

DOCKET NO. 516985

IN RE PAULA'S CLUB	§	BEFORE THE TEXAS
D/B/A PAULA'S CLUB	§	
PERMIT NOS. N-115503, PE-230630	§	
	§	
	§	ALCOHOLIC
	§	
HENDERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1320	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of May, 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 March 6, 2006 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 April 26 2006. 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.

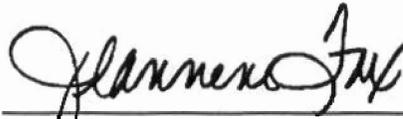
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permits be cancelled for cause, pursuant to §§ 32.03, 32.06 and 109.53 of the Code.**

This Order will become final and enforceable on June 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 on this 12th day of May, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE 214-956-8611
Ph.: 214-956-8616

Paula's Club
d/b/a Paula's Club
RESPONDENT
P. O Box 531
Athens, Texas 75751
CERTIFIED MAIL NO. _____
RETURN RECEIPT REQUESTED

Tim Griffith
ATTORNEY FOR PETITIONER
VIA FACSIMILE 214-819-9676
Ph.: 214-678-4043
TABC Legal Section

Licensing Division
Dallas District Office

State Office of Administrative Hearings

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Shelia Bailey Taylor
Chief Administrative Law Judge

April 26, 2006



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

RE: Docket # 458-06-1320
TABC VS. PAULA'S CLUB
D/B/A PAULA'S

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,

Brenda Coleman

Brenda Coleman
Administrative Law Judge

BC/sr
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**, Paula's Club, D/B/A Paula's, Respondent, **Via Mail**

SOAH DOCKET NO. 458-06-1320

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § §	BEFORE THE STATE OFFICE
V.		OF
PAULA’S CLUB, Respondent		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Petitioner) brought this action against Paula’s Club (Respondent), alleging that Respondent committed several violations of the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent’s permits be canceled. The Administrative Law Judge (ALJ) recommends cancellation of Respondent’s permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

On February 7, 2006, Petitioner issued its notice of hearing setting the matter for hearing on March 6, 2006. The notice of hearing was received by Respondent on or about February 9, 2006, as evidenced by the signature of Mary Timmons on the return receipt. The 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 short, plain statement of the matters asserted, as required by TEX.

GOV'T CODE ANN. § 2001.052. The notice of hearing also contained the following language in 12-point or larger boldface type: "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."

On March 6, 2006, a hearing convened before SOAH ALJ Brenda Coleman at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on March 6, 2006.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. Based on the deemed factual findings in this case, Respondent's permits should be canceled.

III. FINDINGS OF FACT

1. Paula's Club (Respondent), holds Private Club Registration Permit N-115503 and Beverage Cartage Permit PE-230630, issued by the Texas Alcoholic Beverage Commission (Petitioner), for the premises located at Highway 19 West Side 5.2 Miles, South Courthouse, Athens, Henderson County, Texas.
2. On February 7, 2006, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for March 6, 2006.

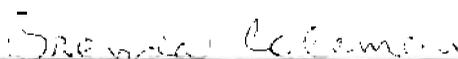
3. The notice of hearing was received by Respondent on or about February 9, 2006. The return receipt was signed Mary Timmons.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The notice of hearing also contained the following language in 12-point or larger boldface type: "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
6. A hearing convened before ALJ Brenda Coleman, with the State Office of Administrative Hearings (SOAH), on March 6, 2006. Petitioner appeared through its Staff Attorney, Timothy Griffith. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
7. On or about December 16, 2005, Respondent deposited money other than the designated percentage into its replacement account.
8. Respondent failed to operate its private club in accordance with its management agreement and sublease agreement.
9. Respondent entered into a device, scheme or plan which surrendered control of the premises to a person or persons other than Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61, 32.03, 32.06 and 109.53.
2. The SOAH has jurisdiction to conduct the 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. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.55 and 16 TAC § 37.3.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.

5. Respondent violated the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. §§ 32.03, 32.06 and 109.53.
6. Respondent's permits should be canceled.

SIGNED April 26, 2006.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Paula's Club

DOCKET NUMBER: 458-06-1320

AGENCY CASE NO: 516985

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AGENCY COUNSEL
VIA FAX

Paula's Club
d/b/a Paula's
PO Box 531
Athens, TX 75751

RESPONDENT
VIA REGULAR MAIL

as of April 26, 2006