CORRESPONDENCE

From: Jason Brandeis
To: Marijuana Licensing (CED sponsored)
Subject: Follow-Up To License Renewal Incomplete Letter - OutPost #17068
Date: Thursday, October 15, 2020 1:26:09 PM
Attachments: LICENSE RENEWAL FOR #17068 (OUTPOST) (00999625x7AB6D).MSG
17068 Incomplete Renewal Notice.pdf
17068 POPPP.PDF
SUBMITTED NOCOO (01015089x7AB6D).PDF
UPDATED MJ-20 (FULLY SIGNED) (01015610x7AB6D).PDF
Letter to AMCO 10-15-20 (01063423xAC92F).pdf
OP AGR OUTPOST LLC - SIGNED (01016817x7AB6D).PDF
UPDATED MJ-17C (FULLY SIGNED).PDF

Dear AMCO Staff:

This message is in response to the incomplete license renewal application letter sent to OutPost LLC on 10/2/20, a copy of which is attached. The specific elements of the license renewal application identified in that letter as needing to be revised are addressed below.

- **MJ-20 Renewal Application Certifications**
  - Page 1, Section 3 – Violations & Charges for Kenneth Izon:
    - It was certified that a Notice of Violation was issued to this license during the specified time frame, but there isn't a Notice of Violation on file. Which NOV is this statement referring to?
      - RESPONSE: *This certification was done in error. The licensee was mistaken and is not aware of an NOV issued for this license. A corrected copy of the MJ-20 form, approved by the licensee, is attached.*
  - A copy of Form MJ-20 is needed for Phillip Izon and Jason Reynolds.
    - RESPONSE: *As explained in an email message to AMCO on 8/28 (attached), there was a dispute amongst the owners that prevented submission of a full license renewal application, including one owner who was no longer a resident of the State of Alaska. A resolution to this dispute has been negotiated, and the process to apply to change ownership is underway. Specifically, Phillip Izon is no longer a resident of the State of Alaska and is no longer involved in the operation of this entity. Jason Reynolds has agreed to leave the company and declined to submit an MJ-20 form. A copy of the MJ-17 form related to this transfer is attached—that application seeks to remove Phillip Izon and Jason Reynolds as licensees and members of the LLC. The full license transfer application will be submitted when the public notice period is complete.*

- **Proof of Possession of Proposed Premises**
  - Cerberus Holdings, LLC no longer holds right and title to the premises as of 1/15/2020, when the deed was conveyed to 1044 Old Glenn LLC. Is there an active lease between 1044 Old Glenn LLC and Cerberus Holdings, LLC?
    - Please note that if OutPost, LLC loses right/title to the premises, the license must be surrendered to AMCO within ten days as required under 3 AAC 306.850.
      - RESPONSE: *OutPost LLC disputes that 1044 Old Glenn LLC*

holds legal right and title to the property. OutPost LLC believes that the purported conveyance of the deed to the property from Cerberus LLC to 1044 Old Glenn LLC was not valid, and therefore Cerberus remains the lawful property owner. This is explained in more detail in the attached letter from Mark Melchert, attorney for Cerberus LLC.

As Mr. Melchert's letter explains, the deed to the property was fraudulently conveyed to 1044 Old Glenn LLC and Cerberus is involved in litigation with 1044 Old Glenn LLC to resolve this matter. However, even in the event that the property was sold or transferred to another party, as a matter of law the new owner would assume the obligations of the prior lease unless and until the tenant was evicted. In this case there has been no effort to physically or judicially evict OutPost LLC from the premises, and therefore the existing lease is still valid, establishes proof of possession of the premises, and should be accepted by the Board.

OutPost requests that the Board accept its existing lease and not take any negative action related to the issue of lawful possession of the property until the court has had an opportunity to resolve the dispute between Cerberus and 1044 Old Glenn LLC. If the Board has additional questions or needs additional information on this issue, OutPost requests that it be addressed in executive session, with sufficient notice provided so that counsel for Cerberus may be present.

