

03-19-2009 02:30pm

From=DOLC/Renewal Section

6146448968

T-725 P.004/004 F-184



**Ohio Department of Commerce
Division of Liquor Control**

6606 Tussing Rd., P.O. Box 4005
Reynoldsburg, OH 43068-9005
(614)644-2360 FAX(614)728-1283
<http://www.com.state.oh.us>

Ted Strickland
Governor

Kimberly A. Zurz
Director

TAX NON-RENEWAL ORDER

ROOKWOOD NEWS LLC
DBA PUB AT ROOKWOOD NEWS
2682 MADISON RD G-1 & PATIO
NORWOOD OHIO 45212

*JWB
3-22-09*

Permit No: 7508318-0005
ROOKWOOD NEWS LLC
DBA PUB AT ROOKWOOD NEWS
2682 MADISON RD G-1 & PATIO
NORWOOD OHIO 45212

#146-SIA-09

YOUR 2009-2010 RENEWAL APPLICATION WILL NOT BE ISSUED AS OF JUNE 1, 2009.

The Division of Liquor Control has received notice from the Ohio Tax Commissioner that you are delinquent in filing a sales or withholding tax return or are liable for outstanding sales or withholding tax, penalties, or interest; or that you have been assessed for unpaid taxes by the Tax Department. Ohio law provides that your permit shall not be renewed by the Division of Liquor Control until this Division is notified by the Tax Commissioner that the tax delinquency liability or assessment has been resolved. R.C. 4303.271(D)(2)(A).

Any sale of alcoholic beverage after JUNE 1, 2009, will be illegal. In order to resolve your tax problems, you should immediately contact the Ohio Department of Taxation, 30 East Broad Street, 20th Floor, Columbus, Ohio 43216-0530, Phone Number (614)995-4754.

In the event that you are able to resolve this tax matter, you should know that the Division of Liquor Control expressly reserves the right to reject your renewal application for matters not related to your sales or employee withholding tax problems. The Division may reject your renewal application for good cause as provided in R.C. 4303.271(A) or where an objection by your local governmental unit has been sustained as provided in R.C. 4303.271(B).

You are entitled to appeal this order to the Ohio Liquor Control Commission. If you want to appeal this order you must file an appeal by AUGUST 31, 2009, with the Liquor Control Commission, 77 S. High Street, 18th Floor, Columbus, Ohio 43215. The notice of appeal should contain a statement of your reasons for appeal and include a copy of this letter. If a notice of appeal is not filed by AUGUST 31, 2009, this order will become final, and your permit will be cancelled.

Sincerely,

Terry Poole
Terry Poole, Superintendent

Mailed:

Certified Mail/Return Receipt Requested

MAY 04 2009



FINANCIAL INSTITUTIONS
REAL ESTATE & PROFESSIONAL LICENSING

INDUSTRIAL COMPLIANCE
SECURITIES

LABOR & WORKER SAFETY
STATE FIRE MARSHAL

THIS IS A TRUE, CERTIFIED
COPY FOR THE FILES OF
THE OHIO LIQUOR
CONTROL COMMISSION.

SIGNED

KR
20/09

05-19-2009 02:30pm

From:DOLC/Renewal Section

6146446960

T-725 P.003/004 F-184



Ohio Department of Commerce

Division of Liquor Control

6606 Tussing Rd., P.O. Box 40015
Reynoldsburg, OH 43068-9015
(614)644-2360 FAX(614)728-1283
http://www.com.state.oh.us

Ted Strickland
Governor

Kimberly A. Zurz
Director

TAX NON-RENEWAL ORDER

NICHOLSONS PUB LLC
825 WALNUT ST 1ST FL, MEZZANINE & PATIO
CINCINNATI OHIO 45202

JMB
5-22-09

Permit No: 8392718
NICHOLSONS PUB LLC
825 WALNUT ST 1ST FL, MEZZANINE & PATIO
CINCINNATI OHIO 45202

#749-STA-09

YOUR 2009-2010 RENEWAL APPLICATION WILL NOT BE ISSUED AS OF JUNE 1, 2009.

The Division of Liquor Control has received notice from the Ohio Tax Commissioner that you are delinquent in filing a sales or withholding tax return or are liable for outstanding sales or withholding tax, penalties, or interest; or that you have been assessed for unpaid taxes by the Tax Department. Ohio law provides that your permit shall not be renewed by the Division of Liquor Control until this Division is notified by the Tax Commissioner that the tax delinquency liability or assessment has been resolved. R.C. 4303.271(D)(2)(A).

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Sincerely,

Terry Poole
Terry Poole, Superintendent

Mailed:

Certified Mail/Return Receipt Requested

MAY 04 2009



THIS IS A TRUE, CERTIFIED COPY FROM THE FILES OF THE BOARD OF OHIO LIQUOR CONTROL COMMISSION

FINANCIAL INSTITUTIONS
REAL ESTATE & PROFESSIONAL LICENSING
INDUSTRIAL COMPLIANCE
SCHOOLS
LABOR & WORKER SAFETY
STATE FIRE MARSHAL

SIGNED

KR
21/24

STATE OF OHIO
BEFORE THE LIQUOR CONTROL COMMISSION

ROOKWOOD MEWS LLC
2692 Madison Road
Cincinnati, Ohio 45212
#7509318-0005

#146-SA-09
JMS
5-22-09

NOTICE OF APPEAL & REQUEST FOR STAY

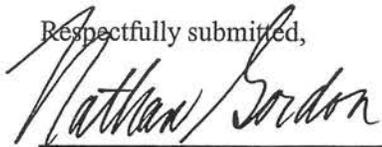
Now comes the Appellant by and through its attorney, and hereby appeals from the Order of the Division of Liquor Control for non-renewing the permit for 2009-2010. The Appellant further requests a stay so it can operate during the pendency of the appeal.

The reasons for said appeal are as follows:

1. There is no basis for the Department's action;
2. The order is not supported by reliable, probative and substantial evidence;
3. Further grounds that may be presented at the hearing.

STATE OF OHIO
LIQUOR CONTROL
2009 MAY 22 A 9:51
FILED

Respectfully submitted,



Nathan Gordon #0024196
2485 East Broad Street
Columbus, Ohio 43209-1757
(614) 621-4135

THIS IS A TRUE, CERTIFIED
COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.

SIGNED KR
19/23

STATE OF OHIO
BEFORE THE LIQUOR CONTROL COMMISSION

NICHOLSONS PUB LLC
625 Walnut Street
Cincinnati, Ohio 45202
#6392716

#147-SAA-09

Pub
5-22-09

NOTICE OF APPEAL & REQUEST FOR STAY

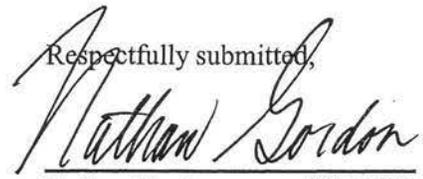
Now comes the Appellant by and through its attorney, and hereby appeals from the Order of the Division of Liquor Control for non-renewing the permit for 2009-2010. The Appellant further requests a stay so it can operate during the pendency of the appeal.

The reasons for said appeal are as follows:

1. There is no basis for the Department's action;
2. The order is not supported by reliable, probative and substantial evidence;
3. Further grounds that may be presented at the hearing.

STATE OF OHIO
2009 MAY 22 A 3 51

Respectfully submitted,



Nathan Gordon #0024196
2485 East Broad Street
Columbus, Ohio 43209-1757
(614) 621-4135

THIS IS A TRUE, CERTIFIED
COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.

SIGNED KR

20/24

**STATE OF OHIO
LIQUOR CONTROL COMMISSION**77 SOUTH HIGH STREET, 18TH FLOOR
COLUMBUS, OHIO 43215
PHONE: (614)466-3132 FAX: (614)466-4564

TED STRICKLAND, GOVERNOR

MICHAEL J. SHAHEEN, CHAIRMAN

May 22, 2009

**ROOKWOOD MEWS LLC
2692 MADISON ROAD
CINCINNATI, OH 45212**RE: Case No. 146-STA-09
Permit No. 7509318-0005

Dear Appellant:

On **May 22, 2009**, the Liquor Control Commission received your notice of appeal from the order or action of the Ohio Department of Commerce, Division of Liquor Control.

In compliance with *Administrative Code 4301:1-1-65*, which requires the Commission to "immediately" set a hearing date for a time between seven and fifteen days after the hearing request, the Commission hereby notifies you that the hearing in this matter is set for **June 5, 2009** at 3:00 p.m. in the offices of the Liquor Control Commission, 77 S. High Street, 19th Floor, Columbus, Ohio. However, on its own motion, the Commission continues this hearing to an indefinite date. **Therefore, the June 5, 2009 hearing will NOT be held.** You will be notified of the new hearing date by the Attorney General's Office, (614) 644-2401. If you have questions regarding this letter, please call (614) 466-3132.

