</b>  |                  | If seasonal license, complete dates of operation:<br>Mo/Day (Begin)    Mo/Day (End)   |       | License Fee: <b>\$2500</b>   |  |
| License Type:<br><b>Beverage Dispensary</b>   |                  | Local Governing Body:<br>City: <b>Kodiak</b>  |       | Filing Fee: <b>\$200</b>   |  |
| Doing Business As (Establishment Name):<br><b>Old Power House Restaurant</b>  |                  | Borough: <b>Kodiak Island Borough</b>   |       | Late Fee: <b>\$500</b><br>(Due after 12/31/08)   |  |
|   |                  |   |       | Fingerprint Fee:<br>(\$59 per person - new Officers, Directors, Managers required)   |  |
|   |                  |   |       | Total Submitted: <b>\$2700</b>   |  |
| Street Address or Location of Premise:<br><b>516 E Marine Way</b>   |                  | Community Council Name(s) & Address:<br>(If applicable)   |       | Federal EIN or Social Security Number:<br><b>20-0032370</b>  |  |
| Owner:<br><b>Ocean Enterprises of Alaska Inc.</b>   |                  | Business Telephone Number:<br><b>907 481 1088</b>   |       | Email Address:   |  |
|   |                  | Fax Number:<br><b>907 481 2897</b>  |       |  |  |
| Mailing Address (include City, State, Zip):<br><b>516 E Marine Way</b><br><b>Kodiak AK 99615</b>  |                  | ↩ If your mailing address has changed, please cross out current mailing address and add new address here:   |       |  |  |
| Has the license been exercised or active at least 30 eight-hour days during each of the two preceding calendar years? [AS 04.11.330(3)]<br>If No, your application will be denied unless a <u>Waiver of Operation</u> (form available) is approved by the Alcoholic Beverage Control Board.<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  |                  |   |       |  |  |
| <b>SECTION B - RENEWAL INFORMATION</b>  |                  |   |       |  |  |
| Has the licensed premises been changed from the last diagram submitted?<br><input type="checkbox"/> Yes If yes, submit a new diagram<br><input checked="" type="checkbox"/> No  |                  | Has there been any change in ownership interest since the last application submitted?<br><input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No |       | <b>PACKAGE STORE:</b> Does this renewal include renewal of the notice required under AS04.11.150(a) to sell alcoholic beverages in response to written orders?<br><input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No |  |
| <b>SECTION C - Individual, corporate officer, limited liability organization member, manager or partner background.</b>   |                  |   |       |  |  |
| Does any individual, corporate officer, director, limited liability organization member, manager or partner named in this application have any direct or indirect interest in any other alcoholic beverage business licensed in Alaska or any other state?<br><input type="checkbox"/> Yes If Yes, complete the following. Attach additional sheets if necessary.<br><input checked="" type="checkbox"/> No             |                  |   |       |  |  |
| Name  | Name of Business | Lic #   | State |  |  |
|   |                  |   |       |  |  |
|   |                  |   |       |  |  |
|   |                  |   |       |  |  |
|   |                  |   |       |  |  |
| Has any individual, corporate officer, director, limited liability organization member, manager or partner named in this application been convicted of a felony, a violation of AS 04, or been convicted as a licensee or manager of licensed premises in another state of the liquor laws of that state?<br><input type="checkbox"/> Yes If Yes, attach written explanation.<br><input checked="" type="checkbox"/> No |                  |   |       |  |  |

| License Fee | Application Fee | Late Fee | Fingerprint Fee | TOTAL |
|-------------|-----------------|----------|-----------------|-------|
| \$2500.00   | \$200.00        |          |                 |       |

By affixing my signature below:

I declare under penalty of perjury that I have examined this application and to the best of my knowledge and belief state it is true, correct and complete.

I certify that I have read and am familiar with Title 4 of the Alaska statutes and corresponding regulations.

I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

As a licensee (a sole proprietor, partner or officer, director, shareholder, member, of the entity to which license is issued), I certify that I have received alcohol server training and my certification is currently valid.

As a licensee, I certify that all other persons named as partners, officers, directors, shareholders, or members have received alcohol server training and their certification is currently valid.

As a licensee, I certify that all my agents and employees tasked with patron identification verification have received alcohol server training and their certification is currently valid.

