

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MEETING MINUTES
FEBRUARY 14, 2024**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission (hereinafter “Commission”) meeting held at 400 East Tryon Road in Raleigh, North Carolina, on February 14, 2024, beginning at 10:00 AM. The meeting was recorded, and a copy of the recording is on file at the Commission within the Legal Section.

ROLL CALL AND ANNOUNCEMENTS

Chairman Hank Bauer called the February 14, 2024, Commission meeting to order and welcomed all who were attending. Chairman Bauer introduced himself, Commissioner La’Tanta (L.T.) McCrimmon, Commissioner David Sherlin, Deputy Commissioner Mike DeSilva, and Assistant General Counsels Kirstin Greene and Renee Metz.

CONFLICTS OF INTEREST

In compliance with N.C.G.S. §138A-35, Chairman Bauer asked if there were any conflicts of interest or any conditions or facts which might create the appearance of a conflict of interest with respect to any matters on the agenda. There were no conflicts or appearances of a conflict.

FEBRUARY 14, 2024, AGENDA

Chairman Bauer asked if there were any requests to make changes to the agenda. Assistant General Counsel Kirstin Greene stated for “Other Business” there were three subsections. Subsection A was “Sour Grapes, LLC. v. Vinum USA - Wine Franchise Order”; subsection B was “M and A Store, Inc. – Amended FAD”; and subsection C was “closed session”. Chairman Bauer made a motion to address the agenda as presented, in addition to Subsections A, B, and C. Commissioner Sherlin seconded the motion. A vote was held, and the motion passed.

Chairman Bauer stated it would be an appropriate time to adopt the agenda for February 14, 2024, as presented in addition to subsections A, B and C. Commissioner McCrimmon moved to adopt the February 14, 2024, agenda as amended. Commissioner Sherlin seconded the motion. A vote was held, and the motion passed.

MINUTES OF THE JANUARY 17, 2024, COMMISSION MEETING

Chairman Bauer asked Commissioners McCrimmon and Sherlin if they received a copy of the minutes from the January 17, 2024, Commission meeting. They stated they had. Chairman Bauer stated he received a copy as well.

Commissioner Sherlin moved to waive the reading of the minutes of the January 17, 2024, meeting. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

Commissioner Sherlin moved to approve the minutes of the January 17, 2024, meeting. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

I. HEARING CASES AND OFFERS IN COMPROMISE – 71

Assistant General Counsel Kirstin Greene stated that the first case on the agenda was a contested case. She stated this case was handled by Assistant Counsel Rachel Spears and an order was granted for failure to prosecute by the Permittee. Ms. Greene summarized the ALJ's Final Decision granting the Commission a \$250 penalty and asked the Commission to ratify the decision of Judge Dills and to impose a payment deadline of March 8, 2024. Chairman Bauer moved to ratify the ALJ's final decision and impose the deadline. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

Ms. Greene presented the remaining 70 Offers in Compromise. Chairman Bauer moved to ratify the remaining Offers in Compromise. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

II. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – LAREMA BEVERAGE COMPANY, LLC; LAREMA COFFEE HOUSES, LLC; AND KEVIN MCLAUGHLIN

Assistant General Counsel Renee Metz stated Kevin McLaughlin owned a retail shop called Larema Coffee House and wanted to open a brewery and serve his products at Larema Coffee House and a new location. Mrs. Metz explained the statute allows for two retail locations, but we typically require they hire an independent third-party manager in charge of ordering malt beverages at retail locations. Mrs. Metz stated that legal staff reviewed the petition and recommended a list of conditions under which the exemption would be acceptable, if approved by the Commission.