At the hearing before the Liquor Control Commission you may be present with or without counsel, or you may present your position or contentions in writing, and at said hearing may present evidence and examine witnesses appearing for or against you. Under Ohio law, a corporation must be represented by an attorney at hearings/trials. Since your appeal to the Commission was filed by **Attorney Nathan Gordon**, we are sending him a copy of this letter. In Compliance with the Ohio Revised Code 4303.27.1(D)(2)(b)(i),

The permit shall be reinstated if the permit holder and the tax commissioner or the attorney general demonstrate to the liquor control commission that the commissioner's notification of a delinquency or assessment was in error or that the issue of the delinquency or assessment has been resolved.

Very truly yours,

Handwritten signature of Michael J. Shaheen in cursive.

Michael J. Shaheen
Chairman, Liquor Control Commission

Certified Mail #70042510000173474661

cc: Assistant Attorney General, Charitable Agencies-Liquor Unit
Permit Section, Division of Liquor Control
Legal Section, Division of Liquor ControlTHIS IS A TRUE, CERTIFIED
COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.SIGNED KR

21/23

**STATE OF OHIO
LIQUOR CONTROL COMMISSION**77 SOUTH HIGH STREET, 18TH FLOOR
COLUMBUS, OHIO 43215
PHONE: (614)466-3132 FAX: (614)466-4564

TED STRICKLAND, GOVERNOR

MICHAEL J. SHAHEEN, CHAIRMAN

May 22, 2009

**NICHOLSONS PUB LLC
625 WALNUT STREET
CINCINNATI, OH 45202**RE: Case No. 147-STA-09
Permit No. 6392716

Dear Appellant:

On **May 22, 2009**, the Liquor Control Commission received your notice of appeal from the order or action of the Ohio Department of Commerce, Division of Liquor Control.

In compliance with *Administrative Code 4301:1-1-65*, which requires the Commission to "immediately" set a hearing date for a time between seven and fifteen days after the hearing request, the Commission hereby notifies you that the hearing in this matter is set for **June 5, 2009** at 3:00 p.m. in the offices of the Liquor Control Commission, 77 S. High Street, 19th Floor, Columbus, Ohio. However, on its own motion, the Commission continues this hearing to an indefinite date. **Therefore, the June 5, 2009 hearing will NOT be held.** You will be notified of the new hearing date by the Attorney General's Office, (614) 644-2401. If you have questions regarding this letter, please call (614) 466-3132.

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The permit shall be reinstated if the permit holder and the tax commissioner or the attorney general demonstrate to the liquor control commission that the commissioner's notification of a delinquency or assessment was in error or that the issue of the delinquency or assessment has been resolved.

Very truly yours,

Handwritten signature of Michael J. Shaheen in black ink.

Michael J. Shaheen
Chairman, Liquor Control Commission

Certified Mail #70042510000173474678

cc: Assistant Attorney General, Charitable Agencies-Liquor Unit
Permit Section, Division of Liquor Control
Legal Section, Division of Liquor ControlTHIS IS A TRUE, CERTIFIED
COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.

SIGNED

Handwritten signature of Michael J. Shaheen in black ink.

22/24

BEFORE THE LIQUOR CONTROL COMMISSION
STATE OF OHIO

IN THE MATTER OR THE APPEAL OF-
ROOKWOOD MEWS LLC

Case No. 146-STA-09
Permit No. 7509318-0005

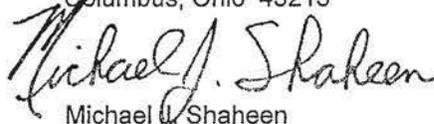
2692 MADISON ROAD
CINCINNATI, OH 45212

ORDER

This matter came before the Liquor Control Commission on **May 22, 2009**, upon motion of counsel/permit holder for a stay of execution from the order or action of the Division of Liquor Control. The Liquor Control Commission on consideration thereof, finds the motion for a stay of execution is granted, during the pendency of the within appeal.

It is further ordered that this Stay of Execution does not circumvent any other provision of *Chapters 4301 or 4303 of the Ohio Revised Code* or Rules of this Commission, and any other Orders of license suspension, revocation, or non-renewal are independent hereof and are not in any manner affected hereby.

LIQUOR CONTROL COMMISSION - STATE OF OHIO
77 South High Street, 18th Floor
Columbus, Ohio 43215



Michael J. Shaheen

-Chairman

Mailed: **May 22, 2009**

cc: Attorney General's Office, Charitable Agencies-Liquor Unit
Legal Section, Division of Liquor Control
Permit Section, Division of Liquor Control

THIS IS A TRUE, CERTIFIED
COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.

SIGNED



23/23

BEFORE THE LIQUOR CONTROL COMMISSION
STATE OF OHIO

IN THE MATTER OR THE APPEAL OF-
NICHOLSONS PUB LLC

Case No. 147-STA-09
Permit No. 6392716

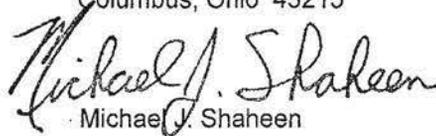
625 WALNUT STREET
CINCINNATI, OH 45202

ORDER

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LIQUOR CONTROL COMMISSION - STATE OF OHIO
77 South High Street, 18th Floor
Columbus, Ohio 43215



Michael J. Shaheen

-Chairman

Mailed: **May 22, 2009**

cc: Attorney General's Office, Charitable Agencies-Liquor Unit
Legal Section, Division of Liquor Control
Permit Section, Division of Liquor Control

THIS IS A TRUE, CERTIFIED
COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.

SIGNED

KR
24/24

BEFORE THE LIQUOR CONTROL COMMISSION
STATE OF OHIO-- STA TAX CASES
SEPTEMBER 15, 2009 - 9:00 A.M.

ROOKWOOD MEWS LLC
DBA PUB AT ROOKWOOD MEWS
2692 MADISON ROAD
CINCINNATI, OHIO 45212
Case #146-STA-09
Docket #5993
Permit #7509318-0005
Mailed: AUGUST 14, 2009

THERE WILL BE ABSOLUTELY NO CONTINUANCE OF THIS HEARING DATE

You are hereby notified that, a hearing will be held on your appeal before the Liquor Control Commission of the State of Ohio, in the Commission hearing room, (19th Floor) at the Vern Riffe Center for Government and Arts, 77 South High Street, Columbus, Ohio 43215 to determine whether the denial of your license renewal by the Department of liquor Control should be affirmed. Pursuant to Section 4303.271, Revised Code, your permit has not been renewed for either failure to (1) file sales and withholding tax returns and/or (2) pay all outstanding sales or withholding taxes, penalties and interest.

You are advised that you may be present at said time and place in person or by your attorney to present your appeal. **Under Ohio Law, a corporation must be represented by an attorney at trials/hearings.** At said hearing, you may present evidence and testimony in your behalf but the scope of such hearing shall be limited solely to whether you have complied with the filing and/or payment requirements set forth above.

Please contact the **Ohio Department of Taxation**, State Office Tower, 20th Floor, 30 E. Broad Street, Columbus, Ohio 43215, or call (614) 466-7351 concerning any payment or arrangements you may wish to make regarding this matter.

BY THE ORDER OF THE CHAIRMAN OF THE LIQUOR CONTROL COMMISSION

THIS IS A TRUE, CERTIFIED
COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.

SIGNED

KR Ex. A
12/23

**BEFORE THE LIQUOR CONTROL COMMISSION
STATE OF OHIO-- STA TAX CASES
SEPTEMBER 15, 2009 - 9:00 A.M.**

NICHOLSONS PUB LLC
625 WALNUT STREET
CINCINNATI, OHIO 45202
Case #147-STA-09
Docket #5993
Permit #6392716
Mailed: AUGUST 14, 2009

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BY THE ORDER OF THE CHAIRMAN OF THE LIQUOR CONTROL COMMISSION

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COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.

SIGNED

EX. A KR
14/24

BEFORE THE LIQUOR CONTROL COMMISSION
STATE OF OHIO

ROOKWOOD MEWS LLC
DBA
2692 MADISON ROAD
CINCINNATI, OHIO 45212
PERMIT # 7509318-0005
CERTIFIED MAIL # 2782

Case No. 146-STA-09

Docket No. 5993

Hearing Date. 9-15-09

ORDER

This matter came before the Liquor Control Commission on the 15th of September, 2009, based on an appeal by the permit holder from the Division of Liquor Control's Non-Renewal Order.

Either no representative appeared on behalf of the Permit Holder or there was insufficient evidence presented to establish compliance with the requirements of Section 4303.271 of The Ohio Revised Code.

