

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
REFERRAL BY THE ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of	)		
	)	OAH No.	14-2400-ABC
ALASKAN LEADER TOURS, LLC	)	Agency No.	14-01
_____	)		

**DECISION**

**I. Introduction**

Alaskan Leader Tours, LLC dba Wild Alaskan (ALT) holds a common carrier dispensary license (CCDL). Since June of 2014 it has been serving alcohol and providing entertainment from the R/V Alaska Leader, which is anchored off shore in the channel near the Kodiak boat harbor. On December 1, 2014, the Alcoholic Beverage Control Board (Board) voted to revoke ALT's CCDL.

On December 8, 2014, ALT filed a request for a hearing to contest the Board's action. A multi-day hearing was held in March 2015. Based on the evidence presented and the applicable statutes and regulations, the Board affirms its December 1, 2014 decision to revoke ALT's license

**II. Facts**

Kimberly Riedel-Byler and her husband, Darren Byler, are the owners, officers, and operators of Alaskan Leader Tours, LLC (ALT). At significant expense, they remodeled the vessel in question to accommodate sightseeing and dinner cruises. ALT applied for a new license to serve alcohol aboard this vessel.<sup>1</sup> On April 11, 2014, it was issued its common carrier liquor license, license number 5271.<sup>2</sup> Approximately one month later, ALT changed the business name it operates under from Alaskan Leader to Wild Alaskan.<sup>3</sup> At some point, the name of the vessel was also changed to the Wild Alaskan.<sup>4</sup>

The U.S. Coast Guard issued a Certificate of Documentation to the Wild Alaskan on July 10, 2014, with an expiration date of July 31, 2015.<sup>5</sup> The vessel has a coastwise endorsement and a registry endorsement.<sup>6</sup>

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<sup>1</sup> AR 42 – 48.  
<sup>2</sup> AR 39.  
<sup>3</sup> AR 37 – 38.  
<sup>4</sup> Exhibit 16.  
<sup>5</sup> *Id.*  
<sup>6</sup> *Id.*

Originally, ALT planned to use its license for dinner cruises. It asked the Coast Guard for a waiver that would allow it to carry more than twelve paying passengers. That request was denied. As a result, ALT changed its business plan. In a letter written to the Board's enforcement supervisor, Ms. Riedel-Byler said:

Mr. Beasley you are correct in stating that my original contact with the Board was to conduct dinner cruises with a common carrier license. Unfortunately the Coast Guard denied a waiver request allowing more than twelve paying passengers to be aboard a 12-pak uninspected vessel, making it impossible to make a profit with just 12 people at a time conducting dinner cruises. Therefore, as I had every legal right to do, I had to rebound with a plan to justify charging a \$20.00 per hour charter rate by providing adult entertainment charters in the channel with a 12 person limit.<sup>[7]</sup>

Under its revised business plan, patrons access the vessel via a water taxi from the Kodiak boat harbor. They sign a charter agreement which provides for a \$20 per hour charter rate for each person.<sup>8</sup> In addition to serving alcohol, ALT provides adult entertainment in the form of nude dancers.<sup>9</sup>

The Wild Alaskan is capable of moving under its own power, and ALT intends to provide bear viewing charters in the future.<sup>10</sup> However, between July of 2014 and the hearing that took place in March of 2015, the vessel did not move from its anchored location.<sup>11</sup>

On December 1, 2014, the Board voted to revoke ALT's license. It issued a notice on that date stating

[T]he Wild Alaskan does not operate "for public hire to transport freight or passengers," as required by AS 04.11.180 and AS 04.16.125. In the board's interpretation, the Wild Alaskan is more of a bar than a boat, and it does not qualify for a common carrier license.<sup>[12]</sup>

### **III. Discussion**

#### ***A. Complaints Concerning the Wild Alaskan***

ALT was notified that the Board had received "numerous complaints" about the Wild Alaskan and ALT's business model.<sup>13</sup> ALT argued that the complaints were improperly motivated, and that there was a concerted effort among a variety of individuals and Kodiak city

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<sup>7</sup> AR 18.

<sup>8</sup> AR 87.

<sup>9</sup> See AR 9.

<sup>10</sup> Testimony of Mr. and Ms. Byler.

<sup>11</sup> Magnuson testimony. Mr. Magnuson is the Deputy Harbor Master for the Kodiak Harbor.

<sup>12</sup> AR 2.

<sup>13</sup> AR 17.

officials to shut down ALT's business. According to ALT, the complaints were due to the fact that Wild Alaskan provided adult entertainment rather than because of any legitimate reason.

For purposes of this hearing, the complaints are irrelevant, as is the reason for any complaint. The Board was made aware that ALT was operating from a fixed location. It does not matter how or why the Board learned this. The only issue for this hearing is whether there is a valid legal reason for revoking ALT's license.

***B. The Wild Alaskan Is Licensed For Passenger Travel***

A common carrier license allows

the holder to sell alcoholic beverages for consumption aboard a vehicle, boat, or train licensed by a state or federal agency for passenger travel, or aboard aircraft operated by an airline licensed by a state or federal agency for passenger travel.<sup>[14]</sup>

ALT is eligible for a common carrier license if the Wild Alaskan is licensed for passenger travel.

