

DOCKET NO. 541873

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	ALCOHOLIC
NATALIJA'S TAVERN	§	
D/B/A NATALIJA'S TAVERN	§	
PERMIT/LICENSE NO(s). N 556669,	§	
NL & PE	§	
BELL COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-1130)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this day, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis Cranz. The hearing convened on January 29, 2007 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 15, 2007. The 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 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 your permits are hereby **SUSPENDED**.

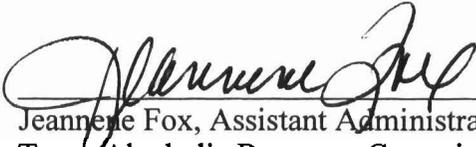
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **23rd day of May, 2007**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of five (5) days, beginning at **12:01 A.M. on the 30th day of May, 2007**.

This Order will become final and enforceable on April 13th, 2007, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this 19th day of March, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannette Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

NATALIJA'S TAVERN
RESPONDENT
NATALIJA'S TAVERN
620 S GRAY STREET
KILLEEN, TX 76541
VIA REGULAR MAIL

Christopher G. Gee
TABC Legal Services

Licensing Division
Waco District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 541873

REGISTER NUMBER:

NAME: Natalija's Tavern

TRADENAME: Natalija's Tavern

ADDRESS: 620 S. Gray St., Killeen, Texas 76541

DATE DUE: May 23, 2007

PERMITS OR LICENSES: N 556669

AMOUNT OF PENALTY: \$750.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 23rd DAY OF MAY, 2007, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711**

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

February 15, 2007

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

**RE: Docket No. 458-07-1130; Texas Alcoholic Beverage Commission vs Natalija's Tavern
d/b/a Natalija's Tavern, (TABC Case No. 541873)**

Dear Mr. Steen:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Christopher Gee, attorney for Texas Alcoholic Beverage Commission, and to Natalija's Tavern (Respondent), alleging that Respondent gave checks or drafts for the purchase of beer, which were dishonored when presented for payment. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permits be suspended for a period of five days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$750.00

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,


Phyllis Cranz
Administrative Law Judge

MG/dd

Christopher Gee, TABC Staff Attorney, VIA FACSIMILE 512/206-3498
Natalija's Tavern d/b/a Natalija's Tavern, 620 S. Gray Street, Killeen, Texas 76541

DOCKET NO. 458-07-1130

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner**

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§

BEFORE THE STATE OFFICE

v.

OF

**NATALIJA'S TAVERN
D/B/A NATALIJA'S TAVERN
Respondent
BELL COUNTY, TEXAS
(TABC No. 541873)**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Natalija's Tavern (Respondent), alleging that Respondent gave checks or drafts for the purchase of beer, which were dishonored when presented for payment. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permits be suspended for a period of five days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$750.00.

I. PROCEDURAL HISTORY

On December 13, 2006, TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 620 South Gray Street Killeen, Texas 76541. The Notice of Hearing was sent by certified mail (7005 3110 0000 0768 2798), return receipt requested. The Notice of Hearing was returned to TABC Staff by the U.S. Postal Service on December 21, 2006 as evidenced by stamped returned letter.

On January 18, 2007, due to inclement weather, the ALJ issued a continuance in Pre-Hearing Order No. 4 resetting the hearing for January 29, 2007 at the same location and time. On January

SOAH DOCKET NO. 458-07-1130

PROPOSAL FOR DECISION

PAGE 2

22, 2007, TABC Staff issued a First Amended Notice of Hearing to Respondent at its mailing address listed above. The First Amended Notice of Hearing was issued to correct information concerning the hearing's date and sent by certified mail (7005 3110 0000 0768 3054). As of the day of hearing, all mail had been returned and no certified mail was signed for.

A hearing was convened as scheduled before ALJ Phyllis Cranz at the State Office of Administrative Hearings, at 801 Austin Avenue, Waco, Texas 76701 on January 29, 2007. TABC Staff was represented at the hearing by Christopher G. Gee, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.

During the hearing, documents were offered by TABC Staff and admitted into evidence to support a recommendation for default against Respondent. The hearing concluded on January 29, 2007, and the record closed on that same day. The ALJ will proceed with consideration of TABC Staff's request for a default recommendation and penalty, as discussed below.

II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that TABC Staff issued notice of the hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE. ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the Notice of Hearing and the First Amended Notice of Hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

TABC Staff requested that the ALJ recommend suspension of Respondent's permit for a period of five days, or in lieu of suspension, that Respondent be allowed to pay a civil penalty in the amount of \$750.00. TABC Staff provided a copy of Respondent's licensing history, which is maintained by TABC Staff, in support of its penalty request.