Therefore, the Order of Non-Renewal of the Division of Liquor Control is hereby affirmed. Any previous Order of this Commission staying the effect of the Non-Renewal Order is immediately dissolved.

NOTICE OF APPEAL RIGHTS

Respondent is hereby notified that this Order may be appealed pursuant to Ohio Revised Code Section 119.12 by filing a Notice of Appeal with the Ohio Liquor Control Commission, setting forth the Order appealed from and the grounds of the appeal. A copy of such Notice shall also be filed with the Franklin County Court of Common Pleas. Such Notice of Appeal must be filed within twenty-one (21) days after the date of mailing of this order.

LIQUOR CONTROL COMMISSION - STATE OF OHIO
77 South High Street, 18th Floor
Columbus, Ohio 43215

CERTIFICATION
I, the undersigned for the Liquor Control Commission hereby certify that the foregoing is a true and exact production of the original before the Commission, and a copy of which has been furnished to the parties this 25th day of September, 2009.
Emily Johnson Title *ASST*

Michael J. Shaheen
Michael J. Shaheen - Chairman

Paul M. Booth
Paul M. Booth - Vice Chairman

Robert A. Gardner
Robert A. Gardner - Member

Mailed: September 25, 2009

CC: Assistant Attorney General, Executive Agencies-Liquor Unit
Permit/Legal Section, Division of Liquor Control
Department of Taxation
Nathan Gordon, Esq., 2485 East Broad Street, Columbus, Ohio 43209

THIS IS A TRUE, CERTIFIED COPY FROM THE FILES OF THE STATE OF OHIO, LIQUOR CONTROL COMMISSION.

SIGNED *FR*

3/23

BEFORE THE LIQUOR CONTROL COMMISSION
STATE OF OHIO

NICHOLSONS PUB LLC
DBA
625 WALNUT STREET
CINCINNATI, OHIO 45202
PERMIT # 6392716
CERTIFIED MAIL # 2805

Case No. 147-STA-09

Docket No. 5993

Hearing Date. 9-15-09

ORDER

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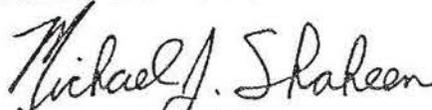
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LIQUOR CONTROL COMMISSION - STATE OF OHIO
77 South High Street, 18th Floor
Columbus, Ohio 43215



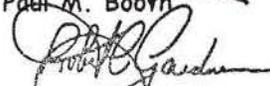
Michael J. Shaheen

- Chairman



Paul M. Booth

- Vice Chairman



Robert A. Gardner

- Member

Mailed: September 25, 2009

CC: Assistant Attorney General, Executive Agencies-Liquor Unit
Permit/Legal Section, Division of Liquor Control
Department of Taxation
Nathan Gordon, Esq., 2485 East Broad Street, Columbus, Ohio 43209

THIS IS A TRUE, CERTIFIED
COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.

SIGNED

KR
11/24

IN THE COURT OF COMMON PLEAS,

FRANKLIN COUNTY, OHIO

09CVF 10 15495

ROOKWOOD MEWS LLC
2692 Madison Road
Cincinnati, Ohio 45212

Appellant

vs.

LIQUOR CONTROL COMMISSION
77 S. High Street
Columbus, OH 43215

Appellee

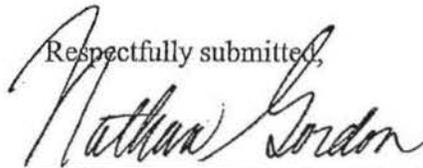
FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2009 OCT 16 AM 9:26
CLERK OF COURTS-CY

NOTICE OF APPEAL

In accordance with the provisions of Section 119.12 of the Ohio Revised Code, Appellant hereby appeals to the Court of Common Pleas of Franklin County, Ohio from the Order of the Liquor Control Commission mailed September 25, 2009, non-renewing Appellant's permit.

That the Order of the Commission is not supported by reliable, probative and substantial evidence and that the Order is not in accordance with law.

Respectfully submitted,



Nathan Gordon #0024196
Attorney for the Appellant-Appellant
2485 East Broad Street
Columbus, Ohio 43209-1757
(614) 621-4135

THIS IS A TRUE, CERTIFIED
COPY FROM THE FILES OF
THE STATE OF OHIO, LIQUOR
CONTROL COMMISSION.

SIGNED KR

2/23

MB
10-16-09

IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

NICHOLSONS PUB LLC
625 Walnut Street
Cincinnati, Ohio 45202
Appellant

vs.

LIQUOR CONTROL COMMISSION
77 S. High Street
Columbus, OH 43215
Appellee

NOTICE OF APPEAL

In accordance with the provisions of Section 119.12 of the Ohio Revised Code, Appellant hereby appeals to the Court of Common Pleas of Franklin County, Ohio from the Order of the Liquor Control Commission mailed September 25, 2009, non-renewing Appellant's permit.

That the Order of the Commission is not supported by reliable, probative and substantial evidence and that the Order is not in accordance with law.

Respectfully submitted,
Nathan Gordon

Nathan Gordon #0024196
Attorney for the Appellant-Appellant
2485 East Broad Street
Columbus, Ohio 43209-1757
(614) 621-4135

RECEIVED

2009 OCT 16 A 10:25

STATE OF OHIO
LIQUOR CONTROL
COMMISSION

THIS IS A TRUE, CERTIFIED COPY FROM THE FILES OF THE STATE OF OHIO, LIQUOR CONTROL COMMISSION.

SIGNED *KR*

9/24

146-STA-09

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Rookwood Mews, LLC.,

Case No. 09CVF10-15495

Appellant,

Judge Pfeiffer

Vs.

Liquor Control Commission,

Appellee.

FILED
CLERK OF COURTS
2009 NOV 10 PM 2:25
FRANKLIN CO. OHIO

JUDGMENT ENTRY

This matter is before the Court on Appellant's Motion for Stay, filed October 16, 2009. The motion is not opposed. The motion is GRANTED.

Appellant shall pay any costs which may be assessed against it on this appeal. Execution of the Order of Appellee, Ohio Liquor Control Commission, is stayed during the pendency of this appeal, and Appellant is permitted to continue operation of its liquor permit business the same as if the order had not been made.

It is further ORDERED that the stay does not circumvent the provisions of R.C. 4303.271 and, if Appellant fails to timely renew, it shall discontinue its permit business on the expiration date of the permit until such time as the permit is renewed.

RECEIVED
NOV 14 P 3:42

Beverly Y. Pfeiffer
BEVERLY Y. PFEIFFER, JUDGE

Copies to:

Nathan Gordon
Counsel for Appellant

Ohio State Liquor Control Commission
Defendant

RECEIVED

2009 NOV 16 PM 3:42

STATE OF OHIO
LIQUOR CONTROL

D9606 - K80

FINAL APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

TERMINATION NO.	8
BY:	JK
12/30/09	

Rookwood Mews, LLC,

Appellant,

Case No. 09CVF10-15495

-v-

JUDGE PFEIFFER

Liquor Control Commission,

Appellee.

DECISION AND ENTRY GRANTING APPELLEE'S MOTION TO DISMISS FILED
DECEMBER 1, 2009

AND
NOTICE OF FINAL APPEALABLE ORDER

Rendered this 30th day of December, 2009

PFEIFFER, J.

This matter is before the Court on Appellee's Motion to Dismiss filed December 1, 2009. The Motion is opposed.

On September 25, 2009, Appellee issued the following Order:

[t]his matter came before the Liquor Control Commission on the 15th day of September, 2009, based on an appeal by the permit holder from the Division of Liquor Control's Non-Renewal Order.

Either no representative appeared on behalf of the Permit Holder or there was insufficient evidence presented to establish compliance with the requirements of Section 4303.271 of the Ohio Revised Code.

Therefore, the Order of Non-Renewal of the Division of Liquor Control is hereby affirmed.

Appellant subsequently initiated this R.C. Chapter 119 administrative appeal by filing a Notice of Appeal stating: "That the Order of the Commission is not supported by

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

D9606 - K81

reliable, probative and substantial evidence and that the Order is not in accordance with law.”

Where a statute confers the right of appeal, an appeal may be perfected only in the manner prescribed by statute. Village of Hills & Dales v. Ohio Dept. of Edn., Franklin App. No. 06AP-1249, 2007-Ohio-5156, at ¶19. The failure to strictly comply with the requirements of R.C. 119.12 for perfecting an appeal “is fatal to invoking the jurisdiction of the common pleas court.” Camper Care, Inc. v. Forest River, Inc., Franklin App. Nos. 08AP-146, 08AP-157, 2008-Ohio-3300, at ¶11. “A demonstration of a lack of subject matter jurisdiction is fatal to any action, and a party or the court sua sponte may challenge jurisdiction at any time during the pendency of a case.” Bunting v. Estate of Mary Jane Bunting, Stark App. Nos. 2008CA00173, 2008CA00199, 2009-Ohio-3136, at ¶13.

