

DOCKET NO. 585390

IN RE HARRY CORNEFF NEAL	§	BEFORE THE
D/B/A PLAYER'S LOUNGE	§	
PERMIT NO. BG425056	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS		
(SOAH DOCKET NO. 458-99-1890)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 28th day of July, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Ed Shipper. The hearing convened on October 28, 1999, and adjourned October 28, 1999. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 6, 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 18, 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 28th day of July, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Ed Shipper
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

Harry Corneff Neal
RESPONDENT
d/b/a Player's Lounge
8904 Cullen Blvd.
Houston, Texas 77051-2814
VIA CERTIFIED MAIL Z 473 041 949

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

July 6, 2000

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

CERTIFIED MAIL NO. P 332 127 602
RETURN RECEIPT REQUESTED

RE: Docket No. 458-99-1890; TABC vs. Harry Corneff Neal d/b/a Player's Lounge Permit No. BG-425056 (TABC Case No. 585390)

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Harry C. Neal, d/b/a Player's Lounge. 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), should be forfeited.

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 black ink, appearing to read "Ed Shipper".

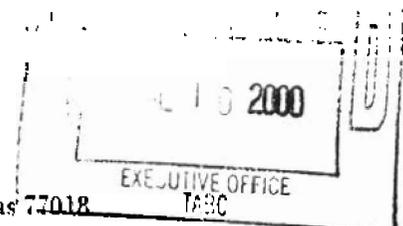
Ed Shipper
Administrative Law Judge

ES/rfm
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - **REGULAR MAIL**
Harry C. Neal d/b/a Palyer's Lounge, 8904 Cullen Blvd. Houston, TX 77051-2814
VIA CERTIFIED MAIL NO. P 332 127 603, RETURN RECEIPT REQUESTED
Holly Wise, Docket Clerk, State Office of Administrative Hearings - **VIA REGULAR MAIL**---

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North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001



SOAH DOCKET NO. 458-99-1890

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

vs.

HARRY CORNEFF NEAL
D/B/A PLAYER'S LOUNGE
PERMIT NO. BG-425056

HARRIS COUNTY, TEXAS
(TABC CASE NO. 585390)

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BEFORE THE STATE OFFICE

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Harry Corneff Neal d/b/a Player's Lounge (the Permittee) for forfeiture of the full amount of its conduct surety bond pursuant to TEX. ALCO. BEV. CODE ANN. §1.01, et seq. and Texas Alcoholic Beverage Commission Rules, 16 TAC §31.1, et seq. TABC alleged that Permittee committed three or more violations of the Alcoholic Beverage Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission Rules 16 TAC §33.24. Four violations of the TEX. ALCO. BEV. CODE ANN occurred on or about April 10, 1999, including sale to a minor, possession of drugs by an employee, refusing inspection of licensed premises and sale, service or delivery during prohibited hours. Two violations of TEX. ALCO. BEV. CODE ANN occurred on or about May 23, 1999, including intoxicated licensee or employee on the premises and refusing inspection of the licensed premises. Finally, one violation of TEX. ALCO. BEV. CODE ANN. occurred on or about December 12, 1998, including sale to a minor.

The Permittee did not make an appearance at the hearing on October 28, 1999. 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 October 28, 1999, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Respondent was not represented, and Respondent did not appear. Ed Shipper, Administrative Law Judge (ALJ), presided. Because the hearing proceeded on a default basis, and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

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 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 seven violations of the Alcoholic Beverage Code between December 12, 1998, and May 23, 1999.

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

Commission 1 is the request for hearing filed by Permittee, Harry Corneff Neal. Commission 2 is the Notice of Hearing sent by Gayle Gordon, Attorney for the TABC, on or about September 17, 1999. Commission 3 is the file of Permittee, with Permit Numbers BG-425056 and BL-425057, which indicates the above-referenced permits were canceled for cause on July 16, 1999.

The ALJ took judicial notice of the Court's file which shows the hearing was scheduled on October 28, 1999. A Notice of Hearing was sent via certified mail on September 16, 1999. The Notice of Hearing was served on Respondent.

III. RECOMMENDATION

Because the Permittee committed seven violations of the Alcoholic Beverage Code between December 12, 1998., and May 23, 1999, 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.

V. FINDINGS OF FACT

1. Texas Alcoholic Beverage Commission (TABC) issued Permit Nos. BG-425056 and BL-425057 to Harry Corneff Neal d/b/a Player's Lounge. The mailing address of Harry Corneff Neal d/b/a Player's Lounge is 8904 Cullen Blvd, Houston, TX 77051-2814.
2. TABC forwarded a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to Harry Corneff Neal, d/b/a Player's Lounge (the Permittee) on or about September 17, 1999.

3. The hearing on the merits was held on October 28, 1999, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Respondent did not appear, and Respondent was not represented at the hearing. Ed Shipper, Administrative Law Judge (ALJ) presided.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee committed violations of TEX. ALCO. BEV. CODE ANN §1.01, et seq. on or about December 12, 1998, April 10, 1999 and May 23, 1999.

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. The Notice of Hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE §155.55.
5. Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, by committing seven violations of the Alcoholic Beverage Code between December 12, 1998, and May 23, 1999.
6. 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 6th day of July, 2000.



Ed Shipper
Administrative Law Judge
State Office of Administrative Hearings