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DOCKET NO. 501686

IN RE RANCH HOUSE CLUB	§	BEFORE THE
D/B/A RANCH HOUSE CLUB	§	
PERMIT/LICENSE NOS. N-233398,	§	
PE233400	§	TEXAS ALCOHOLIC
	§	
COLLIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-0211)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 9th day of February 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on November 3, 2005, and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 30, 2005. 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.

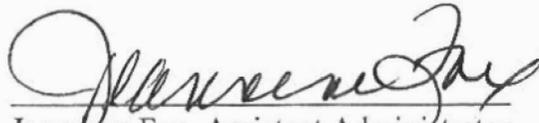
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permits and licenses be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on March 2, 2006 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 this 9th day of February 2006.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

Linda Wallace
Ranch House Club
RESPONDENT
7610 Highway 78
Sachse, TX 75048
VIA CM/RRR NO. 77001 2510 0000 7274 3199

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

SOAH DOCKET NO. 458-06-0211



TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner

BEFORE THE STATE OFFICE OF LEGAL DIVISION

v.

OF

RANCH HOUSE CLUB, Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC or Commission) staff (Petitioner) brought this enforcement action against Ranch House Club (Respondent). Petitioner alleged that Respondent has committed numerous violations of the Texas Alcoholic Beverage Code (the Code) and the Commission's Rules (the Rules), including having entered into a device, scheme or plan which has surrendered control of the premises or business of Respondent to a person other than Respondent. Petitioner requested that Respondent's permits be canceled. The Administrative Law Judge (ALJ) recommends cancellation of the permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 6.01, 11.61, 32.03, 32.06 and 109.53. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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.

On November 3, 2005, a hearing convened in Dallas, Texas, before ALJ Brenda Coleman, State Office of Administrative Hearings (SOAH). Petitioner was represented at the hearing by Timothy Griffith, Staff Attorney. Respondent appeared pro se. After presentation of evidence and argument, the hearing concluded and the record closed on that date.



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II. DISCUSSION AND ANALYSIS

A. Background

Respondent's licensed premises are located at 3955 Highway 78, Sachse, Collin County, Texas. Respondent holds private club registration permit N-233398 and beverage cartage permit PE-233400 issued by the TABC on October 16, 1992. Linda Renee Wallace serves as Respondent's president.

B. Applicable Law

Pursuant to the Code, Petitioner may suspend or cancel a permit if it is found that the permittee violated a provision of the Code or the Rules.¹ Chapter 32 of the Code and chapter 41.52 of the Rules pertain to record keeping for private clubs, including membership records, pool accounts and replacement accounts. No application for membership may be approved until the application has been filed with the membership committee chairman or board and then approved by the chairman.² When considering a membership application or termination of memberships, the membership committee must keep written minutes showing the meeting date, the names of all committee members present, the name of any person admitted to membership, and the name of any person whose membership was terminated.³ A private club may use a business machine rather than a well-bound book if the TABC administrator gives written approval of the machine's use.⁴

A private club may combine the club's alcoholic beverages replacement account, general operating account, and any other account into a single master account if the master account is maintained in accordance with generally accepted accounting principles and the club is able to

1 Code § 11.61(b)(2).

2 Code § 32.03(d).

3 16 TAC § 41.52(c)(1)(B).

4 16 TAC § 41.52(c)(1)(D).

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generate statements reflecting the funds allocated to each component account.⁵ No money other than the designated percentage of service charges may be deposited in the replacement account.⁶ The replacement of alcoholic beverages may be paid for only from money in the replacement account.⁷

Any device, scheme or plan which surrenders the permittee's control of the employees, premises or business to other persons is unlawful. The legislature has expressed its intent

to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices.⁸

Pursuant to TABC's Standard Penalty Chart, the only remedy for subterfuge is cancellation.⁹

C. Petitioner's Evidence and Contentions

Petitioner contends that Respondent has operated its premises in violation of the Code and the Rules and Respondent operated a subterfuge and surrendered control of its premises to someone else. Specifically, Petitioner argues, Ms. Wallace, exercised financial and operational control over the business for her personal benefit instead of for the benefit of Respondent's members. In support of its position, Petitioner presented the testimony of Cheryl Belvedere, a compliance officer with TABC since 1996.

