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DOCKET NO. 518590

IN RE FRANK CARABETTA, L. L. C.	§	BEFORE THE TEXAS
D/B/A MANHATTAN BAR & LOUNGE	§	
PERMIT NOS. MB-529303 & LB-529304	§	
	§	
	§	ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1430)	§	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 Michelle Kallas. The hearing convened on March 2, 2006, continued April 10, 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 bond be forfeited, pursuant to §§11.11, and 16 TAC §33.24(j) 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 Michelle Kallas
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE 214-956-8611
Ph.: 214-956-8616

Frank Carabetta, L. L. C.
d/b/a Manhattan Bar & Lounge
RESPONDENT
3005 Routh St.
Dallas, Texas 75101
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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518590

Shelia Bailey Taylor
Chief Administrative Law Judge

April 26, 2006

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



RE: Docket # 458-06-1430
TABC VS. FRANK CARABETTA L.L.C.
D/B/A MANHATTAN BAR & LOUNGE

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 "Michelle Kallas".

Michelle Kallas
Administrative Law Judge

MK/sr
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**,
Frank Carabetta, L.L.C., **Via Mail**

SOAH DOCKET NO. 458-06-1430

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
V.	§	OF
	§	
FRANK CARABETTA L.L.C. d/b/a	§	
MANHATTAN BAR & LOUNGE,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action seeking forfeiture of the conduct surety bond posted by Frank Carabetta L.L.C. (Respondent). Petitioner recommended that the bond be forfeited because Respondent has committed at least three violations of the Texas Alcoholic Beverage Code (Code) or Texas Alcoholic Beverage Commission Rules (Rules) since September 1, 1995. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent’s conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 §§ 6.01, 11.11, 11.61, 61.13, 61.71, and TEX. ADMIN. CODE ch. 16 § 33.24. 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 17, 2006, Petitioner issued its notice of hearing, directed to Respondent at Respondent’s last known designated mailing address: 3005 Routh Street, Dallas, Texas, 75201-1300, via certified mail, return receipt requested.¹ The notice of hearing contained a statement of the time,

¹ Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the permittee’s last known address as reflected in the commission’s records. A certificate of service to such address shall be prima facie evidence of adequate service on the permittee. 16 TEX. ADMIN. CODE § 37.3.

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 2, 2006, the case was continued to April 10, 2006, at 1:00 p.m. On March 2, 2006, SOAH notified Respondent of the new date and time of the hearing via regular mail sent to Respondent's last known address. SOAH has not received the mailing back from the U. S. Postal Service; therefore, the ALJ presumes that Respondent received notice of the hearing's date, time, and location.²

On April 10, 2006, a hearing convened before SOAH ALJ Michelle Kallas 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 April 10, 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. Petitioner's Notice of Hearing complies 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

² 1 TEX. ADMIN. CODE § 155.25(d)(3) provides for a rebuttable presumption if a document was sent to a party to a proceeding by regular mail, certified mail, or registered mail. In that instance, the judge is to presume that the mailed document was received no later than three days after mailing.

below. Based on the deemed factual findings in this case, the ALJ recommends that Respondent's conduct surety bond be forfeited.

III. FINDINGS OF FACT

1. Frank Carabetta L.L.C. (Respondent) held a Mixed Beverage Permit, MB-529303 and a Mixed Beverages Late Hours Permit, LB-529304, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 3005 Routh Street, Dallas, Dallas County, Texas.
2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is 3005 Routh Street, Dallas, Texas, 75201-1300.
3. Respondent has posted Conduct Surety Bond Number 41039610, dated May 31, 2005, in the amount of \$5,000.00, payable to the state.
4. Respondent committed at least three violations of the Code or Rules since September 1, 1995.
5. By letter dated November 8, 2005, Petitioner sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond.
6. Respondent requested a hearing to determine whether the conduct surety bond should be forfeited.
7. On February 17, 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 16, 2006.
8. 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.
9. 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."
10. On March 2, 2006, the case was reset to April 10, 2006, at 1:00 p.m. SOAH notified

Respondent of the new date and time, via regular mail sent to Respondent's last known address.

11. A hearing convened before Michelle Kallas, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on April 10, 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.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 6.01, 11.11, 11.61, 61.13, 61.71, and TEX. ADMIN. CODE ch. 16 § 33.24.
2. 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. The conduct surety bond posted by Respondent should be forfeited. TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TAC § 33.24 (j).

SIGNED April 26, 2006.



MICHELLE KALLAS

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Frank Carabetta L. L. C. d/b/a Manhattan Bar & Lounge

DOCKET NUMBER: 458-06-1430

AGENCY CASE NO: 518590

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AGENCY COUNSEL
VIA FAX

Frank Carabetta L. L. C.
d/b/a Manhattan Bar & Lounge
3005 Routh St.
Dallas, TX 75101-1300

RESPONDENT
VIA REGULAR MAIL

April 26, 2006