- Leases need to contain a disclaimer that the landlord/lessor will not take possession of or remove marijuana from the premises, and will contact AMCO in the event that removal is necessary.
    - RESPONSE: *The lease initially submitted with the 2020-2021 renewal application did not contain an amendment to the lease previously executed that addressed this concern. That was an error. A copy of the full lease, which is still in force, was submitted with the 2019-2020 license application for this entity and is attached.*

- **Entity Documents**
    - Pages of your Operating Agreement are missing. The full Operating Agreement is required.
        - RESPONSE: *Due to the ownership dispute described above, a new operating agreement for the company is needed. The attached operating agreement reflects the pending change in ownership, with Kenneth Izon listed as the 100% owner.*
    - The ownership of this entity has been changed without board approval. File a Notice of Change of Officials to revert ownership with CBPL to what was approved by the board and request back a stamped received copy. This change will require a transfer application.
        - RESPONSE: *A change in the ownership of this entity was reported to CBPL in December 2019. MCB approval was not sought for that*

change and the individuals involved in the change dispute that they ever became members of this LLC. Accordingly, that filing seems to have been made in error. Pursuant to AMCO's guidance, a NOCOO changing the ownership back to how it was first reported was filed. A copy of that NOCOO with fax confirmation is attached (a "stamped received" copy was not available). A transfer application to make further changes to the ownership is in process.

- **Applicant's Alaska Residency**
  - Phillip Izon's Alaska residency could not be verified. Did he apply for the current year's Permanent Fund Dividend?
    - RESPONSE: *Phillip Izon did not apply for the PFD. As explained above, Phillip Izon is no longer a resident of Alaska and is being removed from the license.*

Thank you for your attention to this matter. Please let me know if you need any clarification or additional information.

Sincerely,
Jason Brandeis

Jason Brandeis, Of Counsel
Birch Horton Bittner & Cherot
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Tel. 907.263.7243
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JDOLAW
JERMAIN DUNNAGAN & OWENS, P.C.
3000 A Street, Suite 300 • Anchorage, Alaska 99503
tel 907.563.8844 • fax 907.563.7322 • www.jdolaw.com

October 15, 2020

State of Alaska
Department of Commerce, Community,
and Economic Development
Alaska and Marijuana Control Office
550 West Seventh Avenue, Suite 1600
Anchorage, Alaska 99501

Re: Cerberus Holdings, LLC
Our File No. 9700.2

To Whom It May Concern:

I understand AMCO has concerns whether OutPost, LLC has a lease for the location at 1044 Old Glenn Highway. OutPost, LLC is the lessee under a long-term lease with Cerberus, LLC, a copy of which I understand has been provided to AMCO. Thus, there is a long-term lease in place. Nonetheless, I understand AMCO is concerned whether the lease remains valid in light of the purported conveyance by Cerberus LLC of the underlying property to 1044 Old Glenn, LLC.

The lease remains valid for two reasons.

First, as a matter of law, a lease conveys an interest in real property. It conveys the possessory interest in the property. If the fee simple interest in the property is later sold, the buyer receives the fee simple interest subject to the pre-existing lease. The lease does not disappear. For example, if the owner of an office building sells the building, all of the businesses in the building do not lose their leases as a result of the sale. They are not required to move out. Instead, the buyer buys the building with the leases that are in effect. The same would be true here. Even if the fee simple interest was transferred to 1044 Old Glenn, LLC, the transfer would be subject to the pre-existing lease under which OutPost, LLC is lessee.

Second, the deed purportedly conveying the property to 1044 Old Glenn, LLC is not valid. Martin Childers signed that deed, purportedly on behalf of Cerberus even though he is not a member of Cerberus, a member-managed Alaska limited liability company. Mr. Childers is the manager of two companies that lent money to Cerberus. However, the company to which he purportedly conveyed the property is 1044 Old Glenn, LLC, another company set up by Mr. Childers. In other words, Mr. Childers effectively conveyed the property to himself. If you check the Alaska Corporations Section records, you will note that Mr. Childers organized 1044 Old Glenn, LLC but has elected not to file the required Initial Biennial Report; likely, in order to avoid disclosing his ownership of 1044 Old Glenn, LLC. Mr. Childers, through 1044 Old Glenn, LLC, has twice filed eviction proceedings but the court dismissed both of the proceedings.