⁵ Code § 32.06(c).

⁶ Code § 32.06(b)(2).

⁷ Code § 32.06(b)(3).

⁸ Code § 109.53.

⁹ 16 TAC § 37.60(a).

1. Testimony of Cheryl Belvedere

As a compliance officer and CPA, Ms. Belvedere routinely conducts audits and reviews the documents of private clubs as required by the Code. On July 19, 2005, she conducted a routine audit of Respondent's records and personally met with Ms. Wallace.

a. Improper Record Keeping Violations

During the audit, Ms. Belvedere detected the following record keeping violations: (1) Respondent's membership committee minutes failed to indicate the names of committee members present;¹⁰ (2) Respondent did not maintain a well-bound membership book. It was attempting to use a computerized system, however, the computerized system was inadequate and was not approved by TABC;¹¹ and (3) Respondent's preliminary membership applications were not maintained in chronological order by date.¹²

According to Ms. Belvedere, a private club must establish a designated percentage of funds to be allocated to the pool replacement account. In this case, however, Respondent's designated replacement account percentage of 30 percent was not deposited into the pool account. Ms. Wallace advised that the actual amount deposited by Respondent was based on cash flow and what she determined the private club could afford to deposit into the account.¹³ Respondent's bank statements included a couple of negative account balances for the pool account, which indicated that Respondent was not replenishing alcoholic beverages from funds in the pool account as the Code requires.¹⁴

10 16 TAC § 41.52(c)(1)(B).

11 16 TAC § 41.52(c)(1)(D).

12 Code § 32.03(d).

13 Code § 32.06(b)(2).

14 Code § 32.06(b)(3).

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Ms. Belvedere stated that pursuant to Code § 32.06(c), it is permissible for Respondent and the restaurant to co-mingle or share a master account if the account is maintained in accordance with generally accepted accounting principles and Respondent is able to generate statements reflecting the funds allocated to each component account, *i.e.*, an operating account for the restaurant, an operating account for Respondent, and a pool replacement account for Respondent. However, in this case, Respondent failed to maintain separate subsidiary ledgers and, therefore, was unable to produce any statements reflecting the funds allocated to each component account. Also, Ms. Wallace's personal expenses were paid from Respondent's account. In Ms. Belvedere's opinion, the co-mingling activity between Respondent and Ms. Wallace would not fall within generally accepted accounting principles.

Ms. Belvedere discounted the suggestion that Ms. Wallace's practices were merely clerical errors. On April 21, 2004, TABC compliance officer Chriss Sheppard conducted a subterfuge investigation on Respondent. As a result of the investigation, Respondent received a warning for subterfuge and record keeping violations of the same type and nature as in the July 2005 audit.¹⁵

b. Subterfuge

Ms. Belvedere determined that Respondent failed to conduct its operations as a private club in accordance with its by-laws, management agreement and sublease agreement. Failure to do so is evidence of a subterfuge, she testified.

Ms. Belvedere testified that Respondent, as a private club, is a separate entity owned by the members. The officers are primarily elected to manage the club on the members' behalf. However, Ms. Wallace's individual income tax return for 2004 designated Respondent as a "night club" and sole proprietorship for which she was the owner. Also, Respondent's revenues and

¹⁵ Petitioner's Exhibits Four (TABC Narrative and written warning), and Five (TABC Report of Irregularities and Recommendations).

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expenses were claimed on Ms. Wallace's tax return.¹⁶ The correct procedure would have been for Respondent to file a separate tax return under its own tax identification number obtained from the IRS. Any revenues earned or business expenses incurred by Respondent should have been reflected on its tax return, rather than on the personal tax return of Ms. Wallace.

