

DOCKET NO. 580736

IN RE CAESARS BY NIGHT, INC.	§	BEFORE THE
D/B/A CAESARS BY NIGHT	§	
PERMIT NO. BG-312243	§	
LICENSE NO. BL-312244	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-0131)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 18th day of July, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica B. Dorsey. The hearing convened on May 5th, 2000, and adjourned May 5th, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 22, 2000. 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, 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.

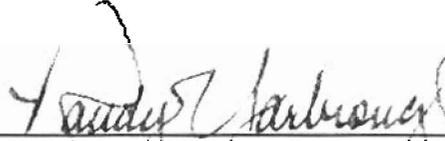
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on August 15th, 2000, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 18th day of July, 2000.

On Behalf of the Administrator,



Randy Yarborough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Veronica B. Dorsey
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

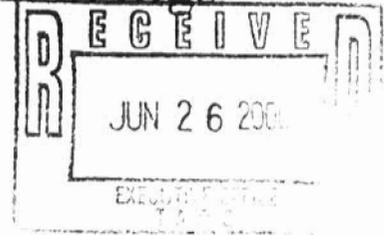
Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Ceasars By Night, Inc.
RESPONDENT
6555 Harbor Town Dr., #710
Houston, Texas 77036
VIA CERTIFIED MAIL Z 473 041 953

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 22, 2000

Mr. Doyne Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

VIA CERTIFIED MAIL P 332 127 581
RETURNED RECEIPT REQUESTED

RE: Docket No. 458-99-0131; TABC vs. Caesars By Night, Inc (Permit No. BG-312243 and License No. BL-312244) (TABC Case No. 580736)

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above reference case. Copies of the Proposal For Decision are being set to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Caesars By Night, Inc. For reasons discussed in the Proposal for Decision, I have recommended forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), is warranted.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Veronica Dorsey".

Veronica Dorsey
Administrative Law Judge

VD:rfm
Enclosure:

cc: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, Texas 78731 - **REGULAR MAIL**
Caesars By Night, Inc., 6555 Harbor Town Dr. #710, Houston, Texas 77036 -
CERTIFIED MAIL NO., RETURN RECEIPT REQUESTED P 332 127 582
Holly Wise, Docket Clerk, State Office of Administrative Hearing - **REGULAR MAIL**

SOAH DOCKET NO. 458-99-0131

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE
VS.		OF
CAESARS BY NIGHT, Respondent PERMIT NO. BG-312243 LICENSE NO. BL-312244		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Caesars by Night, Inc., (Permittee) for forfeiture of the full amount of its conduct surety bond in conjunction with TEX. ALCO. BEV. CODE ANN. §61.13 (b)(2) and Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24. TABC alleged that Permittee committed three violations of the Alcoholic Beverage Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission Rules §33.24. A violation of TEX. ALCO. BEV. CODE ANN §106.03 occurred on or about June 18, 1998, when Permittee, its agent, servant, or employee sold an alcoholic beverage to a minor. A violation of TEX. ALCO. BEV. CODE ANN §§106.04, 106.05, or 106.06 occurred on April 15, 1998, when the Permittee, its agent, servant, or employee permitted a minor to possess or consume an alcoholic beverage. A violation of TEX. ALCO. BEV. CODE ANN §61.71(a)(19), 61.17(a)(20), 69.09, or 71.05 occurred on November 2, 1997, when Permittee, its agent, servant, or employee purchased alcohol from an unauthorized source. A violation of TEX. ALCO. BEV. CODE ANN §§106.04, 106.05, or 106.06 occurred on June 7, 1996, when the Permittee, its agent, servant, or employee permitted a minor to possess or consume an alcoholic beverage. TABC also alleged the violations have been finally adjudicated.

This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of TABC that the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), should be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on May 5, 2000, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Tam Chi Tran, Permittee and President of Caesars by Night, Inc., appeared and represented Respondent. Veronica B. Dorsey, Administrative Law Judge (ALJ), presided.

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

Texas Alcoholic Beverage Commission Rules 16 TAC §33.24(j) authorizes TABC to notify a permittee or licensee of its intent to seek forfeiture of the bond when a licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995. As described in the Findings of Fact, the Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24 by committing three violations of the Alcoholic Beverage Code since September 1, 1995.

The TABC's attorney introduced the following three exhibits into evidence:

TABC 1 Permittee's request for a hearing.

TABC 2 is the Notice of Hearing.

TABC 3 is the file of Permittee, including multiple "Agreement and Waiver of Hearing," signed on June 18, 1998, April 15, 1998, November 2, 1997, and June 7, 1996.

Permittee argued that he was not guilty of the offenses contained in the Agreement and Waiver of Hearing because he was either not aware of the law or he had a defense to the action. Permittee did not deny entering into the multiple Agreement and Waiver of Hearings, signed on June 18, 1998, April 15, 1998, November 2, 1997, and June 7, 1996.

III. RECOMMENDATION

Because the Permittee committed three violations of the Alcoholic Beverage Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to certificates of deposit and letters of credit), should be forfeited.

IV. FINDINGS OF FACT

1. Texas Alcoholic Beverage Commission (TABC) issued Permit No.-BG-312243 and license No. BL-312244 to Caesars by Night Inc., (Permittee).

2. On August 18, 1998, TABC sent Permittee a Notice of Hearing regarding Permittee's violation of three or more provisions of Texas Alcoholic Beverage Code or Rules since September 1, 1995.
3. Permittee requested a hearing to determine if his bond should be forfeited.
4. The hearing proceeded and the factual allegations were deemed admitted as follows:

A violation of TEX. ALCO. BEV. CODE ANN §106.03 occurred on or about June 18, 1998, when Permittee, its agent, servant, or employee sold an alcoholic beverage to a minor.

A violation of TEX. ALCO. BEV. CODE ANN §§106.04, 106.05, or 106.06 occurred on April 15, 1998, when the Permittee, its agent, servant, or employee permitted a minor to possess or consume an alcoholic beverage.

A violation of TEX. ALCO. BEV. CODE ANN §61.71(a)(19), 61.17(a)(20), 69.09, or 71.05 occurred on November 2, 1997, when Permittee, its agent, servant, or employee purchased alcohol from an unauthorized source.

A violation of TEX. ALCO. BEV. CODE ANN §§106.04, 106.05, or 106.06 occurred on June 7, 1996, when the Permittee, its agent, servant, or employee permitted a minor to possess or consume an alcoholic beverage.

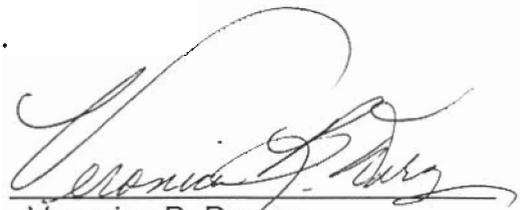
5. The above listed violations of the Texas Alcoholic Beverage Code or Rules also have been finally adjudicated.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, by committing three violations of the Alcoholic Beverage Code Since September 1, 1995.

5. Based on the foregoing Findings of Fact and Conclusions of Law, forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), is warranted.

SIGNED this 22nd day of June 2000.



Veronica B. Dorsey
Administrative Law Judge
State Office of Administrative Hearings