III. PROPOSED FINDINGS OF FACT

1. The Natalija's Tavern (Respondent) holds a private club permit, beverage cartage permit, and private club late hours permit, N556669, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 1002 Wales Drive, Killeen, Bell County, Texas.
2. On December 13, 2006, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 620 South Gray Street, Killeen, Texas 76541. This notice was sent by certified mail (7005 3110 0000 0768 2798), return receipt requested, and was returned by the U.S. Post Office on December 21, 2006.
3. On January 18, 2007, due to inclement weather the ALJ issued a continuance and reset the hearing for January 29, 2007 at the same location and time. That letter was returned to SOAH by the U.S. Post Office on January 23, 2007.
4. On January 22, 2007, TABC Staff issued a First Amended Notice of Hearing to Respondent at its mailing address listed above. The First Amended Notice of Hearing was issued to correct information concerning the hearing's new date due to inclement weather. The First Amended Notice was sent by certified mail (7001 3110 0000 0768 3054), return receipt requested. As of the day of hearing, no mail had been returned nor had the certified mail been signed for.
5. Both the Notice of Hearing, and the First Amended 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 statement of the matters asserted.
6. Both the Notice of Hearing and the First Amended Notice of Hearing also properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed as true, and the relief sought may be granted by default.
7. On January 29, 2007, a hearing was convened before ALJ Phyllis Crazz at the State Office of Administrative Hearings, at 801 Austin Avenue, Waco, Texas 76701. TABC Staff was represented at the hearing by Christopher G. Gee, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
8. Respondent, through its agent, servant, or employee gave checks or drafts for the purchase of beer, which were dishonored when presented for payment as follows:
 - On April 28, 2006, a check or draft for the purchase of beer to Gidden Distributing Inc., was given in the amount of \$185.06, that

was dishonored when presented for payment;

● On June 2, 2006, a check or draft for the purchase of beer to Gidden Distributing Inc., was given in the amount of \$236.35, that was dishonored when presented for payment; and

● On June 6, 2006, a check or draft for the purchase of beer Gidden Distributing Inc., was given in the amount of \$135.61, that was dishonored when presented for payment.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§6.01 and 11.61.
2. The State Office of Administrative Hearings 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.
3. Based upon Proposed Findings of Fact Nos. 2 - 5, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2 - 7, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Proposed Finding of Fact No. 8, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 61.73 and 102.31.
6. Based upon Proposed Findings of Fact Nos. 8, Conclusion of Law No. 5, and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 102.31, Respondent's permits should be suspended for a period of five days.

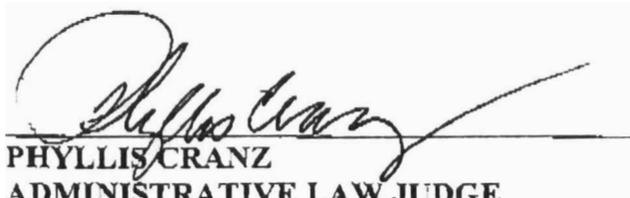
SOAH DOCKET NO. 458-07-1130

PROPOSAL FOR DECISION

PAGE 5

7. Based upon Proposed Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty in the amount of \$750.00 in lieu of suspension of its permits.

SIGNED on February 15, 2007.



PHYLLIS CRANZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: Natalija's Tavern d/b/a Natalija's Tavern

DOCKET NUMBER: 458-07-1130

AGENCY CASE NO: 541873

Christopher Gee
Staff Attorney
Texas Alcoholic Beverage Commission
Fax: 512/206-3498
Ph: 512/206-3490

AGENCY COUNSEL
BY FAX

Natalija's Tavern
d/b/a Natalija's Tavern
620 S. Gray Street
Killeen, Texas 76541

RESPONDENT
BY MAIL

as of December 14, 2006

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**6777 Camp Bowie Blvd., Suite 400
 Ft. Worth, Texas 76116
 Phone (817) 731-1733
 Fax (817) 377-3706**

FACSIMILE TRANSMISSION

DATE: February 15, 2007

**SOAH Docket No. 458-07-1130
 TABC vs. Natalija's Tavern
 d/b/a Natalija's Tavern**

FROM: Diana Dupre', Administrative Tech

NUMBER OF PAGES: 8
 (Including cover sheet)

FAX TO:	FAX NO.:	Transaction No./Time:
Christopher Gee	512/206-3498	

Message: Attached is the **Proposal for Decision** for the above referred to cause number.

Note: If all pages are not received, please contact **Diana Dupre'** at **817/731-1733**

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