Tomio Demura  
Licensee Signature

Tomio Demura President  
Printed Name & Title

[Signature]  
Notary Signature

Notary Public in and for the State of Alaska

My commission expires: 2/19/2011

Subscribed and sworn to before me this

29th day of October, 2010





IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT KODIAK  
**JUDGMENT**

☒ STATE OF ALASKA ☐ CITY OF KODIAK CASE NO. 3KO-12-406CR

DEFENDANT'S NAME: Ocean Enterprises of Alaska, Inc.

ADDRESS: No listed address.

DOB N/A ID# N/A ATN 114147117

CTN Tracking No. 003 Convicted of: Responsibility of Licensee, Agent, employee

Date of Offense: 04/14/12 Statute/Ord./Reg. AS04.21.030

DV Offense per AS 18.66.990(3) & (5) ☐ Yes ☒ No

PLEA: ☐ Not Guilty ☒ Guilty ☐ No Contest

TRIAL: ☐ Court ☐ Jury

☒ Based upon the above plea or verdict after trial, the defendant is adjudged GUILTY of the offense named above.

**SENTENCE**

☒ SIS: Imposition of sentence is suspended, and defendant is placed on probation as set out below.

☐ Sentence Imposed: Defendant is sentenced as follows:

☐ Jail: \_\_\_\_\_ days Jail Suspended: \_\_\_\_\_ days ☐ Remanded ☐ Credit for time served.

☐ Report to the Kodiak Jail between 6:00 - 10:00 p.m. on \_\_\_\_\_

☐ Report to the Cordova Center in Anchorage at 7:45 a.m. on \_\_\_\_\_

☐ If defendant is arrested for new offense or the State files a Petition to Revoke Probation prior to Jail Report Date, then he/she is remanded immediately in this case.

☐ Credit for time spent in residential treatment program if the requirements of AS 12.55.027 have been met.

☐ A remand hearing will be held on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. in Kodiak re: \_\_\_\_\_

☐ Corrections Surcharge: \$50 due within 10 days ☐ Apply bail

Pay to AG's Collection Unit, 1031 W. 4th Ave., Ste 200, Anchorage, AK 99501. (907) 269-5205

☒ Fine: \$ 2,500 Fine Suspended \$ 0.00 Fine due: 06/13/13 ☐ Apply bail

☒ Fine concurrent with count 2 in 3KO-12-406CR

☐ Credit for fees paid for alcohol treatment, anger management, if receipts filed before fine is due.

☒ Police Training Surcharge: ☒ \$50 (Misdemeanor) ☐ \$10 (Infraction) ☐ Apply bail

☒ Due within 10 days to Kodiak Clerk's Office, 204 Mission Rd., Rm. 124, Kodiak, AK 99615

☐ Restitution: Pay as ordered in Restitution Judgment, which shall be civilly enforceable after probation expires.

Defendant shall apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.

☐ Restitution is owed to \_\_\_\_\_ in the amount of \_\_\_\_\_, pursuant to Restitution Judgment.

☐ The State has \_\_\_\_\_ days to file a Notice of Restitution, supporting the restitution amount. Defendant has \_\_\_\_\_ days to object to the amount. If there is a dispute as to the amount, a hearing will be held.

☐ License Action: Defendant's driver's license is revoked for \_\_\_\_\_ days, concurrent with DMV action (if any).

☐ DNA: For all AS 11.41 convictions, defendant must give DNA sample if requested by an officer on state's behalf.

☐ Alcohol/Substance Abuse Screening: Contact Kodiak ASAP (481-2413) within 72 hours and comply with recommendations of alcohol/substance abuse screening for education, counseling, treatment, and aftercare, including residential treatment up to \_\_\_\_\_ days, if recommended. Pay all associated counseling & ASAP fees.

☐ Domestic Violence/Anger Management/Mental Health: within \_\_\_\_\_ days of sentencing, contact:

☐ Providence Kodiak Island Counseling Center (481-2400) for a comprehensive domestic violence, anger management and mental health assessment; comply with all their recommendations, which may include one or more of the following: (1) the Violence Intervention Program (VIP) described below; (2) Providence's 12 hour anger management class, and/or (3) individual therapy with them; satisfactorily complete all recommended program(s), pay all assessment and treatment costs.

☐ Kodiak Area Native Association (KANA) (486-9812) for an anger management or mental health assessment; complete their recommended program and pay any costs.

☐ Sandra Collins-Jackson (486-2632), complete her Violence Intervention Program (V.I.P.); pay all costs.

