

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
ALCOHOL AND TOBACCO COMMISSION

1711 Corp. )  
Permittee / Respondent )  
Permit No. RR49-06236 )  
 )  
1711 E. Minnesota St. )  
Indianapolis, IN 46203 )

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Comes now, Jessica Allen, chairwoman of the alcohol and tobacco commission, sitting as hearing judge pursuant to Ind. Code § 4-15-10.5-12, submits the following Proposed Findings of Fact and Conclusions of Law to the full Alcohol and Tobacco Commission.

**PROCEDURAL HISTORY**

Petitioner was the holder of the permit listed above to sell liquor, beer, and wine as a retailer in Indianapolis, Marion, Indiana (collectively, the “Permit”) operated as Casino at the address listed above. Petitioner is 100% owned by Rhoda M. Walker (“Owner”). Petitioner, by owner, executed a settlement agreement (“Settlement Agreement”) with the Indiana Alcohol and Tobacco Commission (“Commission”) in relation to a series of violations of alcoholic beverage laws and regulations captioned EX19016919 (the “Violations”). Petitioner entered into a transfer agreement to transfer the ownership of the Permit to an unrelated party (the “December Transfer”). The transfer application was recommended for denial by the Marion County Local Board (“Local Board”) and that recommendation was upheld by the Commission on or about December 15, 2020. The applicant for transfer elected not to appeal the decision. Petitioner found another transferee and entered into a new transfer agreement. The new transferee requested that the Permit be renewed prior to transfer. Petitioner placed on file with the Commission on or about February 1, 2021 a renewal application. Petitioner appeared in May 2021 before the Local Board. The Local Board recommended approval for the limited

purpose of transferring the Permit. The Commission upheld that recommendation. The Commission rescinded that approval on or about June 1, 2021, citing that the Permit could not be renewed under the terms of the Agreement. Petitioner timely filed an appeal.

Several pre-hearing conferences were held in August and September 2021. An appeal hearing was held on November 18, 2021, before hearing judge Commission Chairwoman Jessica Allen. No remonstrators were present at the hearing.

### **BRIEF DISCUSSION OF THE MATTER**

Owner fell ill with severe shingles in 2019. Owner relied upon her adult son, James Bacon, to operate the Permit. Mr. Bacon committed criminal acts at the permit premises leading to his incarceration and the Permit's permanent closure.

### **FINDINGS OF FACT**

1. Petitioner held permit for more than 20 years. (Hearing testimony. ATC File.)
2. Owner is the 100% owner of Permit. (ATC File.)
3. Owner suffered a significant medical setback after being diagnosed with shingles in 2019. (Hearing testimony.)
4. Owner handed over operations of the Permit to her adult son, James Bacon. (Hearing testimony.)
5. Mr. Bacon held a valid employee permit to act, in this case, as a bartender, waiter, waitress, or manager in a retail establishment. (Excise report. Ind. Code § 7.1-3-18-9(a)(3).)
6. Mr. Bacon was not identified as a manager of the Permit upon assuming control of the Permit in violation of Ind. Code § 7.1-5-9-15. (Excise report.)
7. Mr. Bacon was acting as an agent or employee of Petitioner. (Hearing testimony.)

8. Owner was not present for Mr. Bacon's actions during the operation of the Permit.  
(Excise report. Hearing testimony.)
9. Petitioner does not dispute the allegations contained in Excise report entitled EX19-016919 ("Excise Report"). (Hearing testimony.)
10. Petitioner, without advice of counsel, signed acceptance of a settlement agreement proffered by the Alcohol and Tobacco Commission Prosecutor ("Prosecutor") on August 20, 2020. ("Settlement Agreement") (ATC file.)
11. Petitioner paid a \$5,000.00 civil penalty on August 24, 2020, in accordance with the terms of the Settlement Agreement. (ATC file.)
12. Petitioner agreed that the Commission would place the Permit into "escrow," effectively closing the permit premises. (ATC file.)
13. Petitioner agreed to terms and conditions which would allow Petitioner to transfer the ownership of the Permit. (ATC file.)
14. Terms in the Settlement Agreement listed in the signed Notice of Violation and Settlement Offer for Complaint Number EX19016919, a copy of which is attached hereto and incorporated herein as Attachment A.
15. Petitioner paid the fine. (ATC file.)
16. Permit was placed in escrow. (ATC file.)
17. Petitioner initiated a transfer to an unrelated party on September 22, 2020, by filing or allowing the transferee to file, Application for New or Transfer Permit – Retailer or Dealer for permit number RR4936902. (ATC file.)
18. Application for New or Transfer Permit – Retailer or Dealer for permit number RR4936902 included the required consent to transfer and purchase agreement or Affidavit of Purchase Price form in lieu of purchase agreement. (ATC file.)
19. The Settlement Agreement was silent with respect to when a transfer of ownership

must be fully approved by the Commission. (ATC file.)