R.C. 119.12 provides that “[a]ny party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal.” (Emphasis added). The Ohio Supreme Court has recently held that:

to satisfy the “grounds of the party's appeal” requirement in R.C. 119.12, parties appealing under that statute must identify specific legal or factual errors in their notices of appeal; they may not simply restate the standard of review. While an extensive explanation of the alleged errors is not required at that point in the proceedings, the stated grounds must be specific enough that the trial court and opposing party can identify the objections and proceed accordingly, much in the same way that assignments of error and issues for review are presented in the courts of appeals and propositions of law are asserted in this court.

Medcorp, Inc. v. Ohio Dep't of Job & Family Servs., 121 Ohio St.3d 622, 2009-Ohio-2058, at ¶20.

D9606 - K82

Applying that standard, the high court then determined that the appellant's notice of appeal, which stated only that the underlying order was "not in accordance with law and was not supported by reliable, probative, and substantial evidence did "not strictly comply with the plain meaning of R.C. 119.12, and thus the trial court lacked jurisdiction to consider" the appeal. *Id.* at ¶21.

Appellee now moves the Court to dismiss this appeal for lack of subject matter jurisdiction based on the Medcorp holding. Appellee asserts that the language utilized in the Notice of Appeal is identical to the language deemed by the Ohio Supreme Court to be insufficient to comply with R.C. 119.12 and to invoke subject matter jurisdiction. Appellant has responded with a criticism of Medcorp, which it contends "overruled years of precedent." Appellant argues that, in the 4-3 decision, the majority "fails to set forth the degree of specificity it requires to identify a legal or factual error in a notice of appeal." Additionally, Appellant argues that the manner in which decisions are issued in liquor control cases renders it impossible to set forth specific legal or factual errors:

[t]he Commission merely issues a form order in all of its cases. It does not give any specific reasons for its decisions and does not issue any findings of fact or conclusions of law. Trying to cite specific legal or factual errors would result in mere conjecture. The Attorney General would then probably move to dismiss since the alleged errors were incorrect.

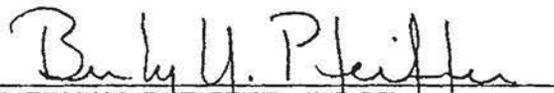
If the Appellant is required to state errors with specificity, then the Liquor Commission should be required to give reasons for its Order or issue findings of fact or conclusions of law.

Finally, Appellant argues that Appellee would not be prejudiced if the Court exercises its equitable power and overruled the motion to dismiss.

D9606 - K83

The Court does not have any equity powers when it comes to issues of subject matter jurisdiction or following binding Supreme Court precedent. Additionally, the Court would disagree that Appellee issued a "form" decision. Rather, the underlying Order states that "[e]ither no representative appeared on behalf of the Permit Holder or there was insufficient evidence presented to establish compliance with the requirements of Section 4303.271." Based on Medcorp, this Court must find that the Notice of Appeal does not comply with R.C. 119.12, and, as a result, subject matter jurisdiction is lacking. Accordingly, Appellee's Motion to Dismiss is GRANTED, and this action is hereby ORDERED DISMISSED. Costs to Appellant.

Pursuant to Civ. R. 58(B), the Clerk of Courts is hereby directed to serve upon all parties notice and the date of this judgment.


BEVERLY Y. PREIFFER, JUDGE

Copies to:

Nathan Gordon
Counsel for Appellant

Scott Longo
Counsel for Appellee

D9684 - W92

TERMINATION NO: <u>18</u> BY: <u>PG</u> <u>1-29-10</u> FINAL APPEALABLE ORDER IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

NICHOLSON'S PUB LLC,]	
]	CASE NO. 09CVF-10-15497
Appellant]	JUDGE MCINTOSH
vs.]	
]	
LIQUOR CONTROL COMMISSION,]	
]	
Appellee]	

FILED COURT
 COMMON PLEAS COURT
 FRANKLIN CO., OHIO
 7:10 JAN 29 PM 3:32
 CLERK OF COURTS

DECISION AND JUDGMENT ENTRY
DISMISSING FOR LACK OF JURISDICTION
AND
NOTICE OF FINAL APPEALABLE ORDER

Rendered this 25th day of January, 2010

MCINTOSH, JUDGE

This case is before the Court on an appeal pursuant to R.C. 119.12 from the September 25, 2009 Order of the Liquor Control Commission (the "Commission").

On October 16, 2009, Appellant filed the Notice of Appeal. On December 1, 2009, Appellee filed a Motion to Dismiss for Lack of Jurisdiction. On December 16, 2009, Appellant filed a Memorandum Contra the Motion to Dismiss.

This appeal is governed by R.C. 119.12, which provides, in pertinent part, as follows: "Any party desiring to file an appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal."

In *Medcorp v. Ohio Dept. of Job and Family Services*, 2009-Ohio-2058, the Ohio Supreme Court held that "To satisfy the 'grounds of the party's appeal' requirement in R.C. 119.12, parties appealing under that statute must identify specific legal or factual errors in their notices of appeal." The Court held that when the notice of appeal simply

(2)

D9684 - W93

restates the standard of review, this does not comply with R.C. 119.12, and the trial court lacks jurisdiction to consider the appeal. *Id.*, ¶21.

The notice of appeal in this case is the same as that in *Medcorp*, in that it restates the standard of review by alleging that the Commission's order is not supported by reliable, probative and substantial evidence and is not in accordance with law. The notice of appeal does not identify specific legal or factual errors as required by R.C. 119.12.

For the foregoing reasons, this case is dismissed for lack of jurisdiction. This is a final, appealable Order. Costs to Appellant. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.



STEPHEN L. MCINTOSH, JUDGE

Copies to:
Nathan Gordon, Counsel for Appellant
David H. Dokko, Counsel for Appellee

V8

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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OHIO
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CLERK OF COURTS

Rookwood Mews, LLC,

Appellant-Appellant,

v.

No. 10AP-83

Liquor Control Commission,

(REGULAR CALENDAR)

Appellee-Appellee.

Nicholson's Pub, L.L.C.,

Appellant-Appellant,

v.

No. 10AP-158

Liquor Control Commission,

(REGULAR CALENDAR)

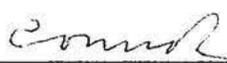
Appellee-Appellee.

JOURNAL ENTRY OF DISMISSAL

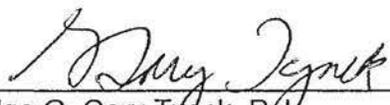
Appellant's April 2, 2010 respective motions to voluntarily dismiss these appeals are approved and these appeals are hereby dismissed. Costs shall be assessed against appellants. Appellee's March 31, 2010 motions to dismiss, filed in case Nos. 10AP-83 and 10AP-158 are hereby denied as moot. The appeals docketed under case Nos. 10AP-157 and 10AP-216 are hereby *sua sponte* de-consolidated from these appeals and remain pending for determination by this court.



Judge Peggy Bryant



Judge John A. Connor



Judge G. Gary Tyack, P.J.



IN THE COURT OF APPEALS
FRANKLIN COUNTY, OHIO
TENTH APPELLATE DISTRICT

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APR 05 2010
Attorney General's Office
Charitable Law Section

ROOKWOOD MEWS LLC
Appellant-Appellant

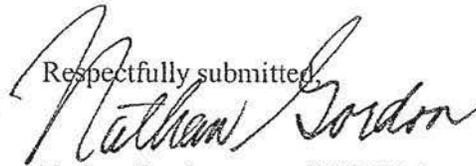
v.

OHIO LIQUOR CONTROL COMMISSION

MOTION TO DISMISS

Rookwood Mews LLC hereby moves to dismiss this appeal.

Respectfully submitted,



Nathan Gordon #0024196
2485 East Broad Street
Columbus, Ohio 43209-1757
(614) 621-4135

Vk

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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OHIO
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CLERK OF COURTS

Rookwood Mews, LLC,
Appellant-Appellant,

v.

Liquor Control Commission,
Appellee-Appellee.

No. 10AP-83

(REGULAR CALENDAR) APR 19 2010

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Attorney General
Charitable Law Section

Nicholson's Pub, L.L.C.,
Appellant-Appellant,

v.

Liquor Control Commission,
Appellee-Appellee.