☐ Inform court in writing of selected agency the counseling will be done through within \_\_\_\_\_ of sentencing.

☐ An alternative program if defendant wishes to go elsewhere. Submit notice to court for approval within \_\_\_\_\_ of sentencing. If request is granted, complete that program successfully and pay all costs.

**PROBATION**

☒ Probation for: 1 year, subject to these conditions:

☒ Probation Surcharge: \$100 suspended.

☒ Comply with all direct court orders listed above by the deadlines stated.

☒ Do not commit any: ☒ jailable offenses

06/03/13

Effective Date

I certify that on 7/9/13 a copy of this judgment was sent to:

☒ Def/Atty ☒ DA ☐ ASAP ☐ DMV ☒ Media  
☒ KPD ☒ AST ☒ DPS ☐ AG ☐

CLERK: Tas

Magistrate Dawson A. Williams





IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT KODIAK  
**JUDGMENT**

☒ STATE OF ALASKA ☐ CITY OF KODIAK CASE NO. 3KO-12-406CR  
DEFENDANT'S NAME: Ocean Enterprises of Alaska, Inc.  
ADDRESS: No listed address  
DOB N/A ID# N/A ATN 114147117  
CTN Tracking No. 002 Convicted of: Responsibility of Licensee, Agent, employee  
Date of Offense: 04/14/12 Statute/Ord./Reg. AS04.21.030

DV Offense per AS 18.66.990(3) & (5) ☐ Yes ☒ No  
PLEA: ☐ Not Guilty ☒ Guilty ☐ No Contest TRIAL: ☐ Court ☐ Jury  
☒ Based upon the above plea or verdict after trial, the defendant is adjudged GUILTY of the offense named above.

**SENTENCE**

- ☒ SIS: Imposition of sentence is suspended, and defendant is placed on probation as set out below.  
☐ Sentence Imposed: Defendant is sentenced as follows:
- ☐ Jail: \_\_\_\_\_ days Jail Suspended: \_\_\_\_\_ days ☐ Remanded ☐ Credit for time served.
    - ☐ Report to the Kodiak Jail between 6:00 - 10:00 p.m. on \_\_\_\_\_
    - ☐ Report to the Cordova Center in Anchorage at 7:45 a.m. on \_\_\_\_\_
    - ☐ If defendant is arrested for new offense or the State files a Petition to Revoke Probation prior to Jail Report Date, then he/she is remanded immediately in this case.
    - ☐ Credit for time spent in residential treatment program if the requirements of AS 12.55.027 have been met.
    - ☐ A remand hearing will be held on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. in Kodiak re: \_\_\_\_\_
  - ☐ Corrections Surcharge: \$50 due within 10 days ☐ Apply bail  
Pay to AG's Collection Unit, 1031 W. 4th Ave., Ste 200, Anchorage, AK 99501. (907) 269-5205
  - ☒ Fine: \$ 2,500 Fine Suspended \$ 0.00 Fine due: 06/13/13 ☐ Apply bail
    - ☒ Fine concurrent with count 3 in 3KO-12-406CR
    - ☐ Credit for fees paid for alcohol treatment, anger management, if receipts filed before fine is due.
  - ☒ Police Training Surcharge: ☒ \$50 (Misdemeanor) ☐ \$10 (Infraction) ☐ Apply bail
  - ☒ Due within 10 days to Kodiak Clerk's Office, 204 Mission Rd., Rm. 124, Kodiak, AK 99615
  - ☐ Restitution: Pay as ordered in Restitution Judgment, which shall be civilly enforceable after probation expires. Defendant shall apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full.
    - ☐ Restitution is owed to \_\_\_\_\_ in the amount of \_\_\_\_\_, pursuant to Restitution Judgment.
    - ☐ The State has \_\_\_\_\_ days to file a Notice of Restitution, supporting the restitution amount. Defendant has \_\_\_\_\_ days to object to the amount. If there is a dispute as to the amount, a hearing will be held.
  - ☐ License Action: Defendant's driver's license is revoked for \_\_\_\_\_ days, concurrent with DMV action (if any).
  - ☐ DNA: For all AS 11.41 convictions, defendant must give DNA sample if requested by an officer on state's behalf.
  - ☐ Alcohol/Substance Abuse Screening: Contact Kodiak ASAP (481-2413) within 72 hours and comply with recommendations of alcohol/substance abuse screening for education, counseling, treatment, and aftercare, including residential treatment up to \_\_\_\_\_ days, if recommended. Pay all associated counseling & ASAP fees.
  - ☐ Domestic Violence/Anger Management/Mental Health: within \_\_\_\_\_ days of sentencing, contact:
    - ☐ Providence Kodiak Island Counseling Center (481-2400) for a comprehensive domestic violence, anger management and mental health assessment; comply with all their recommendations, which may include one or more of the following: (1) the Violence Intervention Program (VIP) described below; (2) Providence's 12 hour anger management class, and/or (3) individual therapy with them; satisfactorily complete all recommended program(s), pay all assessment and treatment costs.
    - ☐ Kodiak Area Native Association (KANA) (486-9812) for an anger management or mental health assessment; complete their recommended program and pay any costs.
    - ☐ Sandra Collins-Jackson (486-2632), complete her Violence Intervention Program (V.I.P.); pay all costs.
    - ☐ Inform court in writing of selected agency the counseling will be done through within \_\_\_\_\_ of sentencing.
    - ☐ An alternative program if defendant wishes to go elsewhere. Submit notice to court for approval within \_\_\_\_\_ of sentencing. If request is granted, complete that program successfully and pay all costs.