20. The Settlement Agreement states that the “Permit shall remain in Escrow until a transfer is approved as outlined below”. Emphasis added. (ATC file.)

21. Finding of Fact 18(c) states that the Permit shall be revoked under only two specific circumstances:

- a. If the Respondent fails to submit appropriate documentation within the timeframe above. Emphasis added.
- b. If the Respondent fails to abide by the conditions of Escrow as outlined by Indiana Code.

22. No term or condition in the Settlement Agreement states in explicit or implicit terms that a recommendation of denial by the Local Board or adoption of the recommended denial by the Commission would result in a revocation. (ATC file.)

23. Petitioner continues to abide by current Indiana escrow laws. The Permit is in its first escrow period, a 24-month period.<sup>4</sup> (ATC file.)

24. The December Transfer was denied by the Marion County Local Board in December 2020. (ATC file.)

25. The Transferee did not pursue an appeal of that denial. (ATC file.)

26. Petitioner was not a party to the December Transfer and, therefore, had no legal authority to pursue administrative appeal of the denial of the December Transfer.

27. Petitioner has a buyer for the Permit who has already placed funds into escrow for the transfer of ownership of the Permit. It will be immediately ready to transfer to an unrelated party. (Hearing testimony.)

28. Any finding of fact may be considered a conclusion of law, if the context so warrants.

## CONCLUSIONS OF LAW

1. All findings of fact stated infra are hereafter incorporated by reference as conclusions of law.
2. The ATC has jurisdiction over this matter pursuant to *Ind. Code § 7.1-1-2-2; Ind. Code § 7.1-2-3-9*.
3. The Hearing Judge conducted a de novo review of the matter on behalf of the ATC, including a public hearing. *905 Ind. Admin. Code 1-36-7(a); Ind. Code § 7.1-3-19-11.5*
4. The Hearing Judge may consider as evidence all documents in the ATC File, including the transcript of proceedings and exhibits before the Hearing Judge. *905 Ind. Admin. Code 1-36*.
5. The Hearing Judge may also consider as evidence Commission orders and any codes and standards that have been adopted by an agency of this state. *Id.*
6. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noted in the proceeding. *905 Ind. Admin. Code 1-37-11(e); Ind. Code § 4-21.5-3-27(d)*.
7. Permittee means a person who is the holder of a valid permit under this title, including an agent, servant, or employee of, or other person acting on behalf of, a permittee, whenever a permittee is prohibited from doing a certain act under this title. *Ind. Code § 7.1-1-3-30*.
8. The actions of Mr. Bacon are the responsibility of the Petitioner as permittee.
9. Petitioner does not have a property interest in the Permit. *Ind. Code § 7.1-3-1-2*.
10. When terms in a contract are explicit, implicit terms cannot be substituted. If there may be vagueness or ambiguity, courts, however, "do not sit to improve the bargains that parties

freely negotiate.” *Wood v. Mid-Valley Inc.*, 942 F.2d 425, 428 (7th Cir.1991). The existence of express terms in a valid contract thus precludes the substitution of implied terms regarding matters covered by the contract's express terms. *Keystone Carbon Co. v. Black*, 599 N.E.2d 213, 216 (Ind.App.1992). In short, “there can be no constructive contract where there is an express contract between the parties in reference to the same subject matter.” *Twin Lakes*, 568 N.E.2d at 1083; *see also Huff v. Biomet, Inc.*, 654 N.E.2d 830, 837 (Ind.App.1995); *Milwaukee Guardian Ins., Inc. v. Reichhart*, 479 N.E.2d 1340, 1343–44 (Ind.App.1985); *Kincaid v. Lazar*, 405 N.E.2d 615, 619.

11. Reading the explicit terms of the Settlement Agreement without substituting implicit terms, Petitioner was required to initiate a transfer of Permit by filing a consent to transfer and purchase agreement without 45 days of the adoption of the Settlement Agreement, or within 45 days of September 1, 2020.

12. Petitioner initiated a transfer of Permit by filing, or by transferee filing, a consent to transfer and purchase agreement on September 22, 2020.

13. The remaining requirements on the Petitioner are to comply with all relevant statutes and rules regarding Escrow, excluding any statute or rule that allows a permittee to remove the permit escrow and make the permit active.

14. Permit was effectively placed in escrow with the adoption of the Settlement agreement by the Commission on September 1, 2020.

15. The initial permit term of 24 months is September 1, 2020 to August 31, 2022. Ind. Code § 7.1-3-1.1-2(1).

16. Petitioner shall request extension of any term of deposit prior to expiration of the current term or the permit will revert to the Commission. Ind. Code § 7.1-3-1.1-3(a).