Received by AMCO 10/15/2020

It is unfortunate that Mr. Childers has taken action that is so patently invalid. To finally resolve the matters with Mr. Childers, we have prepared and will be filing a complaint to recover title to the property. We have enclosed a copy of the complaint that describes in more detail why we anticipate the court will correct the matters and enter judgment re-establishing Cerberus' title to the property. Please do not hesitate to contact me if you have questions.

Sincerely,

JERMAIN, DUNNAGAN & OWENS, P.C.

/s Mark P. Melchert

Mark P. Melchert

MPM/rrb

Enclosure

Received by AMCO 10/15/2020

Mark P. Melchert
Jermain, Dunnagan & Owens
3000 A Street, Suite 300
Anchorage, AK 99503
(907) 563-8844
mmelchert@jdolaw.com

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CERBERUS HOLDINGS, LLC, Plaintiff, vs. 1044 OLD GLENN, LLC, Defendant.	Case No. 3AN-20-_____CI

COMPLAINT

COMES NOW Plaintiff, Cerberus Holdings, LLC, by and through its counsel, JERMAIN, DUNNAGAN & OWENS, P.C., and files its complaint against Defendant, 1044 Old Glenn, LLC, as follows:

I. PARTIES

1. Plaintiff Cerberus Holdings, LLC ("**Cerberus**") is a limited liability company organized in the State of Alaska, is in good standing and is qualified to bring and maintain this action.

2. Defendant 1044 Old Glenn, LLC ("**Old Glenn**") is a limited liability company organized in the State of Alaska, having a physical address of 721 Depot Drive,

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Anchorage, AK 99501. Old Glenn is not in good standing as it has failed or refused to file its initial biennial report.

II. JURISDICTION AND VENUE

3. The subject matter hereof and the parties named herein are subject to the jurisdiction of the above-named court, pursuant to AS 22.10.020.

4. The real property in controversy in this matter is located in the Palmer Recording District, Third Judicial District, State of Alaska; therefore, venue is proper under Alaska Civil Rule 3(b).

III. BACKGROUND

5. Cerberus possesses and is the owner of legal title to the real property described as follows:

> A parcel of land located within the SE1/4 SW1/4 of Section 11, Township 17 North, Range 2 East, Seward Meridian, according to the official Bureau of Land Management Survey thereof, being located in the Palmer Recording District, Third Judicial District, State of Alaska, More particularly described as: commencing at the South 1/4 corner common to Sections 11 and 14 to the West 1/16 corner position common to Sections 11 and 14; thence Northerly along the West line of the SE1/4 SW1/4 a distance of 580.0 ft. said point being the True Point of Beginning; thence Southeasterly across the SE1/4 SW1/4 to a point on the center 1/4 line said point being Northerly of the center ¼ position a distance of 323.89 ft.; thence Northwesterly to the SW 1/16 corner of said Section 11; thence Southerly along the west line of the SE1/4 SW 1/4 to a point 580.00 ft. Northerly of the West 1/16 Position and the True Point of Beginning.
>
> This Parcel being "Parcel 2" as depicted in the Matanuska-Susitna Borough Waiver Resolution Serial No. 2002-1 80-PWm, recorded December 31, 2002 under Serial Number 2002-030072-0.
>
> Parcel ID 39419 and Account Number 17N02E11C017 at the Matanuska-Susitna Borough Tax Assessors Office.

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Also Known As: 1044 S. Old Glenn Hwy, Palmer AK 99645.

The foregoing real property is hereinafter referred to as the "**Property**."

6. On or about January 10, 2020, Martin Childers executed a Warranty Deed (the "**Fraudulent Deed**") purportedly on behalf of Cerberus, purporting to convey the Property from Cerberus to Old Glenn.

7. Martin Childers represented he was the "Manager" of Cerberus at the time he executed the deed.

8. Cerberus is a member-managed limited liability company.

9. Therefore, Martin Childers was not a manager of Cerberus, pursuant to AS 10.50.250, at the time he executed the Fraudulent Deed.

FIRST CAUSE OF ACTION

10. Cerberus hereby incorporates the allegations set forth above.

11. Pursuant to AS 10.50.355(a), a limited liability company may transfer property of the company if the company uses an instrument of transfer signed by a member of the company in the name of the company.