**PROBATION**

- ☒ Probation for: 1 year, subject to these conditions:  
☒ Probation Surcharge: \$100 suspended.  
☒ Comply with all direct court orders listed above by the deadlines stated.  
☒ Do not commit any: ☒ jailable offenses

Effective Date 06/03/13  
I certify that on 7/9/13 a copy of this judgment was sent to:  
☒ Del/Atty ☒ DA ☐ ASAP ☐ DMV ☒ Media  
☒ KPD ☒ AST ☒ DPS ☐ AG ☐  
CLERK: Taf

Magistrate Dawson A. Williams



IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KODIAK

|                              |   |
|------------------------------|---|
| STATE OF ALASKA,             | ) |
|                              | ) |
| Plaintiff,                   | ) |
|                              | ) |
| v.                           | ) |
|                              | ) |
| OCEAN ENTERPRISES OF ALASKA, | ) |
| INC.,                        | ) |
|                              | ) |
| Defendant.                   | ) |
| _____                        | ) |

No. 3KO-S12-00406 CR

TRANSCRIPT OF PROCEEDINGS

June 3, 2013 - Pages 2 through 13



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COP HEARING

BEFORE THE HONORABLE DAWSON A. WILLIAMS  
Magistrate

Kodiak, Alaska  
June 3, 2013  
3:07 o'clock p.m.

APPEARANCES:

FOR THE PLAINTIFF:

JOHN C. CAGLE  
Assistant District Attorney  
District Attorney's Office  
202 Center Avenue, Suite 201  
Kodiak, Alaska 99615

FOR THE DEFENDANT:

AARON D. SPERBECK  
BIRCH, HORTON, BITTNER & CHEROT  
1127 West Seventh Avenue  
Anchorage, Alaska 99501

P R O C E E D I N G S

B

03:07:50

THE COURT: And the two cases are State versus Demura and State versus Ocean Enterprises?

MR. SPERBECK: Correct, Judge.

THE COURT: 3KO-12-406 and 408. What's the status here?

MR. SPERBECK: Judge, with regards to Mr. Demura who is seated at counsel table with me, the case indivi -- personal to him, Judge, is a part of all of the resolutions, will be dismissed in its entirety. I believe there were two counts?

(Whispered conversation)

MR. SPERBECK: The two counts against Mr. Demura himself are being dismissed pursuant to 43(a).....

THE COURT: Okay.

MR. SPERBECK: .....by the state judge, leaving then the proceedings against the corporation, Ocean Enterprises. Now, this is the entity -- Mr. Demura is here on behalf of the company as am I and in this instance, we have reached a Rule 11 agreement. It's kind of a unique posture as against the entity but, in essence, Judge, the corporation would be entering a plea to the two -- Counts II and III of the complaint. Count I would be dismissed and the -- there would be a \$2,500 fine as to Counts II and II run concurrent, not consecutive. So it'll be a single \$2,500 fine and then the

1 applicable \$50 surcharge in that instance and I guess as far  
2 as the probationary status, it would, again, be a one-year  
3 SIS. It's just unique having it against a corporation versus  
4 a person but, nonetheless, that's the posture of this  
5 particular case, Judge. So to the extent that Mr. Demura  
6 needs to enter the plea, I guess he's here to do that but,  
7 really, I can do that on behalf of the corporation as well as  
8 its counsel so however the court would like to proceed.