No. 10AP-158

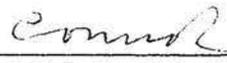
(REGULAR CALENDAR)

JOURNAL ENTRY OF DISMISSAL

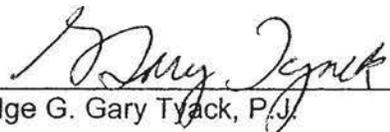
Appellant's April 2, 2010 respective motions to voluntarily dismiss these appeals are approved and these appeals are hereby dismissed. Costs shall be assessed against appellants. Appellee's March 31, 2010 motions to dismiss, filed in case Nos. 10AP-83 and 10AP-158 are hereby denied as moot. The appeals docketed under case Nos. 10AP-157 and 10AP-216 are hereby *sua sponte* de-consolidated from these appeals and remain pending for determination by this court.



Judge Peggy Bryant



Judge John A. Connor



Judge G. Gary Tyack, P.J.



IN THE COURT OF APPEALS
TENTH APPELLATE DISTRICT

Active DS i just supply
TRG DEERFIELD LLC

Case No. 09AP-1217

Appellant-Appellant

v.

LIQUOR CONTROL COMMISSION
Appellee-Appellee

Cancelled Mary
ROOKWOOD MEWS *issues w/ permit*

Case No. 10AP-83

Appellant-Appellant

v.

LIQUOR CONTROL COMMISSION
Appellee-Appellee

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JUN 07 2010

Attorney General
Charitable Law Section

NICHOLSONS PUB LLC *issues D3 possible C1, C2*

Case No. 10AP-158

Appellant-Appellant

v.

LIQUOR CONTROL COMMISSION
Appellee-Appellee

MOTION FOR EXTENSION OF TIME AND FOR RECONSIDERATION

The Appellant-Appellant hereby moves the Court for an extension of time and for reconsideration of the journal entries in these cases for the reasons contained in the attached memorandum.

Nathan Gordon
Respectfully submitted,

Nathan Gordon #0024196
2485 East Broad Street
Columbus, Ohio 43209-1757
(614) 621-4135
Attorney for Appellant-Appellant

MEMORANDUM IN SUPPORT OF MOTIONS

The Appellant-Appellant filed Appeals of Common Pleas Court decisions dismissing their Appeals and affirming the non-renewal of their permits. In all three cases, the Appellants either filed a Motion to dismiss or the Court on its own dismissed the Appeals in March and April, 2010.

The Appellants filed the Motions or allowed the Court to proceed on its own based on a verbal agreement with the Liquor Control Commission that the Commission would order the renewal of these permits if the tax delinquencies were resolved and the Appeals were dismissed just as in Afterworld, Inc. v LCC, Case No 10AP-157. In all three cases, significant checks were delivered to the Attorney General of Ohio and the Appeals were dismissed. Those payments covered all taxes known to the Appellant at the time. In one case, (Nicholson's) a small additional payment was made to the Tax Department several weeks later after it was made known to the undersigned. As of the date of this Motion, all three taxpayers are current on all sales tax payments.

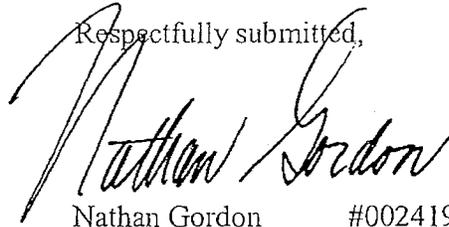
Last Thursday, May 27th, the undersigned was informed by the Commission that the Division of Liquor Control would not honor the agreement evidently claiming that the Commission did not have jurisdiction. Then only today, in response to another email, was the undersigned informed that the Division has taken the same position in these three cases.

The Appellants have made substantial payments to the State of Ohio to the tune of over \$100,00.00 based on a verbal agreement with the Liquor Control Commission. The Commission is still evidently willing to issue renewal Orders but knows that the Division will not honor those Orders unless it still has jurisdiction.

The Appellants are not requesting that this Court reinstate these cases and reverse the lower Court rulings. The Appellants are instead filing a two branch Motion. The first requests that this Court grant an

extension of time for the Appellants to file their Motions for Reconsideration. The second requests that this Court reconsider its earlier entries dismissing these Appeals but instead issue entries dismissing the Appeals and remanding the cases back to the Liquor Control Commission. That would enable the Commission to live up to its agreement and order the renewals of their permits.

Respectfully submitted,

A handwritten signature in black ink that reads "Nathan Gordon". The signature is written in a cursive style with a large, sweeping initial "N".

Nathan Gordon #0024196
2485 East Broad Street
Columbus, Ohio 43209-1757
(614) 621-4135

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion and Memorandum in Support of Motions was mailed to the Attorney General, 150 E. Gay Street, 23rd Floor, Columbus, Ohio 43215 on this 3rd day of June, 2010.



Nathan Gordon
Nathan Gordon

✓
2

20696 - P14

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

TRG Deerfield, LLC,

Appellant-Appellant,

v.

Ohio Liquor Control Commission,

Appellee-Appellee.

Rookwood Mews, LLC,

Appellant-Appellant,

v.

Liquor Control Commission,

Appellee-Appellee.

Afterworld, Inc.,

Appellant-Appellant,

v.

Liquor Control Commission,

Appellee-Appellee.

Nicholson's Pub, L.L.C.,

Appellant-Appellant,

v.

Liquor Control Commission,

Appellee-Appellee.

Tavern Restaurant Group, Inc.,

Appellant-Appellant,

v.

Liquor Control Commission,

Appellee-Appellee.

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CLERK OF COURTS
No. 09AP-1217

(REGULAR CALENDAR)

No. 10AP-83

(REGULAR CALENDAR)

No. 10AP-157

(REGULAR CALENDAR)

No. 10AP-158

(REGULAR CALENDAR)

No. 10AP-216

(REGULAR CALENDAR)

20696 - P15

Case Nos. 09AP-1217, 10AP-83, 10AP-157, 10AP-158 & 10AP-216

Page 2

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JOURNAL ENTRY

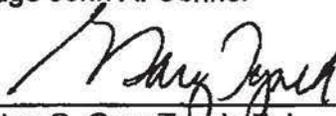
Appellants not demonstrating good cause for reinstating these appeals, and the Liquor Control Commission opposing appellants' application for reconsideration, rather than joining in it, appellants' June 3, 2010 motion for extension of time to file and application for reconsideration are denied.



Judge Peggy Bryant



Judge John A. Connor



Judge G. Gary Tyack, P.J.



*MS
8-13-10*

BEFORE THE OHIO LIQUOR CONTROL COMMISSION

IN THE MATTER OF:

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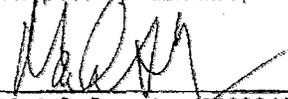
Case No. 146-STA-09

Permit # 1573700
Rookwood Mews, LLC
2692 Madison Rd., G-1 & Patio
Norwood, OH 45212

MOTION TO REOPEN CASE
AND
REQUEST FOR STAY

NOW COMES the Appellant, Rookwood Mews, LLC, by and through counsel, and hereby respectfully requests the Ohio Liquor Control Commission reopen the above captioned matter. Further, Appellant requests the issuance of a stay order pending a hearing before the Liquor Control Commission on the matter. A Memorandum in Support of the instant Motion follows below.

Respectfully submitted,



Mark S. Gutentag (0062046)
22 East Gay Street, Suite 400
Columbus, Ohio 43215
(614) 221-2700
(614) 221-2768 Fax
Attorney for Rookwood Mews, LLC

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PAGE 03/09

MEMORANDUM IN SUPPORTI. CASE HISTORY

Rookwood Mews, LLC ("Rookwood") is a restaurant located in Norwood, Ohio. Rookwood employs 60-65 people from the Norwood and the southwest Ohio area. Rookwood is the holder of an Ohio D-1-2-3-3A-6 liquor permit (the "Permit"). The Permit was issued to Rookwood in August, 2004. Rookwood has never had a liquor citation. This matter comes before the Ohio Liquor Control Commission ("LCC") on Rookwood's 2009 sales tax obligations.

In 2009, due to the total downturn in the American economy, like many businesses throughout Ohio and the rest of the country, Rookwood fell behind with remitting sales tax to the state of Ohio. Based on Rookwood falling behind in its sales tax to the State, the Ohio Division of Liquor Control ("DOLC") issued a Tax Non-Renewal Order for the 2009-2010 renewal of the Permit. By right, and through Attorney Nathan Gordon, Rookwood file an appeal of the Tax Non-Renewal Order with the LCC.

The appeal was docketed and presented to the LCC on September 15, 2009. At the LCC hearing Attorney Nathan Gordon appeared on behalf of both Rookwood. At the September 15, 2009 hearing, evidence was presented Rookwood owed \$22,500.92 in sales tax assessments and, as such, a non-renewal for the Permit was recommended. Attorney Gordon made no statement on behalf of Rookwood and the LCC stated that a non-renewal order would be issued. The non-renewal order (the "Order") was mailed to Rookwood on September 25, 2009.