12. Martin Childers was not a member of Cerberus at the time he executed the Fraudulent Deed.

13. Martin Childers has never been a member of Cerberus.

14. The Fraudulent Deed was not signed by a member of Cerberus.

15. Pursuant to AS 10.50.355(a), the Fraudulent Deed was not effective to convey the Property.

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16. Pursuant to AS 10.50.360, Cerberus is entitled to recover the Property because the Fraudulent Deed did not bind Cerberus under AS 10.50.250.

SECOND CAUSE OF ACTION

17. Cerberus hereby incorporates the allegations set forth above.

18. On information and belief, Martin Childers was the organizer of Old Glenn.

19. On information and belief, Martin Childers has been a member of Old Glenn at all times relevant to the subjects of this Complaint.

20. On information and belief, Martin Childers has been the manager of Old Glenn at all times relevant to the subjects of this Complaint.

21. As the purported "Manager" of Cerberus at the time Martin Childers executed the Fraudulent Deed, Martin Childers would have had a material financial interest in the transaction conveying the Property to Old Glenn within the meaning of AS 10.50.140(a).

22. As the purported "Manager" of Cerberus, Martin Childers never disclosed such material financial interest to the members of Cerberus at a meeting of the members of Cerberus held to authorize the conveyance of the Property to Old Glenn, in accordance with AS 10.50.140.

23. The Property constitutes substantially all of the assets of Cerberus.

24. The conveyance of the Property, if effective, would render Cerberus insolvent.

25. Old Glenn paid Cerberus no consideration for the Property.

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26. The Fraudulent Deed was not made in the usual and customary way of conducting business.

27. The members of Cerberus never held a meeting to authorize the conveyance of the Property to Old Glenn.

28. The members of Cerberus never authorized the conveyance of the Property to Old Glenn.

29. The members of Cerberus never held a meeting to authorize Martin Childers to execute the Fraudulent Deed.

30. Martin Childers was not authorized to execute the Fraudulent Deed.

31. Consequently, the Fraudulent Deed is void.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

1. For judgment that Plaintiff is the fee simple owner of all right, title, and interest in and to the property that is the subject of this complaint;

2. For judgment that Defendants do not have any right, title, estate, or interest in or lien upon the property that is the subject of this complaint;

3. For an award of damages against Martin Childers in an amount to be proven at trial.

4. For award of interest, costs and attorneys' fees.

5. For such further relief as the court may deem proper.

Dated at Anchorage, Alaska this 14th day of October, 2020.

JERMAIN DUNNAGAN & OWENS, P.C.
Attorneys for Cerberus Holdings, LLC

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By:_____

Mark P. Melchert
Alaska Bar No. 9212123

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Received by AMCO 10/15/2020

CERBERUS HOLDINGS, LLC &
PRESTIGE WORLDWIDE MANAGEMENT LLC

NOTICE TO MEMBERS OF SPECIAL MEETING

Dear Member,

Pursuant to Section 11 of the Operating Agreement of each company, a special meeting of the Members of Cerberus Holdings, LLC, an Alaska limited liability company, together with a simultaneous special meeting of the Members of Prestige Worldwide Management LLC, an Alaska limited liability, (together, the "Companies,") is called and will be held in a conference room at the **Egan Convention Center** in Anchorage, Alaska on **January 10, 2020 at 1:00 p.m.** local time for the following purposes only, and no other business will be considered or transacted:

1. To consider whether to declare that Phil Izon has become unable, unwilling, or has failed materially to perform the management duties;
2. In the event that the Members decide not to declare that Phil Izon has become unable, unwilling, or has failed materially to perform the management duties, to consider whether to remove Phil Izon as Manager of either or both of the Companies;
3. To consider whether to enter into an arrangement whereby

Members may participate in this meeting in person or by telephone via Microsoft Teams, and may attend with their attorney.

Creditors of the Companies, Clearport LLC and Brookridge LLC, will also attend by and through their counsel, Matt Block, and their principal, Martin Childers, who may appear telephonically or by video conference link.