Respondent is required to have its own separate bank accounts (operating account and alcoholic beverage replacement account) or master account evidencing separate subsidiary ledgers. Ms. Wallace co-mingled her personal funds with Respondent's operating account and improperly paid personal expenses out of Respondent's account. Ms. Wallace was the sole signatory on Respondent's bank signature card and had absolute control over all deposits and disbursements.

D. Respondent's Evidence and Contentions

Ms. Wallace testified at the hearing on behalf of Respondent. Ms. Wallace did not dispute Petitioner's allegations but attempted to offer explanations instead. She stated that she never used Respondent's money for her own profit or personal gain, and any money she received from taxes went back into the private club. She did pay herself a monthly salary to cover her living expenses, and a bi-weekly cleaning fee. She admitted that her bookkeeping practices are not very good sometimes. According to Ms. Wallace, she sometimes used Respondent's checks to pay bills if she did not have money in her personal account, but she always put the money back.

According to Ms. Wallace, it is sometimes very difficult to put money into the pool account exactly as it should be. If she had some cash, she deposited some into the account, then wrote another check to cover the pool account. Sometimes, the records appeared to show that she was not depositing the whole amount to the pool account, but she was doing so with the cash flow from the day's business.

Ms. Wallace stated that since the July 2005 audit, she has taken some steps to correct the

¹⁶ Petitioner's Exhibit Three.

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violations and improve her practices. Specifically, Respondent has entered into a sublease agreement. She has a secretary who signs Respondent's bank signature cards. Respondent's designated replacement account percentage was reduced from 30 percent to 23 percent. And, she has applied to TABC for approval of the machine bookkeeping system.

Ms. Wallace explained that she has struggled in the operation of the private club since her husband passed away a few years ago. The fire marshal shut Respondent down for 32 days as the result of a fire on the roof of the premises in July 2004, which caused a financial strain. Ms. Wallace stated that she has not had an opportunity to take any classes to assist her in the proper operation of the private club.

Ms. Wallace acknowledged that Respondent was issued a warning for the stated violations discovered by Ms. Sheppard in April 2004, and was given 90 days to make corrections. She admitted that despite the warning relating to her 2002 and 2003 individual tax returns designating Respondent as a sole proprietorship, she repeated the improper practice on her 2004 tax return. Ms. Wallace added that she has been trying to get back on her feet and would like the opportunity to continue to do so. She also stated that she now has a better understanding of the requirements and expectations involved for private clubs.

E. Analysis

After considering the evidence, the ALJ concludes that Petitioner has met its burden and proved that Respondent committed the violations of the Code and the Rules as alleged by Petitioner. Respondent had an obligation to know and abide by the provisions of the Code and is accountable for failing to meet this obligation. The obligation exists whether Respondent is warned of a violation by TABC and given a chance to correct it or not. As a result of TABC's 2004 subterfuge investigation on Respondent, Ms. Wallace knew, or should have known, the appropriate requirements for operating a private club. Ms. Belvedere's inspection of Respondent's records on July 19, 2005, as well as Ms. Wallace's own testimony, indicated that Respondent's ownership or operation was a subterfuge and illegal and its record-keeping practices

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were incorrect. According to Ms. Belvedere, these violations were continued practices for which Respondent was previously warned.

III. RECOMMENDATION

Petitioner requested that Respondent's permits be canceled. Subterfuge is a major regulatory violation of the Code, and cancellation is the remedy provided in the Rules for this violation. The ALJ agrees with that sanction, and therefore, recommends that Respondent's permits be canceled.

IV. FINDINGS OF FACT

1. Respondent (Ranch House Club) holds private club registration permit N 233398 and beverage cartage permit PE 233400 issued by Petitioner on October 16, 1992, for its premises located at 3955 Highway 78, Sachse, Collin County, Texas.
2. Linda Renee Wallace serves as Respondent's president.
3. On July 19, 2005, TABC compliance officer, Cheryl Belvedere, conducted an audit of Respondent's records, which revealed that Ms. Wallace designated Respondent as a personal business on her 2004 individual tax return.
4. Ms. Wallace claimed Respondent's revenues and expenses on her 2004 individual tax return.
5. Ms. Wallace co-mingled her personal funds with Respondent's operating account.
6. Ms. Wallace was the sole person listed on Respondent's bank signature card and had absolute control over Respondent's deposits and disbursements.
7. Ms. Wallace paid personal expenses from Respondent's account
8. There was no evidence to show any management fees or sublease fees were paid.
9. Respondent failed to maintain preliminary membership applications in chronological order.
10. Respondent deposited money other than the designated percentage into the replacement account.