17. Petitioner shall continue to pay all required renewal fees while the permit is deposited in escrow. Ind. Code § 7.1-3-1.1-4.

18. Petitioner shall appear at a public meeting of the commission and provide to the commission’s satisfaction an explanation of the:

- (a) The specific reasons why the business for which the permit was issued is not immediately operational.
- (b) A timetable for making the business and the permit active.
- (c) A detailed statement of the permit holder's efforts to make the business operational and the permit active.

Ind. Code § 7.1-3-1.1-4(3).

19. Petitioner may request three one-year extensions of the term of deposit. Petitioner shall transfer the permit on or before August 31, 2025. Ind. Code § 7.1-3-1.1-2.

20. Any conclusion of law may be considered a finding of fact if the context so warrants.

#### **Recommendation**

WHEREFORE, Petitioner may continue to hold the permit in escrow pursuant to the requirements in Ind. Code § 7.1-3-1.1-1 to Ind. Code § 7.1-3-1.1-6, excluding any privileges to make Permit active. Permit was approved for renewal by the Local Board on May 3, 2021, for a one-year renewal. Permit was not transferred during that one-year period because the Commission reversed the decision of the local board, and the Permit was under appeal.

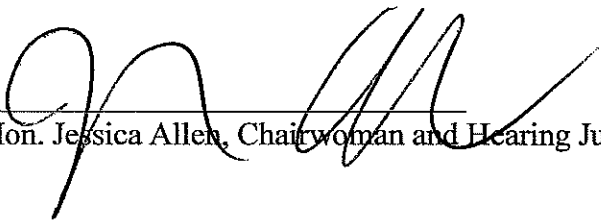
THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED, the Commission shall:

1. Reverse the prior decision to deny renewal of the Permit;
2. Grant the Permit renewal for the permit year June 8, 2021 to June 8, 2022;
3. Allow Petitioner to file an additional renewal within 30 days of the adoption of this decision by the Commission for the permit year June 8, 2022 to June 8, 2023 as an automatic renewal without Local Board hearing;
4. Allow Petitioner to file a transfer application to an unrelated individual as outlined in the

Settlement Agreement; and

5. Request additional escrow time and renewal of the permit before the Local Board through the requirements and statutes in Title 7.1, excluding any rule or statute that allows a permit to be taken out of escrow and made active or operational.

DATE: May 13, 2022.



Hon. Jessica Allen, Chairwoman and Hearing Judge

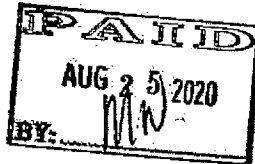




STATE OF INDIANA  
ALCOHOL AND TOBACCO COMMISSION

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IGCS Room E114  
Indianapolis, IN 46204  
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1711 CORP.  
1711 E MINNESOTA ST  
Indianapolis IN 46203



Permit # RR4906236  
August 21, 2020  
Complaint #: EX19016919

**NOTICE OF VIOLATION**

Comes now the State of Indiana, by and through the duly appointed Prosecutor of the Alcohol and Tobacco Commission ("Commission"), pursuant to Indiana Code Section 7.12-2-5 *et seq.*, and files this Notice of Violation. The following violation(s) were recorded as occurring on or about 01/25/2020 under Complaint #: EX19016919:

**VIOLATION(S):**

**7.1.2.3.13 - Subterfuge In Use of Premises - Prevention - Revocation**

**7.1.5.10.12 - Credit Sales - Revocation**

**7.1.5.12.4(a) - Smoking prohibited in public places, places of employment, state vehicles - Revocation**

**7.1.5.9.15 - Managers Questionnaire (required) - Revocation**

**905.1.20.1 - Food Requirement (minimum menu required) - Revocation.**

**905.1.27.2(D) - Public Nuisance - Drugs - Revocation**

Pursuant to Indiana Code 7.1-3-23-2, the Commission may fine, suspend, or revoke a permittee for the violation of a provision of IC 7.1 or of a rule or regulation of the Commission. The Commission may fine a permittee for each day the violation continues if the violation is of a continuing nature.

**SETTLEMENT OFFER**

In light of the facts and circumstances surrounding the noted violations and permittee's history, and in exchange for an admission to the above violations, the Prosecutor now offers to resolve the same by way of the following sanction:

- \* Respondent shall pay a Civil Penalty in the amount of Five Thousand dollars (\$5000), and
- \* Respondent shall transfer Permit No. RR4906236 (the "Permit"), pursuant to the conditions below:
  - o The Respondent agrees that the permit shall be placed in Escrow, and shall remain in Escrow, pursuant to all relevant statutes and rules regarding Escrow, until a transfer is approved as outlined below.
  - o The Commission agrees to allow the transfer of the Permit to a qualified person at a location deemed desirable in accordance with 905 IAC 1-27-4. Such transfer shall be to an individual unrelated to Respondent and its principals. The term "unrelated" for purposes of this settlement agreement shall mean that Respondent shall have no familial or financial ties to the transferee whatsoever, other than the financial terms associated with any purchase and/or transfer agreement associated with the renewal and/or transfer of the Permit.