9 THE COURT: Okay. Mr. Cagle, is that the state's  
10 understanding?

11 MR. CAGLE: That's correct, Your Honor, and I'm handing  
12 Mr. Sperbeck a copy of that dismissal as well too and I'll  
13 file it with the court.

14 THE COURT: I'm a little bit rusty on the specific terms  
15 here so the -- it's the registered agent or the licensed agent  
16 for the -- in terms of the rep -- person representing the  
17 corporation? What's the specific term?

18 MR. SPERBECK: Well, it would be either a direct or a  
19 member of the corporation. So Mr. Demura would act in that  
20 capacity, Judge.

21 THE COURT: And if you answered the questions, Mr.  
22 Sperbeck, on behalf of the.....

23 MR. SPERBECK: I would have Mr. Demura do that.

24 THE COURT: Okay. Mr. Demura, in your capacity as a.....

25 MR. SPERBECK: And, Judge, he's -- he would be the

1 president of the corporation.

2 THE COURT: Okay. As the president of the corporation,  
3 I'm going to ask you a few questions, essentially the same  
4 questions that I asked Mr. Uwe (ph).

5 MR. DEMURA: Yes.

6 THE COURT: Are you thinking clearly today?

7 MR. DEMURA: Pardon me?

8 THE COURT: Are you thinking clearly today?

9 MR. DEMURA: Yes.

10 THE COURT: Are you sick or under the influence of  
11 any.....

12 MR. DEMURA: No.

13 THE COURT: Are you under the influence of any drugs,  
14 alcohol of medication?

15 MR. DEMURA: No.

16 THE COURT: Okay. Anything affecting your ability to  
17 understand what's happening?

18 MR. DEMURA: Yes.

19 THE COURT: Is there anything that's affecting your  
20 ability to understand what's happening?

21 MR. DEMURA: Yes. I understand.

22 THE COURT: Do -- well, that's a different question than  
23 do you understand what's happening.

24 MR. SPERBECK: He's asking is there anything that affects  
25 your ability to understand.

1 MR. DEMURA: No.

2 THE COURT: Okay. Do you understand that, by pleading  
3 guilty, you're giving up your right to appeal any mistakes  
4 that may have been made in this case?

5 MR. DEMURA: Yes, I'm.....

6 THE COURT: And you're giving up your right to a trial  
7 where the state would have to prove the charges beyond a  
8 reasonable doubt?

9 MR. DEMURA: Yes.

10 THE COURT: And did you hear me talk about trial rights  
11 with Mr. Uwe? Were you paying attention when I went over the  
12 trial rights with Mr. Uwe?

13 MR. SPERBECK: Did you hear.....

14 THE COURT: Well, it's all right, I can just go over them.

15 MR. SPERBECK: Yes, I don't think he.....

16 THE COURT: Mr. Demura, if you wanted to fight these  
17 charges or if the corporation wanted to fight these  
18 charges.....

19 MR. DEMURA: Yes?

20 THE COURT: .....for example, the state would have to  
21 prove them beyond a reasonable doubt and the corporation would  
22 have the right to a jury trial and a jury would be a group of  
23 six people chosen at random from the community.

24 MR. DEMURA: No.

25 THE COURT: Okay. And you're saying you don't want to



1 have that.....

2 MR. DEMURA: No.

3 THE COURT: .....but I want to make sure you understand  
4 what the process would look like. The state would present its  
5 evidence. You'd be able to cross examine all of the state's  
6 witnesses. You could object to the state -- state's evidence  
7 and you could call your own witnesses if you want. If you had  
8 witnesses that you thought wouldn't come on their own, you  
9 could ask the court to order them to come in and testify.

10 You could testify or people could testify on behalf of  
11 the corporation if they wanted to but they wouldn't have to  
12 and if they chose not to, they could not be -- that couldn't  
13 be held against them or the corporation. It's the state's  
14 duty to prove the matter beyond a reasonable doubt. Do you  
15 understand all that?