At the direction of a Member:

_____ January 6, 2020

Kenneth Izon
Member

Date

Received by AMCO 10/15/2020

CERBERUS HOLDINGS, LLC

RESOLUTION 2020-01

On January 10, 2020 the Members of Cerberus Holdings, LLC (the "Company,") met in person and by proxy, discussed, and resolved as follows:

WHEREAS, pursuant to Section 10 of the Operating Agreement of the Company, "[t]he ordinary and usual decisions concerning the management and business affairs of the Company shall be made by a Manager"; and

WHEREAS, pursuant to Section 10 of the Operating Agreement of the Company, Phillip Izon was appointed the initial Manager; and

WHEREAS, pursuant to Section 10 of the Operating Agreement of the Company, Phillip Izon is to be removed and replaced as Manager of the Company if at any time he became unable or unwilling to perform the duties of Manager, or if at any time he failed materially to perform management duties; and

WHEREAS, Phillip Izon has lost the trust of the Members of the Company, repeatedly failed materially to perform management duties, and is unable to perform the duties of Manager;

WHEREAS, Phillip Izon has consented to being removed as Manager of the Company, and on that basis is presumed unwilling to perform the duties of Manager;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COMPANY that they find Phillip Izon is unable to perform the duties as Manager of the Company; and

BE IT FURTHER RESOLVED that the Members find Phillip Izon is unwilling to perform the duties as Manager of the Company; and

BE IT FURTHER RESOLVED that the Members find Phillip Izon has failed materially to perform management duties as Manager of the Company; and

BE IT FURTHER RESOLVED that, pursuant to Section 10 of the Operating Agreement, Phillip Izon is hereby removed as Manager of the Company. Management vests in Martin Childers, who shall remain in full control of the Company.

//
// ((SIGNATURES FOLLOW ON THE NEXT PAGE))
//
//

Received by AMCO 10/15/2020

Executed by the undersigned Members, present in person, by telephone, or by proxy at a Special Meeting of the Members on January 10, 2020.

Phillip Izon	Kenneth Izon
Andrew Rhodes	Connor Steward
Martin Childers, Manager	

Received by AMCO 10/15/2020

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community, and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

October 2, 2020

OutPost, LLC
DBA OutPost
Via email: outpost.kushtopia@gmail.com

Re: Retail Marijuana Store License #17068

Dear licensee,

AMCO staff has reviewed the renewal documents for the license referenced above. The following items need to be corrected and/or submitted within **fourteen (14) days of the date of this notice** or the license will expire, per 3 AAC 306.035(g).

- **MJ-20 Renewal Application Certifications**
  - Page 1, Section 3 – Violations & Charges for Kenneth Izon:
    - It was certified that a Notice of Violation was issued to this license during the specified time frame, but there isn't a Notice of Violation on file. Which NOV is this statement referring to?
  - A copy of Form MJ-20 is needed for Phillip Izon and Jason Reynolds.
- **Proof of Possession of Proposed Premises**
  - Cerberus Holdings, LLC no longer holds right and title to the premises as of 1/15/2020, when the deed was conveyed to 1044 Old Glenn LLC. Is there an active lease between 1044 Old Glenn LLC and Cerberus Holdings, LLC?
    - Please note that if OutPost, LLC loses right/title to the premises, the license must be surrendered to AMCO within ten days as required under 3 AAC 306.850.
  - Leases need to contain a disclaimer that the landlord/lessor will not take possession of or remove marijuana from the premises, and will contact AMCO in the event that removal is necessary.
- **Entity Documents**
  - Pages of your Operating Agreement are missing. The full Operating Agreement is required.
  - The ownership of this entity has been changed without board approval. File a Notice of Change of Officials to revert ownership with CBPL to what was approved by the board and request back a stamped received copy. This change will require a transfer application.
- **Applicant's Alaska Residency**
  - Phillip Izon's Alaska residency could not be verified. Did he apply for the current year's Permanent Fund Dividend?

It is very important that you submit the above corrections and/or documents as soon as possible. AMCO staff needs adequate time to review the documents and determine if additional corrections and/or documents are necessary to complete your application.

This incomplete notice supersedes any temporary license notice that you may have received while your renewal application was in the queue waiting to be reviewed.

Respectfully,

TJ Zielinski, Occupational Licensing Examiner
For,
Glen Klinkhart, Interim Director
marijuana.licensing@alaska.gov