

DOCKET NO. 458-03-3067

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**THE LEGENDARY CRYSTAL
CHANDELIER,
Respondent
DALLAS COUNTY, TEXAS
(TABC No. 595878)**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against The Legendary Crystal Chandelier (Respondent), alleging that Respondent gave checks or drafts for the purchase of beer, which were dishonored when presented for payment. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permits be suspended for a period of ten days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$1,500.00.

I. PROCEDURAL HISTORY

On May 15, 2003, TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 2520 S. Beckley, Lancaster, Dallas, Texas 75146. The Notice of Hearing was sent by certified mail (7001 2510 0003 8688 9033), return receipt requested. The Notice of Hearing was received at that address by Respondent's agent, Melitta Hutchins, as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service on May 27, 2003.

On May 28, 2003, TABC Staff issued a First Amended Notice of Hearing to Respondent at its mailing address listed above. The First Amended Notice of Hearing was issued to correct information concerning the hearing's time. The First Amended Notice was sent by certified mail (7001 2510 0003 8688 8944), return receipt requested. The First Amended Notice was received at that address by Respondent's agent, Melitta Hutchins, as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service on June 6, 2003.

A hearing was convened as scheduled before ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150 A, Dallas, Dallas County, Texas, on June 12, 2003. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.

During the hearing, documents were admitted into evidence for TABC Staff which would support a recommendation for default against Respondent. The hearing concluded on June 12, 2003, and the record closed on that same day. The ALJ will proceed with consideration of TABC Staff's request for a default recommendation and penalty, as discussed below.

II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that TABC Staff issued notice of the hearing in compliance with 1 TEX. ADMIN. CODE §§ 156.27 and 155.55, and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the Notice of Hearing and the First Amended Notice of Hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

TABC Staff requested that the ALJ recommend suspension of Respondent's permit for a period of ten days, or in lieu of suspension, that Respondent be allowed to pay a civil penalty in the amount of \$1,500.00. TABC Staff provided a copy of Respondent's licensing history, which is maintained by TABC Staff, in support of its penalty request.

III. PROPOSED FINDINGS OF FACT

1. The Legendary Crystal Chandelier (Respondent) holds a Private Club Registration Permit, N 264494, a Private Club Late Hours Permit, NL 264495, and a Beverage Cartage Permit, PE 264496, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2520 S. Beckley, Lancaster, Dallas County, Texas.
2. On May 15, 2003, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 2520 S. Beckley, Lancaster, Texas 75146. This Notice was sent by certified mail (7001 2510 0003 8688 9033), return receipt requested, and was received at that address by Respondent's agent, Melitta Hutchins, on May 27, 2003, as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service. On May 28, 2003, the TABC Staff issued a First Amended Notice of Hearing to Respondent at its address listed above. The Amended Notice corrected the hearing's scheduled time from 10:00 p.m. to 10:00 a.m. and was sent by certified mail (7001 2510 0003 8688 8944), return receipt requested. The First Amended Notice of Hearing was received by Respondent's agent, Melitta Hutchins, on June 6, 2003, at that address as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service.

3. Both the Notice of Hearing and the First Amended Notice of Hearing contained a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a statement of the matters asserted.
4. Both the Notice of Hearing and the First Amended Notice of Hearing also properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice will be deemed as true, and the relief sought may be granted by default.
5. On June 12, 2003, a hearing was convened before ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 1500, Dallas, Dallas County, Texas. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. Respondent, through its agent, servant, or employee gave checks or drafts for the purchase of beer, which were dishonored when presented for payment as follows:
 - On May 10, 2001, a check or draft for the purchase of beer to Ben E. Keith Co., was given in the amount of \$889.20, that was dishonored when presented for payment;
 - On July 19, 2001, a check or draft for the purchase of beer to Miller of Dallas, Inc., was given in the amount of \$674.10, that was dishonored when presented for payment;
 - On June 14, 2002, a check or draft for the purchase of beer to Willow Distributors, L.P., was given in the amount of \$1,126.78, that was dishonored when presented for payment; and
 - On August 22, 2002, a check or draft for the purchase of beer to Ben E. Keith Co., was given in the amount of \$1,263.60, that was dishonored when presented for payment.
7. Respondent's licensing history maintained by TABC Staff reflects several violations of the Texas Alcoholic Beverage Code and TABC rules.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§6.01 and 11.01.

2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 2 - 4, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 61.73 and 102.31.
6. Based upon Proposed Findings of Fact Nos. 6 and 7, Conclusion of Law No. 5, and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 102.31, Respondent's permits should be suspended for a period of ten days.
7. Based upon Proposed Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty in the amount of \$1,500.00 in lieu of suspension of its permits.

SIGNED on this the 17th day of June 2003


Tanya Cooper, ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 595878

IN RE THE LEGENDARY CRYSTAL	§	BEFORE THE TEXAS
CHANDELIER	§	
PERMIT NO(s). N264494, NL264495	§	
& PE264496	§	ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-3067)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 8th day of August, 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on June 12, 2003, and adjourned June 12, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 29, 2002. This Proposal For Decision 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. 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 264494, NL264495, and PE264496 are herein **SUSPENDED**.

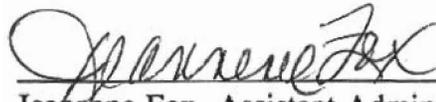
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 1st day of October, 2003, all rights and privileges under the above described permits will be **SUSPENDED** for a period of ten (10) days, beginning at 12:01 A.M. on the 8th day of October, 2003.

This Order will become final and enforceable on AUGUST 29, 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 and by mail as indicated below.

SIGNED on this the 8th day of August, 2003.

On Behalf of the Administrator,



Jeanrene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

Legendary Crystal Chandelier*The
RESPONDENT
2520 S. Beckley
Lancaster, Tx. 75146
CERTIFIED MAIL NO. 7001 2510 0003 8688 8586

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division/Compliance

Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 595878

REGISTER NUMBER:

NAME: The Legendary Crystal Chandelier

TRADENAME:

ADDRESS: 2520 S. Beckley, Lancaster, Texas, 75146

DATE DUE: October 1, 2003

PERMITS OR LICENSES: N 264494

AMOUNT OF PENALTY: \$1,500.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 1ST DAY OF OCTOBER, 2003, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

**P.O. Box 13127
Austin, Texas 78711**

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 17, 2003

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

The Legendary Crystal Chandelier
2520 S. Beckley
Lancaster, Texas 75146

VIA REGULAR MAIL

RE: Docket No. 458-03-3067; Texas Alcoholic Beverage Commission vs The Legendary Crystal Chandelier (TABC Case No. 595878)

Dear Ms. Fox:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission (TABC). Copies of the proposal are being sent to Timothy Griffith, attorney for TABC Staff, and to **The Legendary Crystal Chandelier**, Respondent. The TABC Staff brought this disciplinary action against Respondent alleging that Respondent gave checks or drafts for the purchase of beer, which were dishonored when presented for payment. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permits be suspended for a period of ten days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$1,500.00.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the TABC according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in cursive script that reads "Tanya Cooper".

Tanya Cooper
Administrative Law Judge