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PAGE 04/09

October 16, 2009, Attorney Gordon filed a Notice of Appeal of the Order with the LCC and the Franklin County Common Pleas Court pursuant to R.C. § 119.12. Attorney Gordon also requested that the trial court stay the Order during the appeal. The trial court granted the stay request on November 10, 2009.

On December 1, 2009, the LCC filed a Motion to Dismiss the Notice of Appeal filed by Attorney Gordon for lack of jurisdiction due. On December 16, 2009, Attorney Gordon filed a Memorandum Contra Motion to Dismiss. On December 31, 2009, the trial court granted the LCC's Motion to Dismiss stating that it lacked jurisdiction to hear the case.

On January 29, 2010, Attorney Gordon filed an appeal of the trial court's entry with the Tenth District Court of Appeals. While the case was open and pending, Rookwood paid its outstanding sales tax obligation, including all penalties and interest, in full.

On April 9, 2010, Rookwood was granted a full renewal of its liquor permit and the case before the LCC was dismissed. See, Exhibit 1. Based on the Rookwood's full payment of its tax obligations and the April 9, 2010 full renewal of the Permit, Attorney Gordon moved the appellate court to dismiss the appeal. On April 14, 2010, the appellate court granted the Motion to Dismiss filed by Attorney Gordon. Even though all the taxes had been paid in full and the permit was renewed, on May 3, 2010, the LCC sent a Closing Notice to Rookwood.

It is uncontested that prior to the prior to the case being dismissed and closed, that Rookwood's sales tax obligation had been paid in full and that Rookwood had been

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PAGE 05/09

granted a full renewal of the Permit. See, Exhibit 1. It is clear that should the Rookwood permit remain in the cancelled status that sixty-five (65) more Ohioans will lose their jobs.

There does not seem to any clear cut rules as to when exactly the LCC loses jurisdiction of the case. RC § 119.12 requires that an appellant file its notice of appeal first with the commission and then the court. During that the time the case is pending before the court, the case remains open on the state records. The current DOLC printout shows that the April 9, 2010 full renewal of the permit as being closed while it lists the above captioned matter as being an open case. See, Exhibit 1. To this day, Case 146-STA-09 remains open on the Permit's state record. *Id.*

Here certain equities must be observed. Rookwood's tax obligations to the state of Ohio have been paid in full, including penalties and interest. The LCC, DOLC and the Department of Taxation realize that Rookwood's tax obligations have been paid in full as evidenced by the April 9, 2010 granting the renewal of the Permit. *Id.* Regretfully, Attorney Gordon did not contact the taxing authorities at issue here (the Ohio Attorney General's Revenue Recovery Section and the Ohio Department of Taxation) and request that notice of the payment of the 2009 taxes be sent to the LCC. Attorney Gordon also did not request an amended order from the LCC prior to dismissing the pending appeal.

Moreover, the consequence of not renewing the Permit will add another 60-65 people to the already catastrophic number of Ohio's unemployed citizens. It follows that the loss of jobs and closing of this restaurant will have a negative ripple affect on

the Norwood's economy and the economy of the state of Ohio itself.

Many other state authorized commissions retain jurisdiction over its cases while on appeal and, in some cases, thereafter. For example, the Ohio Industrial Commission retains jurisdiction over its cases. See, *State ex rel. Nicholls v. Indus. Comm.* (1998), 81 Ohio St.3d 454.

Most importantly, in Ohio, "[w]hen the rights of parties are clearly defined and established by law, the courts usually apply the maxim 'equity follows the law'; however, where the rights of the parties are not so clearly delineated, the courts will apply broad equitable principles of fairness." *Aurora Loan Services, LLC v. Molter*, 2010-Ohio-3704 at ¶27, citing *Blackwell v. International Union, United Auto Workers Local No. 1250* (1984), 21 Ohio.App.3d 110, paragraph four of the syllabus.

Here, the most equitable and most fair procedure, to the permit holder, its employees, the City of Norwood and the State of Ohio will be to reopen the case and allow Rookwood to present its case for an amended order. Further, Rookwood renews its request for a stay during the LCC's review and hearing on this matter.

Respectfully submitted,


 Mark S. Gutentag (0062046)
 22 East Gay Street, Suite 400
 Columbus, Ohio 43215
 (614) 221-2700
 (614) 221-2768 Fax
 Attorney for Rookwood Mews, LLC

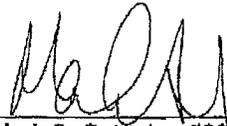
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PAGE 07/09

CERTIFICATE OF SERVICE

This is to certify that the foregoing was served *via* facsimile this 17 day of August, 2010 upon the Ohio Liquor Control Commission and the office of the Ohio Attorney General, 150 E. Broad Street, Columbus, Ohio 43215.



Mark S. Gutentag #0002046

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COMMUNICATIONS SECTION

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PAGE 08/09

PERMIT NUMBER - 7509318-0005
 COUNTY - 31 HAMILTON LLC - WATCH
 TAXING DISTRICT - 319 NORWOOD
 ACTIVE VIOLATIONS - F6 TO DISPLAY
 SUN SALE INFO - F10 TO DISPLAY
 PROBLEM CODE
 PROBLEM DATE
 LAST INSPECTION 08/24/04
 HOLDER BAR CODE

ROCKWOOD MEWS LLC
 DEA PUB AT ROCKWOOD MEWS
 2692 MADISON RD G-1 & PATIO
 NORWOOD OHIO 45212

1
2
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OUTLET NUMBER 512 AGENCY NUMBER

RESTRICTION

C046 TODAY 08/16/10 TIME 08:25:37

CLASS	D1	D2	D3	D3A	D6
TYPE OF APPLICATION	REN	REN	REN	REN	REN
APPLICATION DATE	05/01/09	05/01/09	05/01/09	05/01/09	05/01/09
FILING STATUS	TIMELY	TIMELY	TIMELY	TIMELY	TIMELY
RECEIPT NUMBER	Y064113	Y064113	Y064113	Y064113	Y064113
FEE AMOUNT	\$ 376.00	\$ 564.00	\$ 750.00	\$ 938.00	\$ 500.00
APPLICATION PENDING DATE	05/01/09	05/01/09	05/01/09	05/01/09	05/01/09
RENEWAL PENDING STATUS	NO	NO	NO	NO	NO
SITE LOCATION VOTE					
ORIGINAL ISSUE DATE	08/24/04	08/24/04	08/24/04	08/24/04	08/24/04
SOURCE OF ORIGINAL ISSUE	TRF-NQT	TRF-NQT	TRF-QTA	NEW-QTA	NEW-NQT
CURRENT ISSUE DATE	06/01/08	06/01/08	06/01/08	06/01/08	06/01/08
MAILING DATE					
TYPE OF ISSUE	REN	REN	REN	REN	REN
STATUS OF FEE AMOUNT	DISTRIB	DISTRIB	DISTRIB	DISTRIB	N/A
REFUND AMOUNT					
PENALTY RECEIPT NUMBER					
BUYER					
SELLER	55525B	55525B	45725C		
PROCESS FEE STATUS					
TYPE OF NO ISSUE	R231	R231	R231	R231	R231
ISSUED STATUS	NO	NO	NO	NO	NO
CANCELLATION DATE	05/27/10	05/27/10	05/27/10	05/27/10	05/27/10
QUOTA EXEMPT STATUS	430329B2	430329B2			

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DATE 08-16-10
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COUNTY 31 = HAMILTON
TAXING DISTRICT = 319

7509318-0005 ROOKWOOD MEWS LLC
DBA PUB AT ROOKWOOD MEWS
2692 MADISON RD G-1 & PATIO
NORWOOD OHIO 45212

CLASSES----->	D1	DEFUNCT	R231
	D2	DEFUNCT	R231
	D3	DEFUNCT	R231
	D3A	DEFUNCT	R231
	D6	DEFUNCT	R231

CASE	REPORT	LOG	-----V I O L A T I O N		D E S C R I P T I O N-----	
	DATE	DATE	DATE	CODE		

05	07-15-10	07-15-10	07-15-10		LOEZ LAW WATCH	
*04	03-05-10	03-05-10	03-05-10		LOCL TAX PROBLEM SUB H B 231	
		04-09-10	04-09-10		LODC FULL RENEWAL CASE DISMISSED	
03	03-02-09	03-02-09	03-02-09		LOCL TAX PROBLEM SUB H B 231	
		05-29-09	05-22-09		L320 APPEAL TO LCC	
		05-29-09	05-22-09		L418 DOCKET	CASE 146STA09
		05-29-09	05-22-09		L312 LCC ISSUES STAY ORDER AS OF	052209
		08-25-09	09-15-09		L418 DOCKET 5993	CASE 146STA09
		09-29-09	09-15-09		L360 LCC AFFIRMS TAX NON RENEWAL ORDER	
					MAILED 092509	
					CAN APPEAL TO 101609	
		10-28-09	10-16-09		L337 APPEAL TO COURT	
		11-19-09	11-10-09		L370 COURT ISSUES A STAY ORDER	
		05-13-10	04-14-10		L236 APPEAL WITHDRAWN BY APPELLANT	
*02	02-28-05	02-28-05	02-28-05		LOCL TAX PROBLEM SUB H B 231	
		04-29-05	04-29-05		LODC FULL RENEWAL CASE DISMISSED	
*01	08-23-04	08-23-04	08-23-04		L0DR TRANSFER EXEMPT (TREX)	
					NO TRFL ALLOWED	
		02-10-05	02-10-05		L227 CASE TERMINATED JWY	

