

DOCKET NO. 458-04-1583

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	
	§	OF
REO PALM ISLE	§	
PERMIT NOS. N-263427, NL-263428 &	§	
PE-263429	§	
GREGG COUNTY TEXAS	§	
(TABC NO. 601642)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Reo Palm Isle (Respondent) seeking cancellation of Respondent's Private Club Registration Permit N-263427, Private Club Late Hours Permit NL-263428, and Beverage Cartage Permit PE-263429. TABC alleged Respondent allowed or consented to an unauthorized person using or displaying the permit in violation of TEX. Alco. Bev. Code Ann. §§ 11.05, 11.61(b)(2), 32.03, 32.17 (a)(8), and 109.53, and Respondent failed to properly maintain club records in violation of TEX. Alco. Bev. Code Ann. §§ 32.13, 32.17(a) (8) and 16 Tex. Admin. Code § 41.52 (c) (1) (D).

This Proposal for Decision finds the Respondent's Permits should be canceled.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter convened on February 27, 2004. Attorney Dewey Bracken represented TABC. The Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing was concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. EVIDENCE

TABC staff offered documentary evidence showing:

(a) On March 5, 1996, Respondent was issued Private Club Registration Permit N-263427, Private Club Late Hours Permit NL-263428, and Beverage Cartage Permit PE-263429.

(b) On January 9, 2004, the Petitioner sent a Notice of Hearing by certified mail, return receipt requested, to Respondent asserting that the TABC was seeking to cancel Respondent's permits. Respondent timely received the notice letter.

(c) The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."

III. STATUTORY AUTHORITY

TEX. ADMIN. CODE § 61.71 (a) (1) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period.

TEX. ADMIN. CODE §155.55 states:

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative

on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

IV. PROPOSED FINDINGS OF FACT

1. Reo Palm Isle (Respondent) is the holder of Private Club Registration Permit N-263427, Private Club Late Hours Permit NL-263428, and Beverage Cartage Permit PE-263429.
2. Respondent was notified of the factual allegations against Respondent in the Notice of Hearing issued by Petitioner on January 9, 2004. The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."
3. Respondent was notified of the date, time, and location of the scheduled hearing by the Notice of Hearing dated January 9, 2004.
4. On February 27, 2004, the hearing in this matter convened before ALJ Kyle J. Groves. Dewey Bracken appeared for Petitioner. Respondent failed to appear.
5. Respondent allowed or consented to an unauthorized person using or displaying permits issued to Respondent by Petitioner.
6. Respondent failed to properly maintain club records.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.11.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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.

3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.

4. The factual allegations in the notice of hearing are deemed admitted as true.

5. By allowing or consenting to an unauthorized person to use or display Respondent's permits, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.05, 11.61 (b)(2), 32.03, 32.17 (a)(8), and 109.53.

6. By failing to properly maintain club records, Respondent violated TEX. ALCO. BEV. CODE ANN. §§32.13 and 32.17.

7. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Private Club Registration Permit N-263427, Private Club Late Hours Permit NL-263428, and Beverage Cartage Permit PE-263429 should be canceled.

SIGNED MARCH 29TH, 2004



KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NOS. 601642/607888

IN RE REO PALM ISLE	§	BEFORE THE TEXAS
	§	
	§	
PERMIT NOS. N-263427, NL-263428	§	ALCOHOLIC
& PE-263429	§	
GREGG COUNTY, TEXAS	§	
(SOAH Docket No. 458-04-1583)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 19th day of April, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened on February 27, 2004, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 29, 2004. 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 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 Private Club Registration Permit No. N-263427, Private Club Late Hours Permit No. NL-263428 and Beverage Cartage Permit No. PE-263429 is hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on May 26, 2004, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 5th day of May, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Reo Palm Isle
RESPONDENT

P. O. Box 212

White Oak, Texas 75693

CERTIFIED MAIL NO. 7001 2510 0007 0098 4550

RETURN RECEIPT REQUESTED

Administrative Law Judge
State Office of Administrative Hearings
Dallas , Texas
VIA FACSIMILE: (214) 956-8611

Dewey A. Brackin
ATTORNEY FOR PETITIONER
Texas Alcoholic Beverage Commission
Legal Division

Dallas District Office
Licensing Division