16 MR. DEMURA: Yes.

17 THE COURT: Do you want to have a trial on this matter?

18 MR. DEMURA: No.

19 THE COURT: Anybody making any threats to get you to enter  
20 your plea?

21 MR. DEMURA: No.

22 THE COURT: Anybody making any promises?

23 MR. DEMURA: No.

24 THE COURT: Have you had enough time to think about what  
25 you want to do?

1 MR. DEMURA: No.

2 THE COURT: You haven't? Do you want some more time to  
3 think about it?

4 MR. DEMURA: No.

5 THE COURT: Okay. So are you ready to go forward at this  
6 time?

7 MR. DEMURA: Yes.

8 THE COURT: Okay. Okay, Mr. Demura. On behalf of Ocean  
9 Enterprises of Alaska in case 3KO-12-406 CR to the charge of  
10 violating AS 04.21.030, how do you plead?

11 MR. DEMURA: Yes.

12 MR. SPERBECK: (Indiscernible - whispering).

13 MR. DEMURA: Guilty.

14 THE COURT: And the allegation of that is altering the  
15 layout, the functional floor plan or changing the business  
16 name or license without prior written approval of the director  
17 of the Alcohol Board. You understand that's what you're  
18 pleading guilty to?

19 MR. DEMURA: Yes, sir.

20 THE COURT: And the other count, Count III, is failing to  
21 exercise the degree of care that a reasonable person would  
22 observe to insure that a business under the person's control  
23 is lawfully conducted. That's Count III. How do you plead to  
24 that charge?

25 MR. DEMURA: Yes, guilty.

1           THE COURT: Guilty? Okay. Court finds there's a factual  
2 basis for each of the two counts that you're pleading guilty  
3 to. The court accepts your guilty plea. I find it's knowing  
4 and voluntary and you understand the meaning and consequences  
5 of it. The court finds Ocean Enterprises guilty of Counts II  
6 and III and enters a judgment of conviction against Ocean  
7 Enterprises.

8           Before I pronounce the sentence, I'll hear from Mr. Cagle  
9 and Mr. Sperbeck and you can speak on behalf of the  
10 corporation. Mr. Cagle?

11          MR. CAGLE: Oh, Your Honor, this -- and my records do  
12 reflect he's -- at least 10 years ago, was a hundred percent  
13 shareholder so -- based under the application but that may  
14 have changed in the meantime but I do acknowledge that it  
15 looks like I agree he's president and authorized back on  
16 behalf.

17          Now, again, Mr. Demura had no criminal convictions. I  
18 think an SIS is appropriate. This is not to the individual,  
19 however, it's to the corporation. The main goal here is  
20 deterrence. I believe the license is in the corporation's  
21 name if I'm also recalling correctly and so that would go  
22 directly to that. The \$2,500 is certainly deterrence and  
23 given that he's at least a majority shareholder in the  
24 corporation, it's still hitting Mr. Demura as well as the  
25 corporation so I think that since it's appropriate for

1       deterrence, it does deter the corporate officers. It also  
2       acts as in a way rehabilitation in that it's caused Mr.  
3       Sperbeck to come down and assist him in getting back in track  
4       with ABC and I hope that we don't see them here before the  
5       court again. I hope they're going to be right in line with  
6       ABC from here on out so that would be all the comment I would  
7       have, Your Honor.

8               THE COURT: Thank you, Mr. Cagle. Mr. Sperbeck?

9               MR. SPERBECK: Thank you, Judge. You know, it's  
10       unfortunate, Mr. Demura put a lot of time and energy and  
11       effort into making some wonderful changes down at the  
12       restaurant and, unfortunately, he went a little out of order  
13       and, in making those changes, was required by these codes and  
14       statutes to get approval from the ABC Board before doing that  
15       and so he recognizes that. I think the court is recognizing  
16       there's a little bit of a language barrier. Again, it's not  
17       an excuse but it is one of those things that it happens and we  
18       have to be a little bit more careful. So Mr. Demura and I  
19       have worked together over the last few months to make sure  
20       that the diagrams that are required by the code are done,  
21       they're done correctly, they've been submitted and approved by  
22       the ABC Board and then, additionally, Mr. Demura has made some  
23       policy changes for the restaurant that will insulate it from  
24       liability in the future in terms of making sure all the TAMS  
25       cards are up to date, making all -- you know, sure all of the

1 different placards and signage are up to -- you know, up to  
2 smack and code and where they need to be. We even -- you  
3 know, we met this morning and we talked about some additional  
4 things that might just make it safer and go above and beyond  
5 and that's really what our goal is. So I appreciate that Mr.  
6 Cagle has given, you know, the corporation an opportunity.  
7 Independent of this, the ABC Board may or may not take action  
8 against the license. So this isn't the only sanction that  
9 falls upon individuals and businesses and it is something that  
10 we certainly would strive to do and he spent the last 12 years  
11 here in Kodiak and -- you know, building up that restaurant as  
12 a very well-known and respected establishment. And so I --  
13 again, I'd urge the court to consider this a reasonable and  
14 appropriate resolution and to enforce that Rule 11, Judge.