Chairman Bauer moved to approve the exemption request. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

III. INELIGIBLE PERMITTEE WAIVER REQUEST PURSUANT TO N.C.G.S. §18B-900(a) – XIN LIN OF WAFU JAPANESE STEAKHOUSE & SUSHI BAR (00319370AJ-999)

Assistant General Counsel Renee Metz stated this was a request for a waiver from the requirement that a permittee can have no prior convictions of ABC offenses from the prior two years. She explained the statute allows the Commission to refuse to take action if there is such a conviction. Attorney Dustin Pittman representing Xin Lin of Wafu Japanese Steakhouse and Sushi Bar explained the facts of the violation and stated his client paid the fines in criminal court, unaware of the ABC violation. The client and his staff have completed training with ABC Education Community Outreach. Attorney Pittman noted this was his client's first ABC violation. Mrs. Metz stated she spoke with the charging officer, and he had no objections to the waiver approval.

Chairman Bauer moved to grant waiver request for Xin Lin of Wafu Japanese Steakhouse. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

IV. MANDATORY RULES REVIEW PURSUANT TO N.C.G.S. §150B-21.3A – INITIAL DETERMINATION; NCAC TITLE 14B, CHAPTER 15 SUBCHAPTER C

Assistant General Counsel Renee Metz stated the General Assembly required pursuant to N.C.G.S. §150B-21.3A that every state agency perform a 10-year periodic review of their rules. Chapter 15C was designated for review in 2024. Mrs. Metz explained the initial step in the process was to review the table that was provided by the Rules Review Commission and determine whether the agency considered the rules to be

necessary. She stated all rules in 15C have been deemed by staff to be necessary. She advised we were required to include any Federal Regulations that required us to have a rule and none were found in 15C. Mrs. Metz asked the Commission to ratify all rules in 15C necessary. She explained once ratified, there is a 60-day comment period which would expire on April 19, 2024. She advised information would be posted on both the ABC Commission website and the Rules Review Commission website to notify the public of the 60-day comment period. She stated the final determination would be made in May or June 2024.

Chairman Bauer moved to ratify all rules in Chapter 15, Subchapter C. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

V. OTHER BUSINESS

Chairman Bauer shared the permit renewal/registration period was approaching and renewal registration notices had already been mailed out. He stated important dates to remember were February 19, 2024, when the online payment portal opens and April 30, 2024, the renewal deadline.

A. SOUR GRAPES, LLC v. VINUM USA – WINE FRANCHISE ORDER

Assistant General Counsel Renee Metz stated there are facts that have yet to be determined and require clarification of the order issued by a Hearing Officer in December 2023. Mrs. Metz requested a stay of the order pending further communications with Counsel to determine what the facts are. Jennifer Morgan of Williams Mullen represents Vinum USA and objects to the Commission's decision to stay the Hearing Officer's orders. Her request is to have the Hearing Officer's order stand and not be stayed and the other side can pursue any appeal rights they have. Mrs. Metz stated the main issue is did Vinum at the time, when they issued a notice of termination to the wholesaler, have standing to issue that notice.

Chairman Bauer moved to grant a 60-day stay on Subsection A. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

B. M and A STORE, INC. – AMENDED FINAL AGENCY DECISION (FAD)

Assistant General Counsel Kirstin Greene requested to amend a Final Agency Decision (FAD) from the January 17, 2024 Commission meeting. The penalty in the FAD was \$5,500. The statute does not allow us to exceed a penalty of \$5,000 in an Offer in Compromise. We ask the Commission to amend the penalty amount from \$5,500 to \$5,000 with all other items in the FAD to remain the same.

Chairman Bauer moved to amend the penalty amount from \$5,500 to \$5,000 for M and A Store, Inc. Commissioner McCrimmon seconded the motion. A vote was held, and the motion passed.

C. CLOSED SESSION for CONSULTATION with COUNSEL

Chairman Bauer recognized Assistant General Counsel Kirstin Greene, who asked the Commission, according to General Statute §143-318.11 (a)(3)(6), to consider moving into closed session for the authorized purpose of discussing existing litigation of LB&B Associates v. the North Carolina Department of Public Safety and the North Carolina ABC Commission filed in Wake County Superior Court Case# 23CV11378-910 and to discuss confidential personnel matters.