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 STATE OF OHIO
 COUNTY OF HAMILTON

BEFORE THE OHIO LIQUOR CONTROL COMMISSION

MB
9-17-10

IN THE MATTER OF:

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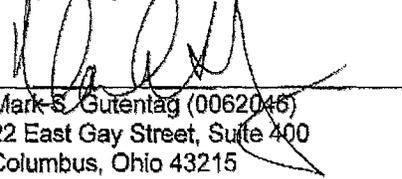
Case No. 147-STA-09

Permit # 6392716
Nicholson's Pub, LLC
625 Walnut Street
Cincinnati, OH 45202

MOTION TO REOPEN CASE
AND
REQUEST FOR STAY

NOW COMES the Appellant, Nicholson's Pub, LLC, by and through counsel, and hereby respectfully requests the Ohio Liquor Control Commission reopen the above captioned matter. Further, Appellant requests the issuance of a stay order pending a hearing before the Liquor Control Commission on the matter. A Memorandum in Support of the instant Motion follows below.

Respectfully submitted,



Mark S. Gutentag (0062046)
22 East Gay Street, Suite 400
Columbus, Ohio 43215
(614) 221-2700
(614) 221-2768 Fax
Attorney for Nicholson's Pub, LLC

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MEMORANDUM IN SUPPORTJMB
8-17-10I. CASE HISTORY

Nicholson's Pub, LLC ("Nicholson's") is a restaurant located in Cincinnati, Ohio. Nicholson's employs 60-65 people from the Cincinnati and the southwest Ohio area. Nicholson's is the holder of an Ohio D-5-6 liquor permit (the "Permit"). The Permit was issued to Nicholson's in April 1998. Nicholson's has never had a liquor citation. This matter comes before the Ohio Liquor Control Commission ("LCC") on Nicholson's 2009 sales tax obligations.

In 2009, due to the total downturn in the American economy, like many businesses throughout Ohio and the rest of the country, Nicholson's fell behind with remitting sales tax to the state of Ohio. Based on Nicholson's falling behind in its sales tax to the State, the Ohio Division of Liquor Control ("DOLC") issued a Tax Non-Renewal Order for the 2009-2010 renewal of the Permit. By right, and through Attorney Nathan Gordon, Nicholson's file an appeal of the Tax Non-Renewal Order with the LCC.

The appeal was docketed and presented to the LCC on September 15, 2009. At the LCC hearing Attorney Nathan Gordon appeared on behalf of both Nicholson's. At the September 15, 2009 hearing, evidence was presented Nicholson's owed \$22,500.92 in sales tax assessments and, as such, a non-renewal for the Permit was recommended. Attorney Gordon made no statement on behalf of Nicholson's and the LCC stated that a non-renewal order would be issued. The non-renewal order (the "Order") was mailed to Nicholson's on September 25, 2009.

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October 16, 2009, Attorney Gordon filed a Notice of Appeal of the Order with the LCC and the Franklin County Common Pleas Court pursuant to R.C. § 119.12. Attorney Gordon also requested that the trial court stay the Order during the appeal. The trial court granted the stay request on November 10, 2009.

On December 1, 2009, the LCC filed a Motion to Dismiss the Notice of Appeal filed by Attorney Gordon for lack of jurisdiction due. On December 16, 2009, Attorney Gordon filed a Memorandum Contra Motion to Dismiss. On January 29, 2010, the trial court granted the LCC's Motion to Dismiss stating that it lacked jurisdiction to hear the case.

On February 22, 2010, Attorney Gordon filed an appeal of the trial court's entry with the Tenth District Court of Appeals. While the case was open and pending, Nicholson's paid its outstanding sales tax obligation, including all penalties and interest, in full.

On April 8, 2010, Nicholson's was granted a conditional renewal of its liquor permit. See, Exhibit 1. Based on the Nicholson's's full payment of its tax obligations and the April 8, 2010 conditional renewal of the Permit, Attorney Gordon moved the appellate court to dismiss the appeal. On April 14, 2010, the appellate court granted the Motion to Dismiss filed by Attorney Gordon. Even though all the taxes had been paid in full and the permit was renewed, on May 3, 2010, the LCC sent a Closing Notice to Nicholson's.

It is uncontested that prior to the prior to the case being dismissed and closed, that Nicholson's's sales tax obligation had been paid in full and that Nicholson's had

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been granted a conditional renewal of the Permit. See, Exhibit 1. It is clear that should the Nicholson's permit remain in the cancelled status that sixty-five (65) more Ohioans will lose their jobs.

There does not seem to any clear cut rules as to when exactly the LCC loses jurisdiction of the case. RC § 119.12 requires that an appellant file its notice of appeal first with the commission and then the court. During that the time the case is pending before the court, the case remains open on the state records.

Here certain equities must be observed. Nicholson's's tax obligations to the state of Ohio have been paid in full, including penalties and interest. The LCC, DOLC and the Department of Taxation realize that Nicholson's's tax obligations have been paid in full as evidenced by the April 8, 2010 granting the renewal of the Permit. *Id.* Regretfully, Attorney Gordon did not contact the taxing authorities at issue here (the Ohio Attorney General's Revenue Recovery Section and the Ohio Department of Taxation) and request that notice of the payment of the 2009 taxes be sent to the LCC. Attorney Gordon also did not request an amended order from the LCC prior to dismissing the pending appeal.

Moreover, the consequence of not renewing the Permit will add another 60-65 people to the already catastrophic number of Ohio's unemployed citizens. It follows that the loss of jobs and closing of this restaurant will have a negative ripple affect on the Cincinnati's economy and the economy of the state of Ohio itself.

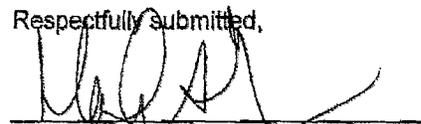
Many other state authorized commissions retain jurisdiction over its cases while on appeal and, in some cases, thereafter. For example, the Ohio Industrial

Commission retains jurisdiction over its cases. See, *State ex rel. Nicholls v. Indus. Comm.* (1998), 81 Ohio St.3d 454.

Most importantly, in Ohio, "[w]hen the rights of parties are clearly defined and established by law, the courts usually apply the maxim 'equity follows the law'; however, where the rights of the parties are not so clearly delineated, the courts will apply broad equitable principles of fairness." *Aurora Loan Services, LLC v. Molter*, 2010-Ohio-3704 at ¶27, citing *Blackwell v. International Union, United Auto Workers Local No. 1250* (1984), 21 Ohio.App.3d 110, paragraph four of the syllabus.

Here, the most equitable and most fair procedure, to the permit holder, its employees, the City of Cincinnati and the State of Ohio will be to reopen the case and allow Nicholson's to present its case for an amended order. Further, Nicholson's renews its request for a stay during the LCC's review and hearing on this matter.

Respectfully submitted,


Mark S. Gutenfag (0062046)
22 East Gay Street, Suite 400
Columbus, Ohio 43215
(614) 221-2700
(614) 221-2768 Fax
Attorney for Nicholson's Pub, LLC

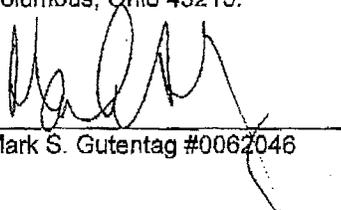
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CERTIFICATE OF SERVICE

This is to certify that the foregoing was served via facsimile this 12 day of August, 2010 upon the Ohio Liquor Control Commission and the office of the Ohio Attorney General, 150 E. Broad Street, Columbus, Ohio 43215.