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11. Respondent replaced alcoholic beverages from money other than replacement money.
12. Respondent failed to generate monthly statements of each component of the master account in accordance with generally accepted accounting principles.
13. Respondent's membership committee minutes failed to indicate the names of committee members present.
14. Respondent failed to maintain an approved machine bookkeeping system.
15. On April 2, 2004, TABC compliance officer Chriss Sheppard met with Ms. Wallace and conducted a subterfuge investigation on Respondent.
16. On April 21, 2004, Ms. Sheppard issued a warning to Respondent for some of the same record keeping violations, as discovered by Ms. Belvedere on July 19, 2005, and for subterfuge.
17. On September 28, 2005, Petitioner issued a notice of hearing notifying Respondent that a hearing would be held concerning Petitioner's allegations and informing Respondent of the time, place, and nature of the hearing and of the legal authority and jurisdiction under which the hearing was to be held; giving reference to the particular sections of the statutes and rules involved; and including a short, plain statement of the matters asserted.
18. The hearing was held on November 3, 2005, in Dallas, Dallas County, Texas, before Brenda Coleman, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Petitioner appeared and was represented by Timothy Griffith, Staff Attorney. Respondent appeared *pro se*. After presentation of evidence and argument, the hearing concluded and the record closed on that date.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code), Chapter 5 and §§ 6.01, 11.61, 32.03, 32.06 and 109.53, as well as 16 TEX. ADMIN. CODE § 41.52 of the Commission's Rules (the Rules).
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 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.

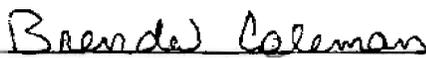
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4. Based on the foregoing findings and conclusions, Respondent violated Code § 32.03(d).
5. Based on the foregoing findings and conclusions, Respondent violated Code § 32.06(b)(2).
6. Based on the foregoing findings and conclusions, Respondent violated Code § 32.06(b)(3).
7. Based on the foregoing findings and conclusions, Respondent violated Code § 32.06(c) of the Code.
8. Based on the foregoing findings and conclusions, Respondent violated 16 TAC § 41.52(c)(1)(B) of the Rules.
9. Based on the foregoing findings and conclusions, Respondent violated 16 TAC § 41.52(c)(1)(D) of the Rules.
10. Based on the foregoing findings and conclusions, Respondent surrendered control of the business to a person other than Respondent in violation of Code §109.53.
11. Based on the foregoing findings and conclusions, Respondent's permits should be canceled.

SIGNED December 30, 2005.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



STATE OFFICE OF ADMINISTRATIVE HEARINGS

6333 Forest Park Road, Suite 150-A
Dallas, Texas 75235
• Phone No. (214)956-8616
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FACSIMILE TRANSMISSION

DATE: December 30, 2005

SOAH DOCKET NO: 458-06-0211
TABC vs Ranch House Club
TABC CASE NO. 501686

FROM: Sharon Robertson, Administrative Assistant

NUMBER OF PAGES: 12
(Including cover sheet)

FAX TO:	FAX NO.:	Transaction No./Time:
Betty Chatham	1-512-206-3498	

Message: Attached please find the **PROPOSAL FOR DECISION** in the above referenced cause.

If all pages are not received, please call Sharon Robertson at 214/956-8616.

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State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 30, 2005



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-06-0211
TABC VS. RANCH HOUSE CLUB
TABC CASE NO. 501686

Dear Ms. Fox:

Please find enclosed a PROPOSAL FOR DECISION in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Coleman".

Brenda Coleman
Administrative Law Judge

BC/sr
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, Via Fax,
Linda Wallace, Respondent, Via Mail