

DOCKET NO. 527178

IN RE MARTY'S SPORTS BAR AND	§	BEFORE THE
PRIVATE CLUB	§	
D/B/A MARTY'S SPORTS BAR AND	§	
PRIVATE CLUB	§	
PERMIT NO. N-268664, PE-268665 &	§	TEXAS ALCOHOLIC
NL-472466	§	
	§	
BURNET COUNTY, TEXAS	§	
<i>(SOAH DOCKET NO. 458-05-2666)</i>	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 26th day of September, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sharon Cloninger. The hearing convened on August 4, 2006, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 9, 2006. This Proposal For Decision 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, 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 Private Club Registration Permit, Private Club Late Hours Permit and Beverage Cartage Permit are hereby **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on November 10, 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 the 26th day of September, 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JLK/yt

Sharon Cloninger
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE: (713) 812-1001

Marty's Sports Bar and Private Club
d/b/a Marty's Sports Bar and Private Club
RESPONDENT
4823 RR 2147 W.
Marble Falls, Texas 78654f
CERTIFIED MAIL NO. 7001 2510 0000 7275 8742
RETURN RECEIPT REQUESTED

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Austin District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

August 10, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

HAND DELIVERY

RE: Docket No. 458-06-2666; MARTY'S SPORTS BAR & PRIVATE CLUB

Dear Mr. Steen:

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.

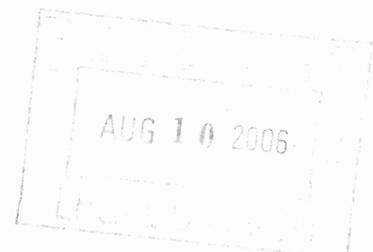
Sincerely,

A handwritten signature in cursive script that reads "Sharon Cloninger".

Sharon Cloninger
Administrative Law Judge

SC/trp
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
Judith Kennison, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Marty Sports Bar & Private Club, 4823 RR 2147 W, Marble Falls, TX 78654-**VIA REGULAR MAIL**



II. FINDINGS OF FACT

1. Marty's Sports Bar and Private Club d/b/a Marty's Sports Bar and Private Club (Respondent) is located at 4823 RR 2147 West, Cottonwood Shores, Burnet County, Texas 78654.
2. Respondent holds the following permits issued by the Texas Alcoholic Beverage Commission (Commission): Private Club Registration Permit N-268664 and Beverage Cartage Permit PE-268665, both issued August 26, 1996, and continuously renewed; and Private Club Late Hours Permit NL-472466, issued May 18, 2000, and continuously renewed.
3. Notice of the hearing was sent to Respondent on July 17, 2006, and delivery was attempted on July 19, 2006.
4. The notice was properly addressed and sent by certified mail, return receipt requested, to 4823 RR 2147 W, Cottonwood Shores, Burnet County, Texas, 78654, Respondent's address as it appears in the Commission's records.
5. As of August 3, 2006, Respondent had not claimed the notice of hearing.
6. The notice 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.
7. The notice contained the following statement in at least 12-point bold-faced type: "If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought may be granted by default."
8. The hearing on the merits was held August 4, 2006. Staff attorney Judith L. Kennison represented the Commission. Respondent was not present and was not represented at the hearing. After the presentation of documentary evidence, the hearing was adjourned and the record closed that day.
9. On February 9, 2006, Respondent, its agent, servant, or employee, allowed or consented to an unauthorized person using or displaying the permit.
10. On February 9, 2006, Respondent, its agent, servant, or employee, failed to operate in accordance with management and sublease agreements.
11. On February 9, 2006, Respondent, its agent, servant, or employee, failed to keep proper records, specifically, complete meeting minutes.

12. On February 9, 2006, Respondent, its agent, servant, or employee, failed to keep proper records, specifically, a bound membership book.
12. On February 9, 2006, Respondent, its agent, servant, or employee, failed to document when each member was admitted or deleted from the membership book.
13. On February 9, 2006, Respondent, its agent, servant, or employee, failed to approve preliminary members within seven days of the request by an applicant for membership.
14. On February 9, 2006, Respondent, its agent, servant, or employee, failed to maintain preliminary membership applications in chronological order.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under Chapter 5, Subchapter B, § 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. SOAH has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing proposed 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 provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; TEX. ALCO. BEV. CODE ANN. § 11.63; and 16 TAC § 37.3.
4. The Commission has the burden of proving the facts necessary to support its reasons for canceling Respondent's permit and certificate.
5. Based on Finding of Fact No. 9, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.05, 11.61(b)(2), 32.03, 32.17(a)(8), and 109.53.
6. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 32.02 and 109.53, based on Finding of Fact No. 10.
7. Based on Findings of Fact Nos. 11, 12, 13, and 15, Respondent violated 16 TAC § 41.52.
8. Based on Finding of Fact No. 14, Respondent violated TEX. ALCO. BEV. CODE ANN. § 32.03.

9. Based on the above Findings of Fact and Conclusions of Law, the cancellation of Respondent's permits is warranted pursuant to TEX. ALCO BEV. CODE ANN. § 11.61(b)(2).

SIGNED August 9, 2006.



SHARON CLONINGER

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS