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April 3, 2013

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TO THE HONORABLE MAYOR AND TO THE MEMBERS OF THE CITY
COUNCIL:

CITY OF SANTA BARBARA
CITY CLERK'S OFFICE

Pursuant to Municipal Code §5.20.150(C), Whiskey Richard's herein appeals the March 28, 2013 decision of the Fire & Police Commission to suspend appellant's dance permit for a period of 60 days. Further, pursuant to Municipal Code §520.150(F) appellant Whiskey Richard's herein offers to participate in a private mediation process in order to determine if the concerns with the permit operation can be appropriately addressed by mutual agreement entered into by mediation.

The grounds for suspension or revocation of a dance permit are set forth in Municipal Code §520.150(E) and provide that any suspension or revocation "shall be based on a written finding, supported by adequate evidence" Appellant is informed and believes that the Fire & Police Commission has not made any written findings, and further contends that there is no "adequate evidence" to support any finding of any of the grounds for suspension recognized in §5.20.150(E).

At the Fire & Police Commission hearing the Santa Barbara Police Department, acting as "staff" for the Commission, recommended a suspension of Whiskey Richard's dance permit for a period of 6 months based upon alleged violations relating to minors at the premises. As set forth in the staff report 8 violations were alleged to have occurred in the preceding 12 months. In truth, there were only 3 citations issued for minors on the premises in the subject period, which is a 25% reduction from the previous review period.

Municipal Code §5.20.150(E) provides, in relevant part, that a dance permit may be suspended or revoked when "the permittee has engaged in violations of the state statutes or regulations related to the sale or distribution of alcohol (particularly with respect to the sale of alcohol to persons under 21 years of age) *as determined by the ABC.*" The ABC has recognized only one citation at Whiskey Richard's in the past four years with sufficient grounds to cite the owner for allowing a minor on the premises. Appellant acknowledged responsibility in this case, paid a significant fine in lieu of suspension, and promptly terminated the responsible employee at the business. The attached February 4, 2013 "ABC Offer in Compromise" affirms that Whiskey Richard's has been licensed "since February 17, 2009 with no record of disciplinary action." Thus, under the terms of the dance permit ordinances there has been only one relevant violation "as determined by the ABC."

Further, appellant respectfully submits that Whiskey Richard's maintains a "zero tolerance" security policy, and has made sure that all employees receive updated training through the ABC and all security guards are licensed through the Department of Consumer Affairs. Issues have certainly arisen, and have been responded to in every instance. Since instituting a procedure to track ID seizures by security, Whiskey Richard's has successfully confiscated and reported the following IDs to the PD:

- October 28, 2002, ID confiscated at front door and turned over to Officer Cruz of the Night-Life Enforcement team.
- January 4, 2013 – fake ID confiscated and given to Officer Cruz.
- January 18, 2013 – fake ID confiscated and delivered to Officer Cruz.
- February 21, 2013 – a suspect ID was presented at the front door but was snatched away from security by the person submitting the ID who then ran south on State Street.
- March 7, 2013 – fake ID confiscated at the front door and given to Officer Cruz.
- March 17, 2013 – fake ID was presented. The young woman presenting the ID fled the scene. The security team followed her and Night-Life Enforcement was notified and thereafter took her into custody.
- March 30, 2013 – fake ID was confiscated at the front door and delivered to Officer Cruz.

Photographs of each of the confiscated IDs are available for review and will be presented at mediation. If mediation is unsuccessful in removing the suspension, the fake IDs will be presented to the Council.

The above history reflects the training that appellant's staff has received in recognizing fake IDs and the seriousness with which such IDs are treated when recognized.

Finally, as a matter of law no dance permit holder, including Whiskey Richard's, is a guarantor that no false IDs will ever be successfully used by a minor to gain access to the premises and consume alcoholic beverages. Business & Professions Code §25660(b) provides that "[p]roof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use, or permission . . . shall be a defense to any criminal prosecution therefor *or to any proceedings for the suspension or revocation of any license based thereon.*"

The Fire & Police Commission has made no written findings based on adequate evidence that Whiskey Richard's is not aggressively addressing the issue of minors on the premises. The ABC has made a written finding of only such violation. The Fire & Police Commission made no finding that Whiskey Richard's did not demand, was not shown, or otherwise failed to act in reliance upon bona fide evidence as described in B&P §25660 in allowing any minor into the premises.

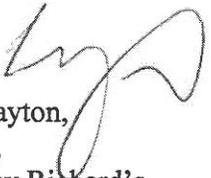
To the Honorable Mayor
& City Counsel Members

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April 3, 2013

For each of these reasons Whiskey Richard's requests a finding by the City Council that its dance permit will not be suspended on the evidence presented.

Respectfully,



Bill Clayton,
Owner,
Whiskey Richard's

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION AGAINST:

POUR HOUSE INC
WHISKEY RICHARDS
435 STATE ST
SANTA BARBARA, CA 93101-2304

ON-SALE GENERAL PUBLIC PREMISES - LICENSE

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.

VENTURA DISTRICT OFFICE

File: 48-474183

Reg: 13077860

**ORDER GRANTING
OFFER IN COMPROMISE**

The above-entitled matter having regularly come before the Department of Alcoholic Beverage Control pursuant to Section 23095 of the Alcoholic Beverage Control Act, the following order is adopted;

The petition of the licensee(s) to make an offer in compromise is granted and the payment of the sum of \$3,000.00 is hereby accepted, receipt number #13072406.

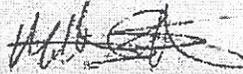
ORDER

The suspension heretofore ordered by the Department shall be permanently stayed effective immediately.

CERTIFICATION

It is hereby certified that on February 4, 2013, the Department of Alcoholic Beverage Control adopted the foregoing as its order in this proceeding effective immediately.

Sacramento, California
Dated: February 4, 2013



Matthew D. Botting
General Counsel

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

POUR HOUSE INC

DBA: WHISKEY RICHARDS

PREMISES: 435 STATE ST
SANTA BARBARA, CA 93101-2304

LICENSE(S): On-Sale General Public Premises

File: 48-474183

Reg:

**ACCUSATION UNDER
ALCOHOLIC BEVERAGE
CONTROL ACT AND
STATE CONSTITUTION**

I hereby complain and accuse the above respondent(s), holding the above license(s), based on the following statement of facts:

COUNT 1

By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and Sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and Sections 24200(a) and (b) of the Business and Professions Code. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

On or about September 26, 2012, respondent-licensee's through their agent or employee, Douglas Alfred HEDGER sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to wit: beer to Nadia B., a person under the age of 21 years, at the premises, in violation of Business and Professions Code Section 25658(a).

Licensee(s) Previous Record: Licensed as above since February 17, 2009, with no record of disciplinary action.

WHEREFORE, I recommend that a hearing be held on this accusation.

Dated this 7th day of Dec, 2011



District Administrator
Department of Alcoholic Beverage Control

Reviewed:

Pursuant to Government Code Section 11507.6 discovery is requested to be provided to: Dept. of Alcoholic Beverage Control, 12750 Center Court Drive, Suite 700, Cerritos, CA 90703 (562) 402-0659.

STATEMENT TO RESPONDENT(S)

Unless a written request for a hearing, signed by you, or on your behalf, is delivered, or mailed, to the Department of Alcoholic Beverage Control within fifteen (15) days after the foregoing accusation was personally served on you or mailed to you, the Department of Alcoholic Beverage Control may proceed upon the accusation without a hearing to take action thereon as provided by law. The request for a hearing may be made by delivering or mailing the enclosed form entitled: "Notice of Defense", or by delivering or mailing a Notice of Defense to the Department of Alcoholic Beverage Control, 12750 Center Court Dr., Ste 700, Cerritos, CA 90703, as provided by Section 11506 of the Government Code. The "Notice of Defense" forwarded herewith, if signed and returned to the Department of Alcoholic Beverage Control, shall be deemed a specific denial of all parts of the accusation, but you will not be permitted to raise any objection to the form of the accusation, unless you file a further Notice of Defense as provided, in Section 11506 of the Government Code within said 15 days after service of said accusation upon you. At any or all stages of these proceedings, you have the right to be represented by counsel at your own expense or to represent yourself without legal counsel. You are not entitled to the appointment of an attorney to represent you.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify this agency within 10 working days after you discover the good cause. Failure to notify this agency within 10 days will deprive you of a postponement.