Mark S. Gutentag #0062046

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2010 AUG 17 AM 11:25

08/17/2010 11:02 6142212768
 PERMIT NUMBER - 6392716
 COUNTY - 31 HAMILTON LLC - WATCH
 TAXING DISTRICT - 066 CINCINNATI
 ACTIVE VIOLATIONS - F6 TO DISPLAY
 SUN SALE INFO - F10 TO DISPLAY
 PROBLEM CODE
 PROBLEM DATE
 LAST INSPECTION 04/26/99
 HOLDER BAR CODE

NICHOLSONS PUB LLC
 625 WALNUT ST 1ST FL, MEZZANINE & PATIO3
 CINCINNATI OHIO 45202

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 5

OUTLET NUMBER 543 AGENCY NUMBER

RESTRICTION

C046 TODAY 08/16/10 TIME 08:25:01

CLASS	D5	D6
TYPE OF APPLICATION	REN	REN
APPLICATION DATE	05/01/09	05/01/09
FILING STATUS	TIMELY	TIMELY
RECEIPT NUMBER	Y064125	Y064125
FEE AMOUNT	\$2344.00	\$ 500.00
APPLICATION PENDING DATE	05/01/09	05/01/09
RENEWAL PENDING STATUS	NO	NO
SITE LOCATION VOTE		
ORIGINAL ISSUE DATE	04/30/98	04/30/98
SOURCE OF ORIGINAL ISSUE	TRF-QTA	TRF-QTA
CURRENT ISSUE DATE	06/01/08	06/01/08
MAILING DATE		
TYPE OF ISSUE	REN	REN
STATUS OF FEE AMOUNT	DISTRIB	N/A
REFUND AMOUNT		
PENALTY RECEIPT NUMBER		
BUYER		
SELLER	03926L	03926L
PROCESS FEE STATUS		
TYPE OF NO ISSUE	R231	R231
ISSUED STATUS	NO	NO
CANCELLATION DATE	05/24/10	05/24/10
QUOTA EXEMPT STATUS		

DISPLAY ANOTHER PERMIT HOLDER // ENTER PERMIT NBR / TRACK-ID / HIT ENTER KEY
 TO RETURN TO MENU HIT THE ENTER

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DATE 08-16-10
TIME 08:25:21

COUNTY 31 = HAMILTON
TAXING DISTRICT = 066

6392716 NICHOLSONS PUB LLC
625 WALNUT ST 1ST FL, MEZZANINE & PATIO
CINCINNATI OHIO 45202

CLASSES-----> D5 DEFUNCT R231
D6 DEFUNCT R231

CASE REPORT LOG -----V I O L A T I O N D E S C R I P T I O N-----
DATE DATE DATE CODE

08 07-15-10 07-15-10 07-15-10 L0EZ LAW WATCH

*07 03-05-10 03-05-10 03-05-10 L0CL TAX PROBLEM SUB H B 231
04-08-10 04-08-10 L282 TAX DEPT APPROVES CONDITIONAL RENEWAL

*06 03-19-09 03-26-09 03-19-09 L0CG BAD CHECK PENDING - BEER & WINE
03-26-09 03-26-09 L2AA BAD CHECK# 011765 BAD CHECK DATE 021309
03-30-09 03-30-09 L227 CASE TERMINATED BP

*05 03-02-09 03-02-09 03-02-09 L0CL TAX PROBLEM SUB H B 231
05-29-09 05-22-09 L320 APPEAL TO LCC
05-29-09 05-22-09 L418 DOCKET CASE 147STA09
05-29-09 05-22-09 L312 LCC ISSUES STAY ORDER AS OF 052209
08-25-09 09-15-09 L418 DOCKET 5993 CASE 147STA09
09-29-09 09-15-09 L360 LCC AFFIRMS TAX NON RENEWAL ORDER
MAILED 092509
CAN APPEAL TO 101609
10-28-09 10-19-09 L337 APPEAL TO COURT
05-13-10 04-14-10 L236 APPEAL WITHDRAWN BY APPELLANT
05-24-10 05-24-10 L227 CASE TERMINATED JWY

*04 02-28-05 02-28-05 02-28-05 L0CL TAX PROBLEM SUB H B 231
04-01-05 04-01-05 L0DC FULL RENEWAL CASE DISMISSED

*03 03-01-04 03-01-04 03-01-04 L0CL TAX PROBLEM SUB H B 231
04-13-04 04-13-04 L0DC FULL RENEWAL CASE DISMISSED

*02 03-04-03 03-04-03 03-04-03 00CL TAX PROBLEM SUB H B 231

(* = INACTIVE CASE) CONTINUED ON NEXT PAGE P=N FOR NEXT PAGE

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DATE 08-16-10
TIME 09:39:16

COUNTY 31 = HAMILTON
TAKING DISTRICT = 066

6392716 NICHOLSONS PUB LLC
625 WALNUT ST 1ST FL, MEZZANINE & PATIO
CINCINNATI OHIO 45202

CLASSES-----> D5 DEFUNCT R231
D6 DEFUNCT R231

CASE	REPORT	LOG	-----V I O L A T I O N		D E S C R I P T I O N-----
	DATE	DATE	DATE	CODE	
		04-03-03	04-03-03	00DC	FULL RENEWAL CASE DISMISSED
*01	03-05-99	03-05-99	03-05-99	00CL	TAX PROBLEM SUB H B 231
		03-16-99	03-16-99	00DC	FULL RENEWAL CASE DISMISSED

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08/17/2010

BEFORE THE LIQUOR CONTROL COMMISSION**STATE OF OHIO**

**ROOKWOOD MEWS, LLC
2692 MADISON ROAD
CINCINNATI, OH 45212**

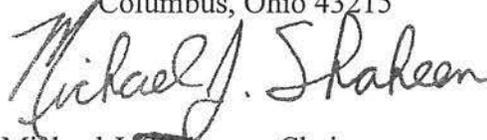
**RE: CASE NO. 146-STA-09
PERMIT NO. 7509318-0005**

NUNC PRO TUNC ORDER

This cause came before the Liquor Control Commission on the 17th day of August, 2010 upon the motion of Mark Gutentag, Counsel for the Permit Holder, for a Reconsideration of a case that was heard before the Commission on the 15th day of September, 2009. As a result of that hearing the Commission affirmed the order of Non-Renewal of the Superintendent, of the Department of Commerce, Division of Liquor Control. Upon review of the Motion filed by Attorney Gutentag and giving due consideration to the fact that no Memorandum In Opposition has been filed, Motion For Reconsideration is granted. The Ohio Division of Liquor Control is herein Ordered to issue the permit accordingly.

NOW THEREFORE, it is hereby ordered that the motion for reconsideration be, and the same hereby is, **granted**. The Ohio Division of Liquor Control is herein **Ordered** to issue the permit accordingly.

LIQUOR CONTROL COMMISSION
STATE OF OHIO
77 S. High St., 18th floor
Columbus, Ohio 43215



Michael I. Shaheen - Chairman



Paul M. Booth- Vice-Chairman

DISSENT (See Attached Statement)

Robert A. Gardner-Member

Mailed and Faxed: August 31, 2010

Cc: Attorney General's, Charitable Law Section - Liquor Unit
Ohio Department of Public Safety, Liquor Enforcement
Ohio Department of Commerce, Division of Liquor Control
Mr. Mark Gutentag, Counsel for the Permit Holder

DISSENT STATEMENT

I, Robert A. Gardner, Member of the Liquor Control Commission, Dissent from this order for the following reasons:

1. The two permits are defunct, so that nullifies the Stay request.
2. The two cases have run the course through the Commission, Franklin County Common Pleas Court and the Tenth District Appeals Court, each time affirming the Tax Non-Renewal Order for failure to pay outstanding owed Sales Tax.
3. There is no confirmation from Taxation that the outstanding taxes have been paid for both permits.
4. The Commission could be setting a dangerous precedent by granting these motions.

A handwritten signature in black ink, appearing to read "Robert A. Gardner", with a long horizontal flourish extending to the right.

Robert A. Gardner -Member

BEFORE THE LIQUOR CONTROL COMMISSION**STATE OF OHIO**

NICHOLSON'S PUB, LLC
625 WALNUT STREET
CINCINNATI, OH 45202

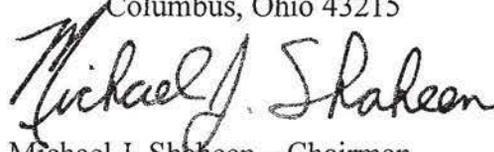
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PERMIT NO. 6392716

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LIQUOR CONTROL COMMISSION
STATE OF OHIO
77 S. High St., 18th floor
Columbus, Ohio 43215



Michael J. Shaheen - Chairman



Paul M. Booth - Vice-Chairman

DISSENT

(See Attached Statement)

Robert A. Gardner-Member

Mailed and Faxed: August 31, 2010

Cc: Attorney General's, Charitable Law Unit - Liquor Unit
Ohio Department of Public Safety, Liquor Enforcement
Ohio Department of Commerce, Division of Liquor Control
Mr. Mark Gutentag, Counsel for the Permit Holder

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Robert A. Gardner -Member