15 THE COURT: Thank you, Mr. Sperbeck. Mr. Demura, is there  
16 anything you'd like to say?

17 MR. DEMURA: No.

18 THE COURT: Okay. Well, the court accepts the Rule 11  
19 agreement. I do find it's appropriate. The primary goal is  
20 sort of rehabilitative in that sense and then there's also a  
21 deterrent element to it because it's a significant fine that's  
22 being imposed as part of that SIS. Of course, Our House does  
23 have a well-earned reputation in town. Sometimes, as Mr.  
24 Sperbeck pointed out, it's hard to keep at the forefront all  
25 the particular rules but at the same time, the -- it is



1 important that they be followed and the remedial steps have  
2 been taken so there's no question that you won't make these  
3 same mistakes and, of course, it wasn't -- and there wasn't  
4 any allegation that this was an intentional oversight but  
5 that's not the standard here. It's a -- so you will be -- or  
6 the corporation will be sentenced accordance to the agreement.  
7 It's a suspended imposition of sentence, a \$2,500 fine being  
8 imposed concurrently on Counts II and III. There's a \$50  
9 police training surcharge with regards to each count though  
10 and those, by statute, have to run consecutively so it'll be a  
11 total of 2,600 that's due.

12 The period of probation is one year and the term of  
13 probation is to commit no jailable offenses and comply with  
14 all direct court orders. The \$50 is due within 10 days so  
15 it's a hundred dollars that would be due within 10 days. How  
16 much time is needed to pay the \$2,500?

17 MR. SPERBECK: Judge, I believe that Mr. Demura as well as  
18 Mr. Uwe are prepared to pay those fines today.

19 THE COURT: Okay.

20 MR. SPERBECK: So we would just need to know where, if we  
21 can do that here or.....

22 THE COURT: Down at the front desk would work.

23 MR. SPERBECK: Understood.

24 THE COURT: We'll set the due date just for the 10 days  
25 then, June 13th. Anything else to address at this time, Mr.

1 Cagle, from the state's point of view?

2 MR. CAGLE: Oh, Your Honor, if the court could dismiss  
3 Count I on the record, yeah.

4 THE COURT: Count I is dismissed on the record and the  
5 case against Mr. Demura, 12-408, is dismissed on the record.

6 MR. CAGLE: And, Your Honor, I have that dismissal if I  
7 may approach the bench?

8 THE COURT: You may approach.

9 MR. SPERBECK: Nothing further from the defense, Your  
10 Honor.

11 THE COURT: Okay. Mr. Sperbeck and Mr. Demura, you may be  
12 excused at this time.

13 (Off record)

14 03:21:10

15 END OF REQUESTED PORTION

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In the District Court of the State of Alaska  
Third Judicial District in Kodiak, Alaska

12-0482  
Agency Number

State of Alaska,

Plaintiff

vs.

Ocean Enterprises of Alaska, Inc.

DOB/ n/a

ID/ 7819486

ATN: 114147117

Defendant

Misdemeanor  
Criminal Complaint

No. \_\_\_\_\_ Cr.

CTN 002  
LICENSED PREMISES  
13 AAC 104.185(c)

VRA CERTIFICATION I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

DOMESTIC VIOLENCE OFFENSES Per AS 18.66.990(3) and (5)  
☐ ALL COUNTS ☒ NONE ☐ SPECIFIED BELOW

Complainant states that on or about the 14th day of April, at or near Kodiak, in the Third Judicial District, State of Alaska, Ocean Enterprises of Alaska, Inc., a licensee, agent, or employee who sells or serves alcoholic beverages, did alter the functional floor plan, reduce or expand the area, or change the business name of a licensed premises without the prior written approval of the director. The licensee must provide a new line drawing showing the proposed changes in the premises.

All of which is a class A misdemeanor offense being contrary to and in violation of 13 AAC 104.185(c) and against the peace and dignity of the State of Alaska.

