DOCKET NO. 458-03-2594
(TABC CASE NO. 602331)

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
NIGHT MANAGEMENT INC.	§	
D/B/A TEXAS LONGHORN SALOON	§	
PERMIT NOS. MB-233413, LB-233414	§	
HARRIS COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Night Management Inc., d/b/a Texas Longhorn Saloon (Respondent), alleging violations of the Texas Alcoholic Beverage Code. Respondent did not appear at the hearing. The Administrative Law Judge (ALJ) finds Staff's motion for a default should be granted, and Respondent should be assessed an administrative penalty.

I. Procedural History, Jurisdiction, and Notice

On June 6, 2003, Stephen J. Burger, State Office of Administrative Hearings ALJ, convened a hearing at 2020 N. Loop W., Suite 111, Houston, Texas. Lindy To of the TABC represented Staff. Respondent did not appear and was not represented by counsel. The record closed that same day after receipt of evidence sufficient to establish jurisdiction and notice in this proceeding, as set forth in the Findings of Fact and Conclusions of Law. After Respondent failed to appear at the hearing, Staff moved for a default and asked that the Respondent's permit and license be canceled or suspended. The ALJ granted Staff's motion for a default pursuant to 1 TEX. ADMIN. CODE § 155.55 and deemed the allegations in the notice of hearing admitted as true. The ALJ recommends that the Respondent's permits be canceled, or, in the alternative, Respondent's permit applications be denied.

II. Findings of Fact

1. Respondent, Night Management Inc., d/b/a Texas Longhorn Saloon, holds a Mixed Beverage Permit, MB-233413, and a Mixed Beverage Late Hours Permit, LB-233414, issued by the TABC.

2. Respondent's address, as reflected in the records maintained by the TABC, is Texas Longhorn Saloon, 800 Northwest Mall, Houston, TX 77092, and Night Management Inc., d/b/a Texas Longhorn Saloon, 9900 Hempstead Highway, #800, Houston, TX 77092.

3. On May 2, 2003, the TABC sent a notice of hearing by certified mail, return receipt requested, and by first class mail, to Respondent at both addresses of record.

4. The hearing notice informed Respondent of the time and location of the hearing, the nature of the hearing, the legal authority and jurisdiction under which it was to be held, the particular sections and rules involved, and of the possibility that failure to appear could result in a default order being entered.

5. The hearing on the merits was held on June 6, 2003. Respondent did not appear either in person or by authorized representative.

6. Based on Respondent's failure to appear, the TABC's motion to proceed on a default basis and have its allegations deemed true was granted.

7. Respondent is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under Chapter 321 of the Tax Code, in violation of TABC § 11.61(c)(2).

8. Respondent is indebted to the state for taxes, fees, or payment of penalties imposed by this code, by a rule of the TABC, or by Chapter 183, Tax Code, in violation of TABC § 11.61 (b)(5) and § 11.46(a)(5).

III. Conclusions of Law

1. The TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE (the Code) §§ 6.01 and 11.61.

2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a contested case hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003.

3. Notice of the complaint and hearing on the merits was provided in compliance with TEX. GOV'T. CODE ANN. ch. 2001, 37 TEX. ADMIN. CODE § 29.107, and 1 TEX. ADMIN. CODE §§ 155.27 and 155.55.

4. Respondent is subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), or is subject to a final determination of taxes due and payable under Chapter 321 of the Tax Code, in violation of § 11.61 (c)(2) of the Code..

5. Respondent is indebted to the state for taxes, fees, or payment of penalties imposed by this code, by a rule of the TABC, or by Chapter 183, Tax Code, in violation of § 11.61 (b)(5) and §11.46(a)(5) of the Code.

6. Pursuant to 1 TAC § 155.55 and Findings of Fact No. 7 and 8, the TABC's allegations against Respondent are established as true.

7. Based on the foregoing findings and conclusions, the TABC is authorized under § 11.61 of the Code to cancel or, in the alternative, deny the applications of Respondent's permits Nos. MB-233413, and LB-233414.

SIGNED this 5th day of August, 2003.

Stephen J. Burger
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 602331

IN RE NIGHT MANAGEMENT INC.	§	BEFORE THE
D/B/A TEXAS LONGHORN SALOON	§	
PERMIT NOS. MB233413, LB233414	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2594)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of September 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened on June 6, 2003, and adjourned on June 6, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 5, 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. MB233413 and LB233414 are hereby **CANCELLED, OR, IN THE ALTERNATIVE, THE PERMIT APPLICATIONS ARE DENIED.**

This Order will become final and enforceable on October 13, 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 22nd day of September, 2003.

On Behalf of the Administrator,

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Stephen J. Burger
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

NIGHT MANAGEMENT INC.
D/B/A TEXAS LONGHORN SALOON
RESPONDENT
800 NW Mall
Houston, TX 77092
CERTIFIED MAIL NO. 7001 2510 0003 8687 1540

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Houston District Office