

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 14, 1999

Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

VIA CERTIFIED MAIL Z269 601 771

**RE: Docket No. 458-98-1997; Texas Alcoholic Beverage Commission vs. Adine J. Garrett
d/b/a Sportsman Recreation Club (TABC Case No. 568954)**

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Andrew del Cueto, attorney for Texas Alcoholic Beverage Commission, and to Respondent d/b/a Sportsman Recreation Club. For reasons discussed in the proposal, I recommend Respondent's permits be cancelled.

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 Commission 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 black ink, appearing to read "Mark S. Richards".

Mark S. Richards
Administrative Law Judge

MSR:fgm
Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing
✓ Andrew del Cueto, Staff Attorney, Texas Alcoholic Beverage Commission
Adine J. Garrett, 1632 MLK, Jr. Blvd., Dallas, Texas 75215

Regular Mail
Certified Mail Z269-601-772
Certified Mail Z269-601-773

DOCKET NO. 458-98-1997

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

§
§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

VS.

OF

**ADINE J. GARRETT
DBA SPORTSMAN RECREATION
CENTER
LICENSE NOS. BE299721 & BL299722
DALLAS COUNTY, TEXAS
(TABC CASE NO. 568954)**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking cancellation of the Beer Retailer's Permit and Retailer Dealer's On-Premise Late Hours License held by Adine J. Garrett, d/b/a Sportsman's Recreation Center (Respondent), because Respondent is shown on the records of the Comptroller of Public Accounts as subject for final determination of sales taxes due and payable under the Limited Sales, Excise and Use Tax Act. The Commission's Staff (Staff) recommended that Respondent's Permit and License be canceled. This Proposal for Decision agrees with the Staff's recommendation.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Proposed Findings of Fact and Conclusions of Law.

The hearing in this matter convened on November 17, 1998, at the offices of the State Office of Administrative Hearings in Dallas, Dallas County, Texas. The Staff was represented by its counsel, Timothy Griffith. The Respondent was represented by its owner, Adine J. Garrett.

II. THE ALLEGATIONS AND APPLICABLE STATUTORY PROVISIONS

There was one allegation in this proceeding, asserting the Respondent is shown on the records of the Comptroller of Public Accounts as subject for final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act, TEX. TAX CODE ANN. Ch. 151, which constitutes a violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61 (c)(2) and 61.712(2).

Pursuant to both TEX. ALCO. BEV. CODE ANN. §§ 11.61(c)(2) (permittee) and 61.712(2) (licensee), "the commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a permit/license if the commission or administrator finds that the permittee-licensee: . . . Is shown on the records of the comptroller of public accounts as being subject to final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code). . ."

III. EVIDENCE

The Staff's documentary evidence consisted of the notice of hearing, true copies of Respondent's licenses, and a certified copy of the final determination of taxes due and payable under the Tax Code from the office of the Texas Comptroller of Public Accounts. Live testimony was elicited from Ms. Garrett and from Mr. Horace Reeder, an enforcement officer for the Texas State Comptroller's office.

Mr. Reeder testified that Respondent was subject to a final determination of taxes due; that the current amount due was \$4,590.43, covering through the third quarter of 1998; that the Comptroller had previously entered into a payment arrangement with Ms. Garrett on July 2, 1998, whereby she would pay \$700.00 per month until her arrearage was satisfied; that he explained the payout agreement to Ms. Garrett and her accountant and told them that liens were on file; that she signed the agreement and returned it to him; that she made one payment of \$700.00 on August 11, 1998 and none thereafter; and that Respondent's business consists of a pool hall which serves beer and allows patrons to play dominoes. He further stated that since a default had occurred on the payout agreement, he was without the power to reinstate it.

Ms. Garrett testified that she was not disputing the fact that she owes the taxes and in fact she does owe them; that the arrearage has come about due to health problems which she has encountered; that she had a heart attack sometime around June of 1998, was hospitalized, and has not been well since that time; that due to her heart problems a friend of hers named James Borden has been essentially running the business; that there have been no drug problems or other criminal activities at her premises and the police have not been called there; that her son had at one time been helping her, but she does not allow him in the business now and that he had a substance problem; and that she had arranged a payout plan but has been unable to abide by it.

During the course of the hearing, Ms. Garrett stated that she felt confident she could pay her arrearage within three or four months. She had brought \$1,500 in cash, which she stated was all that she had and tendered it to Mr. Reeder, who accepted it after it had been used to purchase a cashier's check at a bank in the hearing building. Ms. Garrett was made aware of the fact that despite the \$1,500 payment, this case was still pending and she could still lose her licenses. She stated that she understood this and hoped it would not occur.

Before the hearing was concluded, Mr. Griffith attempted to see if a new arrangement for payout could be entered into, but was unsuccessful. It was agreed that the record would close in approximately three months; if the arrearage was paid, the Staff would file a motion to dismiss, otherwise, the administrative law judge would proceed with a decision on the merits.

IV. FINDINGS OF FACT

1. On August 11, 1994, the Commission issued Beer Retailer's On-Premise License BE-299721, and Retail Dealer's On-Premise Late Hours License BL-299722 to Respondent for the business known as Sportsman Recreation Center located at 1632 Martin Luther King Jr. Blvd., Dallas, Dallas County, Texas. The licenses have been continuously renewed from that date to present.
2. On October 20, 1998, the staff of the Texas Alcoholic Beverage Commission sent a notice of hearing by certified mail, return receipt requested, to the Respondent at its address of record, regarding an alleged violation of the Texas Alcoholic Beverage Code.
3. The hearing on the merits was held on November 17, 1998, at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. The Staff was represented by its counsel, Timothy E. Griffith and Respondent was represented by its owner, Adine J. Garrett.
4. The parties agree that as of November 17, 1998, Respondent was delinquent and subject to a final determination of taxes due and payable in the amount of \$4,590.43 under the Limited Sales, Excise and Use Tax, (TEX. TAX CODE ANN. §151).
5. On November 17, 1998, at the hearing, Respondent made a payment of \$1,500.00, thereby reducing her arrearage to \$3,090.43.
6. Respondent has previously entered into a Payout Agreement with the Texas Comptroller's office to retire her arrearage but has not made required payments.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 11.61(c), 61.71, and 61.712 (Vernon 1995 & Supp. 1999).
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 (Vernon 1999).
3. On October 20, 1998, the Staff sent the notice of hearing to the Respondent by certified mail, return receipt requested, and all parties appeared.

4. Based on Findings of Fact numbers 4 and 5, Respondent is shown on the records of the Comptroller of Public Accounts as subject to final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(c) and 61.712(2) (Vernon 1995), and such final determination is correct.
5. Based on the foregoing Findings and Conclusions, cancellation of Respondent's Beer Retailer's On-Premise License BE-299721 and Retail Dealer's On-Premise Late Hours License BL-299722 is warranted.

SIGNED THIS 14 day of June, 1999



Mark S. Richards
Administrative Law Judge
State Office of Administrative Hearings