

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

FDG NORTH LLC,
d/b/a PLUNGE HOTEL,

Petitioner,

v.

DABT CASE NO.: 2019-005259
FILE NO.: 239078
APPLICATION NO.: 1179329

STATE OF FLORIDA DEPARTMENT OF
BUSINESS AND PROFESSIONAL
REGULATION, DIVISION OF ALCOHOLIC
BEVERAGES AND TOBACCO,

Respondent.

_____ /

ORDER OF DISMISSAL

This matter comes before me for Final Agency Order.

On January 11, 2019, the Division issued a letter entitled "Notice of Intent to Deny License," officially notifying Applicant (hereinafter referred to as "Petitioner") of the Division's intent to deny its application for licensure. Therein, the Division specified the grounds for license denial as follows: section 561.18, Florida Statutes, for failing to provide proof of right of occupancy; for failing to complete sections 7 and 11 of the application; and pursuant to sections 561.01(11), 561.18, and 562.06, Florida Statutes, for failing to submit a complete application. On or about January 29, 2019, Petitioner timely submitted a request for a formal hearing.

During the application process, Petitioner submitted proof of right of occupancy for the addresses listed in the application. The proof consisted of lease agreements listing lot numbers that are part of the official plat of Lauderdale by the Sea in Broward County records. The Division issued its notice of intent to deny based on Petitioner's failure to submit proof of right


of occupancy of El Mar Drive, the public road that separates the two buildings constituting Petitioner's proposed premises as described in the application sketch.

In Florida, "[w]hen any owner of land subdivides the land and dedicates streets, other roadways, alleys or similar strips . . . the conveyance shall carry the reversionary interest in the abutting street to the centerline or other appropriate boundary, unless the owner clearly provides otherwise in the conveyance." § 177.085, Florida Statutes (2020). Petitioner has right of occupancy for properties that are adjacent, and it's uncertain whether the Division will be able to overcome the presumption that the Petitioner's property boundary line extends to the center of the street by clear and convincing evidence. *See Bischoff v. Walker*, 107 So. 3d 1165 (Fla. 5th DCA 2013).

Having fully considered the complete record of this case, it is hereby ORDERED that the Notice of Intent to Deny License letter dated January 11, 2019, shall be rescinded without prejudice, and the Division shall continue the application process after the entry of this order to determine whether Petitioner's application, as submitted, entitles Petitioner to an alcoholic beverage license.

DONE and ORDERED in Tallahassee, Florida this 8th day of may, 2020.





Sterling Whisenhunt, Director
Division of Alcoholic Beverages & Tobacco

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order of Dismissal was furnished to Michael Martinez, Esq., qualified representative of Petitioner, via electronic mail to: Michael.martinez@gmlaw.com, on this 12th day of June, 2020.



Office of the General Counsel

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

In the matter of:

FDG North LLC
c/o Louis J. Terminello
600 Brickell Avenue, Suite 3600
Miami, Florida 33131

License 1620963/4COP S
File No.: 239078
Application No.: 1179329

NOTICE OF INTENT TO DENY LICENSE

This notice is given to advise of the intent of the Division of Alcoholic Beverages and Tobacco to deny the license application as reference above. The grounds for denial are stated on Exhibit A, attached to this notice.

RIGHT TO A HEARING

This is an action that may affect your substantial interests. Mediation of this administrative dispute is not available. However, pursuant to Chapter 120, Florida Statutes, you may request a hearing on this matter, provided a written request is filed with the agency. The request must comply with the requirements of 28-106.111, and 28-106.201 or 28-106.301, Florida Administrative Code. The written request must be postmarked or filed with the Division of Alcoholic Beverages and Tobacco, Chief of Licensing, 2601 Blair Stone Road, Tallahassee, Florida, 32399-1021, within 21 days of the date of this notice.

If the Division determines there are disputed issues of material fact, the case will be forwarded to the Division of Administrative Hearings. If there are no disputed issues of material fact, the Division will schedule an informal hearing. In either case, you will be notified of the date, time and place of the hearing.

In a formal hearing, you have the right to appear in person on your own behalf, to be represented by an attorney, to bring witnesses and present evidence, to cross examine any witnesses produced against you by the State, and to have subpoenas issued on your behalf.

In an informal hearing, you have the right to appear in person on your own behalf, to be represented by an attorney, and to submit whatever information you desire to show entitlement to the license.

FDG North LLC
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If a written Request for a hearing is not received or postmarked within 21 days of this notice, a Final Order will be entered based on the reason(s) stated in Exhibit A, attached to this notice.

Practice in all of the above proceedings are governed by Chapter 120, Florida Statutes, and the Uniform Rules of Practice and Procedure, 28-101 et sequitur, Florida Administrative Code. You have the burden of establishing entitlement to the license.


Dated this 11th day of January 2019.

By: 
Damon J. Larry, Assistant Bureau Chief of Licensing
Department of Business and Professional Regulation
Division of Alcoholic Beverages and Tobacco

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been sent certified by US Mail

FDG North LLC
c/o Louis J. Terminello
600 Brickell Avenue, Suite 3600
Miami, Florida 33131

By: 
Vickie Gordon

Certified Mail #: 7018 1830 0000 5744 7740

Additional copies emailed to:

licensing@qmlaw.com

EXHIBIT A

AUTHORITY: **561.18, FLORIDA STATUTES
61A-5.010, FLORIDA ADMINISTRATIVE CODE**

REASON(S): Application incomplete as applicant has failed to provide **proof of right of occupancy** as requested in the Division's letter dated September 5, 2018 and October 26, 2018. Therefore, the Division of Alcoholic Beverages and Tobacco is unable to fully investigate this application in accordance with Florida Law and is being recommended for denial.

Application incomplete as applicant has failed to provide **proof of right of occupancy** in the name of the **Applicant's entity** as requested in the Division's letter dated September 5, 2018 and October 26, 2018. Therefore, the Division of Alcoholic Beverages and Tobacco is unable to fully investigate this application in accordance with Florida Law and is being recommended for denial.

AUTHORITY: **561.18, FLORIDA STATUTES**

REASON(S): Application incomplete as applicant has failed to **complete Section 7** as requested in the Division's letter dated September 5, 2018 and October 26, 2018. Therefore, the Division of Alcoholic Beverages and Tobacco is unable to fully investigate this application in accordance with Florida Law and is being recommended for denial.

Application incomplete as applicant has failed to **complete Section 11** as requested in the Division's letter dated September 5, 2018 and October 26, 2018. Therefore, the Division of Alcoholic Beverages and Tobacco is unable to fully investigate this application in accordance with Florida Law and is being recommended for denial

AUTHORITY: **561.01(11), 561.18 and 562.06 FLORIDA STATUTES**

REASON: Application incomplete as Applicant has failed to respond to the Division letter dated September 13, 2018 in reference to the sketch of the premises sought to be licensed. Therefore, the Division of Alcoholic Beverages and Tobacco is unable to fully investigate this application in accordance with Florida Law and is being recommended for denial.