

DOCKET NO. 458-03-2053

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

v.

RFP CLUB, INC. D/B/A  
ROCKET FIESTA PALACE  
PERMIT NOS. N-218934, NL-218935,  
PE-218936  
DALLAS COUNTY, TEXAS  
(TABC CASE NO. 599323)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Staff) brought this enforcement action against RFP Club, Inc. d/b/a Rocket Fiesta Palace (Respondent) alleging Respondent failed to provide regular food service adequate for its members and their guests. Staff requested that Respondent's Private Club Registration Permit, N-218934, Private Club Late Hours Permit, NL-218935, and Beverage Cartage Permit, PE-218936, be canceled and that Respondent's request for renewal of these permits be denied. Respondent did not appear and was not represented by counsel at the hearing. The Administrative Law Judge (ALJ) recommends that Staff's request be granted and that Respondent's permits be canceled and request for renewal be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of jurisdiction or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On February 11, 2003, Petitioner sent a Notice of Hearing to Respondent by certified mail, return receipt requested, informing Respondent that the hearing in this matter was scheduled for March 20, 2003. On February 13, 2003, Respondent signed the "green card" indicating receipt of the Notice of Hearing. On March 17, 2003, approximately five weeks after receiving notice of the hearing, Respondent retained counsel. On March 19, 2003, the day before the hearing, Respondent's counsel filed a Motion for Continuance based on counsel's unavailability for the hearing.

On March 19, 2003, a pre-hearing conference was held on Respondent's Motion for Continuance. Counsel for both parties were present. Respondent's counsel argued he was unavailable to appear at the hearing scheduled for March 20, 2003, on such short notice, having just been retained by Respondent two days earlier. Petitioner opposed Respondent's motion, arguing Respondent had ample time to retain counsel after receiving notice of the hearing, that Respondent had waited approximately five weeks after receiving notice of the hearing before retaining counsel, and that Respondent should not be allowed, by its dilatory methods, to delay the hearing.



In that Respondent failed to show good cause for waiting approximately five weeks before retaining counsel and that Petitioner objected to the Continuance request, Respondent's Motion for Continuance was denied.

On March 20, 2003, a public hearing was held before Jerry Van Hamme, ALJ, at the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, attorney. Respondent did not appear and was not represented by counsel at the hearing. The hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion. The record was closed on that date.

## II. LEGAL STANDARD AND APPLICABLE LAW

A private club shall provide regular food service adequate for its members and their guests. The term "food service adequate for its members and their guests" shall mean that complete meals shall be available on the club premises for service to members, their families, and guests. 16 TEX. ADMIN. CODE § 41.52(e).

The administrator may, after notice and hearing, refuse to issue a private club registration permit if he finds that the applicant has failed to comply with any requirement set forth in this subsection. 16 TEX. ADMIN. CODE § 41.52(c)(3).

After notice and hearing the administrator may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if he finds that the holder of the permit, its governing body, or any of its committees, officers, directors, members, agents, servants, or employees has failed to comply with any requirement set forth in this section. 16 TEX. ADMIN. CODE § 41.52(c)(4).

A private club registration permit may only be issued to a club which meets the requirements of this section. TEX. ALCO. BEV. CODE ANN. § 32.03(a).

The club must provide regular food service adequate for its members and their guests. TEX. ALCO. BEV. CODE ANN. § 32.03(g).

The commission or administrator may cancel or suspend for a period of time not exceeding 60 days, after notice and hearing, an original or renewal private club registration permit on finding that the permittee club has violated or assisted, aided or abetted the violation of any provision of this code. TEX. ALCO. BEV. CODE ANN. § 32.17(a)(8).

The commission may issue a beverage cartage permit to the holder of a mixed beverage or private club registration permit. TEX. ALCO. BEV. CODE ANN. § 44.03.

All provisions of this code which apply to a mixed beverage permit also apply to a mixed beverage late hours permit. TEX. ALCO. BEV. CODE ANN. § 29.03.

### III. FINDINGS OF FACT

1. RFP Club, Inc., d/b/a Rocket Fiesta Palace, 416 N. Cockrell Hill Road, Dallas, Dallas County, Texas, holds Private Club Registration Permit, N-218934, Private Club Late Hours Permit, NL-218935, and Beverage Cartage Permit, PE-218936, issued by the Commission on November 2, 1990.
2. On February 11, 2003, Staff sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records. On February 13, 2003, Respondent signed the "green card" indicating receipt of the Notice of Hearing. The Notice of Hearing informed Respondent of the date, time, and place of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
3. The Notice of Hearing also contained language in at least 12-point bold-face type stating that if Respondent failed to appear at the hearing, Staff's factual allegations would be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
4. The hearing on the merits convened on March 20, 2003, at the offices of the State Office of Administrative Hearings, 6333 Forest Park Rd., Suite 150-A, Dallas, Texas, 75235. Staff was represented by attorney Timothy E. Griffith. Respondent did not appear and was not represented at the hearing. The record closed on the same day.

Respondent failed to provide regular food service adequate for its members and their guests.

### IV. CONCLUSIONS OF LAW

The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.61(b)(2). SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.

2. Based on Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
3. Based on Finding of Fact No. 4 and Conclusion of Law No. 2, a default judgment should be entered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.
4. Based on Finding of Fact No. 5, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 32.03(a), (g), and 16 TEX. ADMIN. CODE § 41.52(e).
5. Based on Conclusion of Law No. 4, Respondent's Private Club Registration permit may be canceled by the Commission. TEX. ALCO. BEV. CODE ANN. §32.17(a)(8) and 16 TEX. ADMIN. CODE § 41.52(c)(4).

6. Based on Conclusion of Law No. 4, the Commission may refuse to issue a Private Club Registration permit to Respondent. TEX. ALCO. BEV. CODE ANN. §32.17(a)(8); 16 TEX. ADMIN. CODE § 41.52(c)(3).
7. Based on Conclusion of Law Nos. 4-6, the Commission may cancel or refuse to issue a beverage cartage permit to Respondent. TEX. ALCO. BEV. CODE ANN. §44.03.
8. Based on Conclusion of Law Nos. 4-7, the Commission may cancel or refuse to issue a mixed beverage late hours permit to Respondent. TEX. ALCO. BEV. CODE ANN. §29.03.
9. Based on the foregoing findings and conclusions, the Commission is warranted in canceling Respondent's permits and denying Respondent's request for renewal.

SIGNED this 2 day of May, 2003.



JERRY VAN HAMME  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 599323**

IN RE RFP CLUB INC.	§	BEFORE THE
D/B/A ROCKET FIESTA PALACE	§	
PERMIT NOS. N-218934, NL218935,	§	
PE218936	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2053)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 27th day of May 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on March 20, 2003, and adjourned on March 20, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 2, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

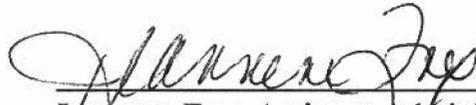
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. N-218934, NL218935 and PE218936 are hereby **CANCELED** and request for renewal is hereby **DENIED**.

**This Order will become final and enforceable on June 17, 2003**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

**SIGNED** this 27th day of May, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable Jerry Van Hamme  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (214) 956-8611

RFP CLUB INC.  
D/B/A ROCKET FIESTA PALACE  
**RESPONDENT**  
c/o Luis De La Garza  
416 N. Cockrell Hill  
Dallas, TX 75211-3405  
**CERTIFIED MAIL NO. 7001 2510 0003 8688 8272**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division

Dallas District Office