

**STATE OF INDIANA
BEFORE THE ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF)	
)	
IT'S A BUFFALO, INC.)	PERMIT NO. RR0322879
4440 JONATHON MOORE PIKE)	
COLUMBUS, IN 47201)	
)	
Applicant.)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

It's a Buffalo, Inc., 4440 Jonathan Moore Pike, Columbus, Indiana (Permittee), permit number RR0322879 (Permit), is the permit holder of a retail restaurant permit to sell beer, wine, and liquor in an incorporated area. Permit was placed in escrow on December 20, 2011. Current permit year expires February 20, 2019.

At the July 3, 2018 meeting of the Alcohol and Tobacco Commission (Commission), the Commission ordered that this permit be made active or transferred by December 31, 2018. Permit was not transferred or made active by December 31, 2018. Commission reviewed the status of the Permit at the January 3, 2019 Commission meeting and order the permittee to appear for a hearing on January 16, 2019 to show cause why the permit should not be revoked for pursuant to IC 7.1-3-23-5 for refusing to comply with a provision of Title 7.1, specifically IC 7.1-3-1-3.5, or pursuant to IC 7.1-3-23-12 for ceasing to possess the qualifications required for the issuance of that particular permit type under Title 7.1 of the Indiana Code. Permittee failed to appear as ordered on January 16, 2019.

Judicial notice is taken of the entire Commission file for permit number RR03022879, including the documents attached hereto as Exhibit 1 and Exhibit 2.

II. FINDINGS OF FACT

1. It's a Buffalo, Inc., 4440 Jonathan Moore Pike, Columbus, Indiana (Permittee), permit number RR0322879 (Permit), is the permit holder of a retail restaurant permit to sell beer, wine, and liquor in an incorporated area. (ATC File.)

2. The Permittee requested Permit to be placed in escrow on December 6, 2011. (Exhibit 1.)

3. The Commission granted the Permittee's first year escrow request on December 20, 2011 and sent a letter to the Permittee on December 28, 2011. (Exhibit 2.)

4. Permittee is current on annual permit fees. (ATC File.)

5. The annual permit year will expire February 20, 2019. (ATC File.)

6. Permittee held the permit in escrow for more than five years. (ATC File.)

7. The Commission ordered at its July 3, 2018 meeting that the Permittee must make Permit active or transfer it by December 31, 2018.

8. The Commission reviewed the status of the Permit at its January 3, 2019 Commission meeting.

9. The Commission found that the Permit remained in escrow.

10. The Commission order the Permittee to appear for a hearing on January 16, 2019 and show cause why Permit should not be revoked.

11. The Permittee failed to appear for the order to show cause hearing.

12. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-4.

A. CESSATION OF QUALIFICATIONS

2. Ind. Code § 7.1-2-3-4 grants the Commission the power to hold permits on deposit as authorized by Ind. Code § 7.1-3-1-3.5.

3. Ind. Code § 7.1-3-1-3.5 allows a retailer or dealer permittee to deposit a permit with the Commission for a period of one (1) year if the permittee is unable to immediately operate the business to which the permit applies. The Commission may extend the term of the deposit for not more than four (4) additional one (1) year periods if the permittee is able to show to the satisfaction of the commission that the permittee is making a good faith effort to put the permit into operation.

4. The total number of years a permit may be held in escrow is five (5) one (1) year periods. Ind. Code § 7.1-3-1-3.5.

5. Ind. Code § 7.1-2-3-4.5 states that the chairman may exercise only those express powers enumerated in this title; however, this section does not limit the powers granted to the commission by section 31 of this chapter.

6. Permittee held the permit in escrow for more than seven (7) years.

7. The seven (7) years in escrow greatly exceeds the statutorily permissible five (5) one (1) year periods.

8. Permittee is not entitled to additional time to hold the permit deposited in escrow.

9. Permittee may not hold a beer retailer or wine retailer permit if it is disqualified under the special disqualifications found in Ind. Code § 7.1-3-4-2.

10. A permittee may not hold a beer retailer or wine retailer permit unless the permittee is the proprietor of a restaurant located and being operated on the premises described in the application for permit. Ind. Code § 7.1-1-3-45, Ind. Code § 7.1-3-4-2(a)(13), and Ind. Code § 7.1-3-14-3.

11. Permittee is not the proprietor of a restaurant located and being operated on the premises described in the application for the permit.

12. Permittee ceases to meet the qualifications required for a beer, wine, and liquor retail restaurant in an incorporated area.

13. The Commission may revoke a permit of a permittee if the permittee at any time ceases to possess any of the qualifications, including the alteration or cessation of the particular business or type of business then engaged in, which qualified the permittee to hold that permit, required for the issuance of that particular permit under Title 7.1. Ind. Code § 7.1-3-23-12.

B. REFUSAL TO COMPLY WITH A PROVISION OF TITLE 7.1

14. Commission ordered Permittee to make the permit active or transfer the permit by December 31, 2018. (ATC File.)

15. The Commission's order was an order to comply with a provision of Title 7.1, specifically Ind. Code § 7.1-3-1-3.5.

16. The Commission may revoke a permit on account of the refusal to comply with a provision of Title 7.1. Ind. Code § 7.1-3-23-5.

17. Permittee had more than seven (7) years to bring the permit into compliance with Title 7.1 and failed to do so.

18. Following the Commission order to comply with Title 7.1, Permittee still did not bring the permit into compliance with Title 7.1.

19. Permittee's failure to bring the permit into compliance is a refusal to comply with a provision of Title 7.1, specifically Ind. Code § 7.1-3-1-3.5.

20. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

IV. RECOMMENDATION

Permittee held Permit in escrow for more than the five (5) years permittee by Ind. Code § 7.1-3-1-3.5. The Commission does not have the authority to grant additional escrow time. Permittee does not qualify for additional escrow time and the Permittee ceases to possess the qualifications necessary to hold a beer, wine, and liquor retail restaurant permit in an incorporated area, specifically Permittee is not the proprietor of a restaurant located and being operated on the premises described in the application for the permit. Further, Permittee refuses to comply with Title 7.1 by holding the permit in escrow longer than the statutorily permissible five (5) one (1) year periods.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that permit number RR0322879 shall be REVOKED.

DATE: January 18, 2019



Jessica Allen, Hearing Officer

Distribution:

It's a Buffalo
5449 W. 550 S.
Trafalgar, IN 46181

Approved this 19 day of February, 2019.




DAVID COOK, CHAIRMAN



JOHN KRAUSS, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER