

STATE OF INDIANA )  
 )  
COUNTY OF MARION )

BEFORE THE INDIANA  
ALCOHOL AND TOBACCO COMMISSION

CAUSE NO: EX18-016185

Brown & Allen Investments LLC )  
d/b/a Krave )  
Permittee / Respondent )  
Permit No.: RR49-33455 )  
 )  
637 N Jefferson Ave )  
Indianapolis, IN 46201 )

FILED

FEB 15 2019

INDIANA  
ALCOHOL AND TOBACCO  
COMMISSION

**MOTION TO STAY FINAL ORDER**

Comes now the duly appointed Prosecutor of the Alcohol and Tobacco Commission (the "Prosecutor") and moves that the Commission stay, pursuant to 905 IAC 1-37-14, the entry of the Final Order adopting the previously entered settlement agreement involving permittee Brown and Allen Investments, LLC d/b/a Krave ("Respondent"). In support of the same, the Prosecutor states the following:

1. Respondent holds a beer, wine, and liquor retailer permit under permit number RR46-33455.
2. On October 17, 2018 the Prosecutor filed a Notice of Violation against Respondent alleging that Respondent had violated Indiana alcohol code sections.
3. Prior to that date, the Prosecutor was contacted by attorney Bart Herriman, who represents the prior permit holder of RR49-33455.
4. Mr. Herriman indicated that there was a pending civil matter involving the sales contract which transferred permit RR49-33455 from Mr. Herriman's client to Respondent.

5. On November 15, 2018, a Prehearing Conference was conducted in reference to the pending violation. At that time, the Prosecutor extended a proposed Settlement Offer in relation to the pending violations against permit RR49-33455.
6. The terms of that offer included a civil penalty, as well as conditions by which Respondent could sell Respondent's Permit, number RR49-33455. The terms also included a requirement that Respondent submit a Consent to Transfer to initiate a transfer of the permit within thirty (30) days of the adoption of the Settlement Agreement.
7. On November 19, 2018, the Prosecutor informed Mr. Herriman of the terms of the tendered Settlement Offer.
8. On December 7, 2018, Mr. Herriman indicated that an arbitration proceeding had been initiated, pursuant to the terms of said sales contract, in which his client was seeking a return of permit RR49-33455 based upon the terms of the previously executed sales contract.
9. On December 11, 2018, Respondent submitted an executed copy of the Settlement Agreement which incorporated the terms of articulated in the Settlement Offer from November 15, 2018.
10. On December 18, 2018, the Commission adopted the Settlement Agreement.
11. On January 18, 2019, Mr. Herriman submitted a copy of a Motion for a Preliminary Injunction filed with the arbiter in relation to the pending arbitration proceeding. That motion included, in part, an injunction upon Respondent from "exercising any and all

efforts to transfer or sell the License pending the resolution of the arbitration proceedings.”

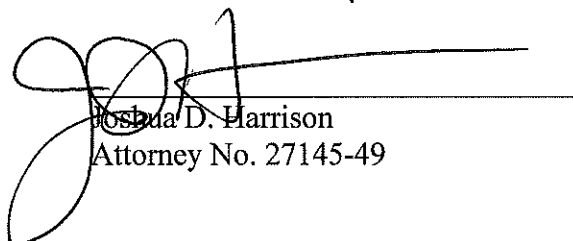
12. On January 22, 2019, Respondent indicated that they were not able to fulfil the conditions of the previously entered Settlement Agreement and indicated a willingness to move forward with a revocation of permit RR49-33455.
13. On February 5, 2019, the Commission adopted a Motion to Vacate Settlement Agreement and Adopt Revised Settlement Agreement. In that document, the Commission adopted a Revised Settlement Agreement in which permit RR49-33455 was revoked.
14. Neither Mr. Herriman nor his client were placed on notice of the change in terms prior to the adoption of the Revised Settlement Agreement.
15. On February 11, 2019, the arbiter in the pending arbitration proceedings entered an Order Granting Preliminary Injunction. That order included a requirement that Respondent withdraw or rescind any agreements made with the Commission that “might jeopardize Claimant’s right to the License”.
16. Neither the Prosecutor nor the Commission were ordered by the arbiter to take any action, including but not limited to the withdrawal of the previously adopted settlement agreement.
17. As Mr. Herriman’s client was not a party to the pending violation, no specific notice on any resolution negotiations nor agreements were required.
18. However, in light of prior dialogue with the Commission, the lack of a curtesy advisement may have precluded Mr. Herriman’s client from seeking a civil remedy, if

one existed, to insulate Mr. Herriman's client's ability to request the return of the permit during the pending arbitration proceedings.

19. In light of the Order Granting Preliminary Injunction and noting that the Revised Settlement Offer may preclude certain civil remedies for the pending arbitration, the Commission should stay the entry of the final order at this time.
20. 905 IAC 1-37-15 states that "[i]f the Commission shall desire, punishment can be withheld for the introduction of more evidence."
21. The Stay should remain in effect only until the final resolution of the arbitration proceedings at which time the Commission can determine to what extent, if any, the arbiter's final order effects the previously entered adoption of the settlement agreement and the revocation order contained therein.

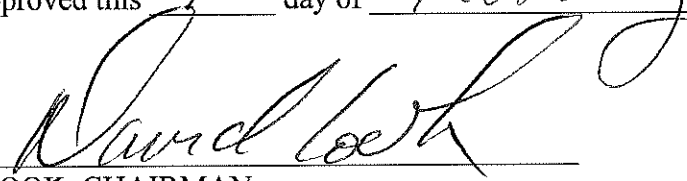
**Wherefore, the Prosecutor now request that the Commission STAY the Final Order adopting the Revised Settlement Agreement on February 5, 2019.**

Respectfully submitted,

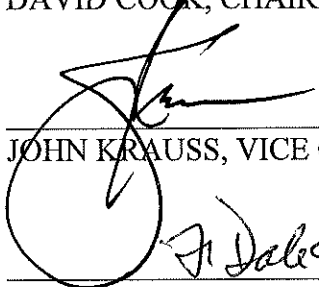


Joshua D. Harrison  
Attorney No. 27145-49

Approved this 19 day of February, 2019.



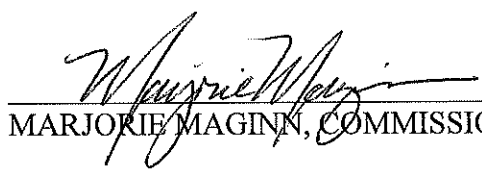
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JOHN KRAUSS, VICE CHAIRMAN



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MARJORIE MAGINN, COMMISSIONER