

Based on the Madison County Court order, the Commission denied the already approved transfer. Petitioner timely filed an appeal.

Several pre-hearing conferences were held in August and September 2021. Several various delays caused the appeal hearing to be held on May 21, 2022, before hearing judge Commission Chairwoman Jessica Allen. No other parties were present at the hearing.

FINDINGS OF FACT

1. Petitioner is an owner of record with the Commission of the Permit held under Roses Pub Inc. (Hearing testimony.)

2. Petitioner made the business determination that the Permit should cease operation as it was not profitable. (Hearing testimony.)

3. Shoestring Group, Inc. ("Shoestring") filed a breach of contract complaint in Madison County Court. The complaint alleged an agreement between Shoestring and Petitioner wherein Petitioner would transfer Permit to Shoestring in the event Petitioner failed to timely pay rent or otherwise breach the agreement. The sole piece of evidence used in the complaint was a copy of an agreement between Shoestring and Petitioner which purportedly transferred shares of Roses Pub Inc to Petitioner. The agreement is unsigned. Shares of Roses Pub Inc were never transferred to Petitioner. At the time of the purported agreement, Roses Pub Inc was administratively dissolved. (Hearing testimony.)

4. Shoestring provided no other documentation before the court. The Madison County Court accepted the unsigned purchase agreement as persuasive. Despite Petitioner appearing and providing testimony, the court issued a default judgment against Petitioner. A court order was

issued by Madison County Circuit Court 5 which granted the Permit to Shoestring and ordered Petitioner to “execute all documents necessary to effectuate transfer of Permit to Plaintiffs.” (Hearing testimony.)

5. Petitioner was afforded an opportunity to file an appeal of the decision *in forma pauperis*. (Hearing testimony.)

6. Petitioner was not represented by counsel. Petitioner failed to timely file the trial court record before the Court of Appeals. The Court of Appeals issued an order dismissing the matter with prejudice. (Hearing testimony.)

7. Petitioner continued to renew the Permit for the 2019, 2020, and 2021 renewal periods. Shoestring, or a representative, did not appear to remonstrate before the Local Board. (Hearing testimony.)

8. Concurrent with the 2021 renewal, Petitioner filed a transfer application. Both the renewal and transfer were approved by the Local Board and Commission. No remonstrators were present. (ATC File, Hearing testimony.)

9. Consistent with standard business practice, Petitioner and the transferee closed their transaction based on the completed and approved renewal and transfer. (ATC File, Hearing testimony.)

10. At a point in time after the closing of approval of the renewal and transfer and the closing of Petitioner’s transaction, the Commission received an unsigned note with a copy of the Madison County Circuit Court’s order in favor of Shoestring. (Hearing testimony.)

11. Based solely on that order, the Commission voted to reverse its previous approvals.
(Hearing testimony.)

12. At no time since the anonymously sent order has Shoestring group or a representative presented themselves to the Commission as a party to any administrative proceeding or a remonstrator against Petitioner. (ATC file.)

13. Petitioner's transferee is Tello Tello LLC. (ATC file.)

14. The Commission is not a party to any agreement, signed or unsigned, between Petitioner and Shoestring.

15. Shoestring has never filed a transfer application with the Commission to place Permit into a different corporate name.

16. The Order of the Madison County Circuit Court did not direct the Commission to act, and the Commission was not a party to the matter. (ATC file.)

17. Shoestring group has not paid a transfer fee to the Commission.

18. Shoestring group has not appeared before the local alcoholic beverage board for a transfer hearing.

19. 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. The Commission is authorized to transfer permits from one holder to another holder. *Ind. Code* § 7.1-3-24-2.

8. Transfers must:

- a. Conform to the terms and rules of the Commission;
- b. Conform to notice and publication and investigation before the local alcoholic beverage board; and
- c. Include advance payment of the transfer fee. *Ind. Code* § 7.1-3-24-3.

9. Transfer applications are filed by the transferee.

10. "Clearly, it was the legislative intent, as an incident of the state's police powers, to delegate to the [Indiana Alcohol and Tobacco Commission] the duty of licensing and supervising alcoholic beverage retailers. Only the Commission has been empowered to grant permits or renew them."

State ex rel. Indiana Alcoholic Beverage Comm'n v. Lake Superior Ct. Room Four Sitting at Gary,

284 N.E.2d 746, 748 (1972). The Madison County Circuit Court did not order the Commission to act.

11. The Madison County Circuit Court may have placed an order in favor of Shoestring and against Petitioner. “It was the legislature's clear intent to exclusively empower the ABC to grant or renew beer, wine and liquor retailer's permits. As such, the Court held that courts do not have the jurisdiction to grant or renew permits, except at the conclusion of judicial review proceedings. *Id.* at 748. *Med. Licensing Bd. of Indiana v. Provisor*, 678 N.E.2d 814, 820 (Ind. Ct. App. 1997) quoting *State ex rel.*

12. Shoestring had over two years to file the required transfer application, pay the required transfer fee, and appear before the local alcoholic beverage board on the transfer application but failed to do so.

13. Shoestring has no property right in the retail permit. *Ind. Code* § 7.1-3-1-2.

14. A decision is deemed arbitrary and capricious when it is “patently unreasonable and is made without consideration of the facts and in total disregard of the circumstances. *In Alc. & Tob. Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 380 (Ind. 2017). If a reasonable person would conclude that evidence and logical and reasonable inferences therefrom are of such substantial character and probative value as to support administrative determination, “substantial evidence” standard is met. *In Civil Rights Com'n v. Weingart, Inc.*, 588 N.E.2d 1288 (Ind. Ct. App. 1992).

15. Petitioner concedes that in the past the Commission may have voted to deny, reverse, or issue permits based on similar court orders. In those cases, the Transferee submitted the required application, paid the required fee, and appeared before the local alcoholic beverage board. In this case, however, Shoestring has not taken any steps to transfer the permit or appear before the Commission.

16. The Commission's primary general charges are: "(1) To protect the economic welfare ... (4) To provide for the raising of revenue. *Ind. Code* § 7.1-1-1-1. The Commission returning to the status quo – that the Petitioner did properly renew and transfer the Permit— meets those specific charges. Tello Tello is ready to operate and generate revenue from the Permit.

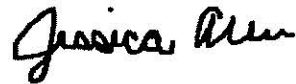
17. Any conclusion of law may be considered a finding of fact if the context so warrants.

RECOMMENDATION

WHEREFORE, the Commission's decision was arbitrary and capricious;

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED, that the decision to deny the renewal and transfer of Permit (RR48-01351) shall be reversed and the Permit be renewed to Petitioner and transferred in GOOD STANDING to Tello Tello, pending all necessary administrative filings and procedures.

SO ORDERED ON: October 31, 2022.



Jessica Allen, Chairwoman and Hearing Judge

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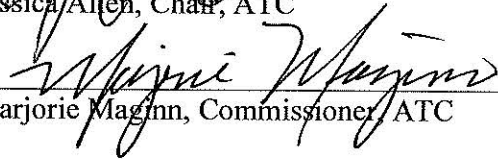
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The Indiana Alcohol and Tobacco Commission pursuant to 905 IAC 1-36-9 hereby accepts the proposed final order of the Hearing Judge and designates this as its final order.

DATED this 15th day of November 2022



Jessica Allen, Chair, ATC



Marjorie Maginn, Commissioner, ATC



James W. Payne, Vice Chair, ATC



Dale Grubb, Commissioner, ATC