This complaint is based upon the statement of Investigator Eric Olsen, Alcoholic Beverage Control Board. While conducting a routine inspection of the Old Powerhouse Restaurant, Inv. Olsen discovered Tomio T. Demura, a licensee of the Old Powerhouse Restaurant was found to have been employed and managing as an owner of the Old Powerhouse Restaurant in Kodiak since 2003. When Inv. Olsen asked Tomio Demura if there had been any changes to the restaurant, Tomio Demura advised and showed Inv. Olsen they had built a new dining area, they had built a new deck, and they were storing alcohol in a new location.

A check of the main license file for the Old Powerhouse Restaurant stored at the ABC board offices in Anchorage revealed the aforementioned changes to the licensed establishment were not submitted to the ABC board nor were any of those changes approved by the ABC board. The Old Powerhouse Restaurant has been issued a "beverage dispensary" type of liquor license, specifically license number "4325". The Old Power House Restaurant is owned by a corporation, Ocean Enterprises of Alaska, Inc. of which Tomio Demura is the president of the corporation.

I certify under penalty of perjury that the above information is true.



Signature of Complainant (Inv. Eric Olsen)

In the District Court of the State of Alaska  
Third Judicial District in Kodiak, Alaska

12-0482  
Agency Number

|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| State of Alaska,                  | ) | Misdemeanor                  |
|                                   | ) | Criminal Complaint           |
| vs.                               | ) |                              |
|                                   | ) | No. _____ Cr. _____          |
| Ocean Enterprises of Alaska, Inc. | ) |                              |
|                                   | ) | CTN 003                      |
| DOB/ n/a                          | ) | RESPONSIBILITY OF LICENSEES, |
| ID/ 7819486                       | ) | AGENTS, AND EMPLOYEES        |
|                                   | ) | A.S. 04.21.030               |
| ATN: 114147117                    | ) |                              |

VRA CERTIFICATION I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

DOMESTIC VIOLENCE OFFENSES Per AS 18.66.990(3) and (5)  
☐ ALL COUNTS ☒ NONE ☐ SPECIFIED BELOW

Complainant states that on or about the 14th day of April, at or near Kodiak in the Third Judicial District, State of Alaska, Ocean Enterprises of Alaska, Inc. did as a licensee fail to exercise that degree of care that a reasonable person would observe to ensure that a business under the person's control is lawfully conducted.

All of which is a class A misdemeanor offense being contrary to and in violation of A.S. 04.21.030 and against the peace and dignity of the State of Alaska.

This complaint is based upon the statement of Investigator Eric Olsen, Alcoholic Beverage Control Board.

While conducting a routine inspection of the Old Powerhouse Restaurant, Inv. Olsen made contact with and learned, Tomio T. Demura, was found to have been employed and managing as an owner of the Old Powerhouse Restaurant in Kodiak since 2003. When Inv. Olsen asked for Tomio Demura's alcohol server education course (hereinafter referred to as "ASEC") card, Tomio Demura produced an ASEC card that was shown to have expired 01-26-2009. Therefore, Tomio Demura was acting as an alcohol beverage control board licensee for over 3 years without having a valid ASEC card.

Inv. Olsen also contacted and spoke with Naomi F. Franquelin, was found to have been employed and serving alcohol to the public while employed as a server at the Old Powerhouse Restaurant in Kodiak since August of 2011. When Inv. Olsen asked for Naomi F. Franquelin alcohol server education course (hereinafter referred to as "ASEC") card, Naomi F. Franquelin was not able to produce an ASEC card due to the fact she has never taken the ASEC training. Therefore, Naomi F. Franquelin was acting as an employee of the Old Powerhouse Restaurant and was serving alcohol to the public for 8 months without being properly trained or licensed to do so.

When Inv. Olsen asked Tomio Demura if there had been any changes to the restaurant, Tomio Demura advised and showed Inv. Olsen they had built a new dining area, they had built a new deck, and they were storing alcohol in a new location.



A check of the main license file for the Old Powerhouse Restaurant stored at the ABC board offices in Anchorage revealed the aforementioned changes to the licensed establishment were not submitted to the ABC board nor were any of those changes approved by the ABC board.

The Old Powerhouse Restaurant has been issued a "beverage dispensary" type of liquor license, specifically license number "4325". The Old Power House Restaurant is owned by a corporation, Ocean Enterprises of Alaska, Inc. of which Tomio Demura is the president of the corporation.

I certify under penalty of perjury that the above information is true.

A handwritten signature in blue ink, appearing to read "Eric T. Olsen", is written over a horizontal line.

Signature of Complainant (Inv. Eric T. Olsen)