The Division presented evidence to show that the Wild Alaskan is not licensed by the Coast Guard as a passenger vessel. As defined by the Coast Guard, a passenger vessel is a vessel of at least 100 gross tons that is chartered and carrying more than twelve passengers.<sup>15</sup> A passenger is anyone on the vessel other than the owner or owner's representative, the master, and the crew.<sup>16</sup> To be certified as a passenger vessel by the Coast Guard, the Wild Alaskan would first have to pass a Coast Guard inspection.<sup>17</sup>

While not certified as a passenger vessel, the Wild Alaskan is authorized for passenger travel. The Wild Alaskan is a documented vessel.<sup>18</sup> Any vessel of at least five tons, including recreational vessels, owned by a US citizen is eligible for documentation.<sup>19</sup> The Wild Alaskan's Certificate of Documentation is endorsed for registry and coastwise trade.<sup>20</sup> An endorsement is an entry made on the Certificate of Documentation that is conclusive evidence that a vessel is entitled to engage in the specified trade.<sup>21</sup> Wild Alaskan's registry endorsement entitles it to "employment in the foreign trade . . . and any other employment for which a coastwise, or

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<sup>14</sup> AS 04.11.180(a) (emphasis added).

<sup>15</sup> 46 CFR § 70.10-1. Submersible vessels and ferries are also passenger vessels if carrying at least one passenger. *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Coast Guard Lt. Sara Lovett.

<sup>18</sup> A documented vessel is any vessel with a valid Certificate of Documentation. 46 CFR § 67.3.

<sup>19</sup> 46 CFR § 67.5.

<sup>20</sup> Exhibit 16.

<sup>21</sup> *Id.*

fishery endorsement is not required.”<sup>22</sup> The coastwise endorsement entitles it to employment in “unrestricted coastwise trade, dredging, towing, and any other employment for which a registry or fishery endorsement is not required.”<sup>23</sup>

These two endorsements are conclusive evidence that the Wild Alaskan may be employed for any purpose except for fishing. While other regulations do not permit the Wild Alaskan to carry a larger number of passengers, the Coast Guard endorsement does permit the vessel to be employed in the trade of carrying up to twelve paying passengers. Thus, the Wild Alaskan is licensed for passenger travel by the Coast Guard.

**C. *The Board Properly Revoked ALT’s Common Carrier License***

ALT argued that it was licensed for passenger travel, and therefore qualified for its common carrier license even though there was no actual passenger travel involved. This narrow reading of AS 04.11.180 is inconsistent with the overall statutory scheme regulating liquor licenses.<sup>24</sup>

AS 04.11 enumerates twenty specific types of liquor licenses. Specific requirements must be met for each type of license. For example, a restaurant or eating place license may only be issued to a bona fide restaurant or eating place.<sup>25</sup> At least 50% of the licensee’s gross receipts must come from the sale of food.<sup>26</sup> A golf course license may only be issued to a golf course with at least nine holes covering at least 2,950 yards.<sup>27</sup> A recreational site license is only available for locations with regularly held sporting events.<sup>28</sup> A beverage dispensary license allows the sale of alcoholic beverages on the licensed premises.<sup>29</sup> Except for the common carrier license, each license is limited to a specific location.<sup>30</sup> The number of licenses allowed in a particular area is limited by the area’s population.<sup>31</sup>

The only type of license not limited to a fixed location is the common carrier license. For a common carrier, the license is for a vehicle, boat, train, or aircraft capable of moving. If,

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<sup>22</sup> 46 CFR § 67.17.

<sup>23</sup> 46 CFR § 67.19.

<sup>24</sup> The notice to ALT indicates that the Board relied on the definition of a common carrier contained in AS 04.16.125. AR 2. The legislature specifically limited the definition contained in section 125 to that specific section. AS 04.16.125(c). That definition is not generally applicable beyond this section 125.

<sup>25</sup> AS 04.11.100(b).

<sup>26</sup> AS 04.11.100(e).

<sup>27</sup> AS 04.11.115.

<sup>28</sup> AS 04.11.210.

<sup>29</sup> AS 04.11.090.

<sup>30</sup> AS 04.11.430(b).

<sup>31</sup> AS 04.11.400.

however, the common carrier does not move and the licensee is operating from a fixed location, then the applicable license under the state's licensing scheme would be that of a beverage dispensary license. Allowing a common carrier license for a fixed location would effectively abolish the statutory limit on the number of licenses in a particular location. Although it is licensed to carry passengers, ALT is not entitled to a common carrier license because it is not actually taking passengers anywhere. In order to qualify for this type of license, the licensee must in fact be transporting passengers.<sup>32</sup> The licensee need not be transporting passengers 100% of the time. For example, a dinner cruise could anchor during the cruise while dinner was served and continue to serve alcoholic beverages. But there must in fact be a cruise; it is not a dinner cruise if the patrons never leave the dock or mooring.

The Board may revoke a license if it finds that the licensee has failed to correct a defect that constitutes a violation of Title 04 of the Alaska Statutes after receiving notice of that defect.<sup>33</sup> ALT was notified on October 14, 2014 that operating its licensed premises from a fixed location was considered a violation.<sup>34</sup> ALT did not correct that violation.

#### **IV. Conclusion**

A common carrier dispensary license is only available to a licensee that is actually transporting passengers. ALT's business model does not include any transportation of passengers between the time they arrive at the Wild Alaskan via water taxi to the time they leave the vessel. Thus, the Board is authorized to revoke ALT's common carrier dispensary license, and hereby does revoke that license.

Dated this 31st day of August, 2015.

*Signed*

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Rebecca L. Pauli  
Administrative Law Judge

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<sup>32</sup> Under AS 04.11.180, the licensee need not carry passengers very far and may return passengers to the same location they departed from. Thus, ALT would have been operating within the scope of its license if it had left its mooring and travelled around the harbor between picking up and discharging passengers.

<sup>33</sup> AS 04.11.370(a)(3).

<sup>34</sup> AR 17.

## Adoption

The Alcoholic Beverage Control Board adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 27th day of November, 2015.

By: Signed  
Signature  
Robert Klein  
Name  
Alcoholic Beverage Control Board Chair  
Title

[This document has been modified to conform to the technical standards for publication.]