

STATE OF INDIANA

BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN RE THE MATTER OF THE PERMIT OF:)	
)	PERMIT NO. RR49-38535
RATON DE AGUA SPORTS BAR & GRILL LLC)	
d/b/a RATON DE AGUA SPORTS BAR & GRILL)	
4810 W 34 TH ST.)	VIOLATION: EX23-021396
INDIANAPOLIS, IN 46224)	
Permittee.)	

ADOPTED
PROPOSED ORDER ON RULE TO SHOW CAUSE

This matter comes before Mark A. Jones, Commissioner and Hearing Judge of the Indiana Alcohol and Tobacco Commission (“IATC” or “Commission”), on the allegation by the Indiana State Excise Police (“ISEP”) that Raton De Agua Sports Bar & Grill LLC d/b/a Raton De Agua Sports Bar & Grill (“Permittee”), has violated the Indiana statutes and regulations of the State of Indiana and the Indiana Alcohol and Tobacco Commission as they pertain to a person who is the holder of a valid permit under Title 7.1 of the Indiana Code. Appearing at the Show-Cause Hearing on June 6, 2024, on behalf of IATC, was Mr. Andrew Wignall, prosecutor for the IATC. Present for Permittee were: Ms. Erica Merino Zurita, power of attorney for Permittee, and Permittee’s accountant and tax representative; Marcial Huete-Velazquez, manager of the location; and Jessica Zurita, who assists Permittee with preparation of documents and other business matters. None of those present for Permittee had authority to negotiate or resolve the violation. The undersigned hereby takes judicial notice of the record of IATC and finds as follows:

1. IATC issued a permit to Raton De Agua Sports Bar & Grill LLC d/b/a Raton De Agua Sports Bar & Grill on July 21, 2022.
2. The permit was last renewed on October 26, 2023, with an expiration date of July 21, 2024.

3. The application, submitted on March 14, 2022, states that Douglas B Rivera Calero and Abner Martinez Salgado are the owners of Permittee, each owning fifty percent (50%). The application further states that Mr. Douglas B Rivera Calero is the manager.
4. The renewal application, submitted on July 21, 2023, states that Douglas Rivera and Abner Martinez Salgado are the owners of Permittee, though it does not state a percentage that each owns. The renewal application further states that Douglas Rivera is the manager.
5. ISEP issued a Notice of Violation to Permittee on or about November 17, 2023, Incident EX-23-021396.
6. The violations included:
 - A. Falsification of Application;
 - B. Public Nuisance, to-wit: Perjury;
 - C. Failure to Disclose Interested Parties;
 - D. Manager's Questionnaire Required;
 - E. Employee: No Employee Permit;
 - F. Record of Employee Permits Required;
 - G. Record of Server Training Certificates Required;
 - H. Smoking Ban Exterior Signage Required;
 - I. Minimum Food Requirements; and,
 - J. Failure to Maintain a High and Fine Reputation.
7. The Complaint was entered by Mr. Andrew Wignall, Prosecutor for IATC, on or about December 5, 2023.
8. Mr. Wignall sent a Notice of Violation and Settlement Offer Letter to the permit premises, 4810 W. 34th Street, Indianapolis, Indiana, 46224, on or about December 20, 2023, which notified Permittee that the prosecutor for IATC had filed a complaint for the following violations:
 - A. 7.1.3.1.5.13 - Alcohol establishment operated by retailer permittee or dealer permittee - Certification requirements;
 - B. 7.1.3.21.8 - Disclosure of Interested Persons;
 - C. 7.1.5.12.4(d) - Failure to Post No Smoking at Door;

- D. 7.1.5.6.3 - Employee Permit (acting w/out permit - defenses);
 - E. 7.1.5.6.4 - Falsification of Records (for permit application);
 - F. 7.1.5.9.10 - Retailer - Interest in manufacturer's or wholesaler's permit unlawful;
 - G. 7.1.5.9.15 - Managers Questionnaire (required);
 - H. 905.1.12.1.2 - Employee Permits (exam and display by employer);
 - I. 905.1.20.1 - Food Requirement (minimum menu required); and,
 - J. 905.1.27.2(O) - Public Nuisance.
9. The Notice of Violation and Settlement Offer Letter also notified Permittee of a settlement conference to be held virtually on February 12, 2024, at 10:00 A.M. The letter explained, in part:
- “... Information regarding the settlement conference as well as instructions on how to log into the virtual meeting can be found under the “Office of the Prosecutor” tab on the Alcohol and Tobacco Commission home page at <https://www.in.gov/atc/2861.htm>.
* * *
- If you do not submit this settlement document or participate in the scheduled virtual settlement conference, this violation may be submitted to the Commission for a default judgement against the permit which could result in the permit being fined, suspended, or revoked for failure to appear.”
10. Permittee failed to appear for the settlement conference or contact IATC and was then notified, by electronic message to their email address listed with IATC, of a pre-hearing conference to be held virtually on May 9, 2024, at 10:15 A.M.
11. On May 9, 2024, no one appeared on behalf of Permittee, and the matter was then set for a show-cause hearing on June 6, 2024, at 12:00 Noon. Notice of the show-cause hearing was sent: to the permit location via USPS Certified Mail, return receipt requested; via the email address on file for the Permittee; and to owner Mr. Rivera’s home address as listed with IATC.
12. IATC received certification that the Order To Show Cause sent to the permit location was picked up at the post office at 12:39 P.M. on May 23, 2024. That Order setting the show-cause hearing included the following warning:

“* * *

Permittee failed to appear for the scheduled settlement conference or remit the settlement letter prior to the settlement date.

Additionally, Prosecutor Wignall was unable to make contact with the permittee to discuss the pending violations further. 905 IAC 1-37-9(a) states that any time a permittee fails to attend or participate in a state of the proceeding, the Commission may set a hearing to show why the permit should not be revoked.

A show cause hearing will be held on **June 6, 2024 at 12:00 pm (noon)**, at the Commission’s office located at **302 West Washington Street, IGCS Room E114, Indianapolis IN 46204**.

The nature of the Show Cause hearing will be to determine if permittee’s certificate or permit should be fined, suspended, or revoked for failing to appear at previously scheduled settlement conference.


If you fail to appear for the Order to Show Cause Hearing, a default judgement [sic] shall be issued against the permit regarding the violation and a sanction imposed, which could include a suspension or revocation of the permit or certificate.

* * *” (Emphasis in original)

13. Both listed owners of the permit failed to personally appear at the show-cause hearing on June 6, 2024, though Mr. Douglas Rivera was alleged to be available by telephone. Those present on his and the Permittee’s behalf were unable to satisfactorily explain why neither he nor anyone else appeared on Permittee’s behalf at the settlement conference or the pre-hearing conference, or why no one contacted IATC since the time the complaint was entered.
14. Mr. Wignall requested that the permit be revoked pursuant to 905 IAC 1-37-9, “Failure to Appear”, which provides:
 - (a) At any stage of a proceeding, if a permittee fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding, the hearing judge may issue an order to show cause why the permit should not be revoked and set a hearing on said order within thirty (30) days. The order shall include the date, time, and place of the hearing and the reason for the order. Said order shall be sent by certified mail to the permittee.
 - (b) At the hearing on the order to show cause, evidence will be taken on the issue of the permittee's failure to appear and sanctions may be imposed including a fine, suspension, or revocation.
 - (c) After the hearing and any subsequent order, the hearing judge shall conduct any further proceedings necessary to complete the disposition of the violation.

15. Notice was provided as required by rule and statute.
16. In light of all of the foregoing, revocation of Permit No. RR49-38535 is appropriate and so ordered.
17. Permittee will have 15 days after service of this Order to file a response to this Proposed Order with the IATC. After that time has run, this Proposed Order On Rule To Show Cause and any response from Permittee will be scheduled for a final hearing before the Commission, notice of which hearing shall be provided to Permittee.
18. If the Proposed Order is adopted by the Commission, Indiana Code 7.1-3-23-9 provides that Permittee may seek judicial review of this action by following I.C. 4-21.5-5, except that the action for judicial review shall be filed in the circuit or superior court having jurisdiction in the County in which the licensed premises are located.

IT IS THEREFORE ORDERED that Permit No. RR49-38535 is REVOKED.

SO ORDERED THIS 9th DAY OF JULY, 2024: 
Mark A. Jones
Hearing Judge, IATC

cc: RATON DE AGUA SPORTS BAR & GRILL LLC, 4810 W 34TH ST., Indianapolis, IN
46224, via Certified Mail
RATON DE AGUA SPORTS BAR & GRILL LLC, via email:
RIVERADOUGLAS@HOTMAIL.ES
Douglas Rivera, 3845 Kiskadee Ct., Indianapolis, IN 46228, via Certified Mail

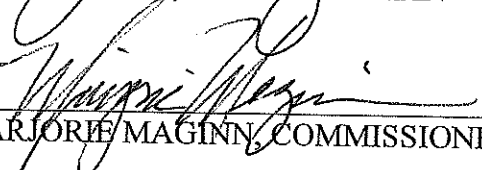
Approved this 20th day of August, 2024.



JESSICA ALLEN, CHAIR



JAMES PAYNE, VICE CHAIRMAN



MARJORIE MAGINN, COMMISSIONER



MARK A. JONES, COMMISSIONER