AN EQUAL OPPORTUNITY EMPLOYER



- Respondent shall initiate the transfer of Permit by filing the Consent to Transfer and Purchase Agreement within 45 days of the adoption of this agreement.
- \* Respondent agrees that failure to submit appropriate documentation within the timeframe above or abide by the conditions of Escrow as outlined by Indiana Code shall result in the permit being **REVOKED** by the Commission without further hearing.
- All items and/or money seized as evidence pursuant to this investigation are surrendered and (if applicable) shall be destroyed.

If you wish to resolve the above violation(s) by accepting this settlement offer, please indicate by signing and returning this document to the above address, along with payment of the fine (if a fine has been assessed), ATTENTION KIM CHEW.

#### ACCEPTANCE

SIGNATURE: Rhoda Walker

PRINTED NAME: Rhoda WALKER

DATE: 8-20-2020

- NOTE: PAYMENT MUST BE IN THE FORM OF A CERTIFIED CHECK, CASHIER'S CHECK, MONEY ORDER OR BUSINESS CHECK, MADE PAYABLE TO THE ATC.

ANY SETTLEMENT OFFER IS SUBJECT TO THE APPROVAL OF THE COMMISSION AND IS NOT BINDING UNTIL SUCH APPROVAL.

#### NOTICE OF PREHEARING CONFERENCE

The Commission now gives notice that a Prehearing Conference has been set in this matter pursuant to 905 IAC 1-37-5. The Prehearing Conference will be held on **08/24/2020 at 10 am** at the Commission's office, located at 302 W. Washington St, IGCS Room E114, Indianapolis, IN 46204. The Commission will be represented by Hearing Judge Jessica Allen. If you have any questions, you may contact Kim Chew, at (317) 233-3940.

The nature of the Prehearing Conference will be to discuss the merits of the above reference Complaint number; exploration of settlement possibilities, rulings on witnesses and exhibits, as well as any such other matters as will promote the orderly and prompt conduct of the final hearing.

Joshua Harrison, Prosecutor of the Alcohol and Tobacco Commission, can be reached via US mail at 302 W Washington St, IGCS Room E114, Indianapolis, IN, 46204, or by phone at 317-232-2474.

Pursuant to 905 IAC 1-37-9, at any stage of a proceeding, if a permittee fails to attend or participate in a prehearing conference, hearing, or other state of the proceeding, the hearing judge may issue an order to show cause why the permit should not be revoked or any other sanctions to be imposed.

If you accept the above settlement offer, your hearing will be canceled and you **WILL NOT** need to appear.



Joshua D Harrison  
Prosecutor  
Alcohol and Tobacco Commission

CERTIFICATE OF SERVICE

I certify that a copy of the "Notice of Violation" has been duly served upon:

Rhonda Walker  
26 Market St  
Southport IN 46227

Sent via U.S. Mail

8/24/20  
Date

  
Kim Chew, Paralegal

Indiana Alcohol and Tobacco Commission  
302 West Washington St.  
IGCS Room E114  
Indianapolis, IN 46204  
Phone: (317) 232-2430  
Fax: (317) 233-6114



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**PARTIES AGREED DISPOSITION**

The Parties have reached this Agreed Disposition pursuant to a Settlement Agreement entered into between the Permittee and the Prosecutor of the Alcohol and Tobacco Commission, Joshua Harrison.

WHEREFORE, the parties respectfully request the Commission accept their agreed disposition.

**ALCOHOL & TOBACCO COMMISSION**

Joshua Harrison, Prosecutor

**IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED** that the Permittee is now ordered to comply with the terms of the Agreed Disposition.

DATED: SEPTEMBER 1, 2020

ALCOHOL AND TOBACCO COMMISSION READ AND AFFIRMED:

DAVID COOK, CHAIRMAN

JOHN KRAUSS, VICE CHAIRMAN

MARJORIE MAGINN, COMMISSIONER

DALE GRUBB, COMMISSIONER

Approved this 7<sup>th</sup> day of June, 2022.

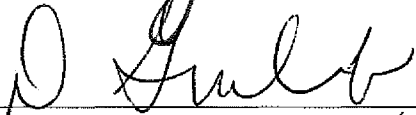
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JESSICA ALLEN, CHAIR



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JAMES PAYNE, VICE CHAIRMAN



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DALE GRUBB, COMMISSIONER *KL*



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MARJORIE MAGINN, COMMISSIONER