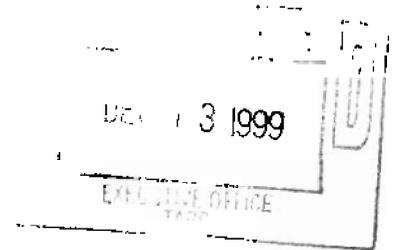


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 10, 1999



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

CERTIFIED MAIL NO. Z 409 580 969
RETURN RECEIPT REQUESTED

RE: Docket No. 458-99-1878; TABC vs. Little Bill's, TABC Case No. 582876

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Little Bill's. For reasons discussed in the Proposal for Decision, I have recommended that Respondent's conduct surety bond be forfeited.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

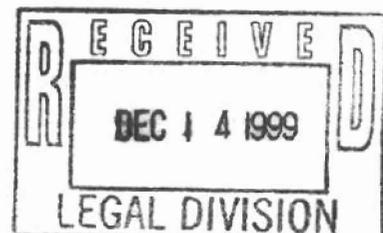
Sincerely,

A handwritten signature in cursive script that reads "Don Smith / rfm".

Don Smith
Administrative Law Judge

DS/rfm
Enclosure

CC: **Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - REGULAR MAIL**
Little Bill's, 6610 Gulfway Drive, Port Authur, TX 77642 - VIA CERTIFIED MAIL NO. Z 409 580 968.
RETURN RECEIPT REQUESTED
Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings - VIA REGULAR MAIL



North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

DOCKET NO. 458-99-1878

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE
	§	
V.S.	§	
	§	OFFICE OF
LITTLE BILL'S	§	
PERMITT NO. N-250451	§	
JEFFERSON COUNTY, TEXAS	§	
(TABC CASE NO. 582876)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission initiated this action seeking forfeiture of the conduct surety bond posted by Little Bill's (the Permittee) because Permittee's permit or license was canceled, or the Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The cancellation or violations have been finally adjudicated. The Permittee made no appearance. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Because the hearing proceeded on a default basis, procedural history, notice, and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion in the text of this proposal.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §11.11 and/or 61.71 provides that the amount of the surety bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of this code.

The staff attorney introduced the affidavit of Brian L. Guenther, Licensing Department Director, into evidence, (Exhibit TABC 4) that the Private Club Registration Permit, N-250451, and Private Club Late Hours Permit, NL-250452 were issued to an unincorporated association of persons, doing business as Little Bill's, 6610 Gulfway Drive, Port Arthur, Jefferson County, Texas, by the Texas Alcoholic Beverage Commission, on the 23rd day of November, 1994, and were voluntary canceled on the 25th day of November, 1998. The Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The mailing address of the Permittee is 6610 Gulfway Drive, Port Arthur, Texas 77642.

The staff attorney introduced the Notice of Hearing (Exhibit TABC 2) and Second Notice of Hearing (TABC 3) to the Permittee, showing that the notice was sent to the Permittee's last known address, as shown on the referring agency's record, 6610 Gulfway Drive, Port Arthur, Texas 77642, with no showing of actual receipt.

III. RECOMMENDATION

Because the the Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995, the Permittee has forfeited the full amount of their conduct surety bond.

IV. FINDINGS OF FACT

1. An unincorporated association of persons, doing business as Little Bill's, 6610 Gulfway Drive, Port Arthur, Jefferson County, Texas, was issued a Private Club Registration Permit, N-250451, and Private Club Late Hours Permit, NL-250452 by the Texas Alcoholic Beverage Commission.
2. On September 17, 1999 and September 29, 1999, the staff of the Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing on the forfeiture of the conduct surety bond to the Permittee at 6610 Gulfway Drive, Port Arthur, Texas 77642, its address of record, by certified mail, return receipt requested.
3. Notice of hearing to the Permittee was shown by proof that the notice was sent to the Permittee's last known address as shown on the referring agency's record with no showing of actual receipt.
4. The Texas Alcoholic Beverage Commission Rules, 16 Texas Admin. Code § 37.7 authorizes service of the notice of hearing by sending it to the Permittee's last known address as shown by the agency's records.
5. There was credible evidence by way of the Notice of Hearing (Exhibit TABC 2) and Second Notice of Hearing (Exhibit TABC 3) that the notice of hearing was sent by certified mail, return receipt requested, to the Permittee's last known address on the agency's records.
6. The hearing on the merits was held on October 28, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon. The Permittee did not appear and was not represented at the hearing.
7. Private Club Registration Permit, N-250451, and Private Club Late Hours Permit, NL-250452 were issued to Little Bill's, 6610 Gulfway Drive, Port Arthur, Jefferson County, Texas, by the Texas Alcoholic Beverage Commission, on the 23rd day of November, 1994, and were voluntary canceled on the 25th day of November, 1998.
8. Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The violations were Open Saloon on 1-9-1998, Breach-Aggravated on 11- 21-1997, Open Saloon on 11-21-1997, Breach Failure to Report on 11-21-1997, and Sale to Intoxicated Person on 11-21-1997.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§11.11 and 61.13.
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. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. TEX. ALCO. BEV. CODE ANN. Section 11.11 and/or 61.71 provides that the amount of the surety bond shall be paid to the state if Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the conduct surety bond executed by Permittee should be forfeited to the State.

SIGNED this 10 th day of December, 1999.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DS:rfm/99-1878