

DOCKET NO. 586654

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|--------------------------------|---|---------------------|
| IN RE CALVIN WALKER INC. | § | BEFORE THE |
| D/B/A THE COTTON CLUB V.I.P. | § | |
| PERMIT NOS. MB418224, LB418225 | § | |
| | § | TEXAS ALCOHOLIC |
| | § | |
| JEFFERSON COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-00-0307) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 28th day of June 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 April 6, 2000 and adjourned April 6, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 2, 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 July 19, 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 June, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB\bc

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

Calvin Walker Inc.
d/b/a The Cotton Club V.I.P.
RESPONDENT
2415 S. 11th St.
Beaumont, Texas 77701-6427
CERTIFIED MAIL/RRR NO. 473 040 365

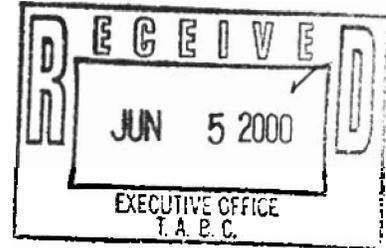
Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Beaumont District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



June 2, 2000

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

CERTIFIED MAIL NO. P 332 127 579
RETURN RECEIPT REQUESTED

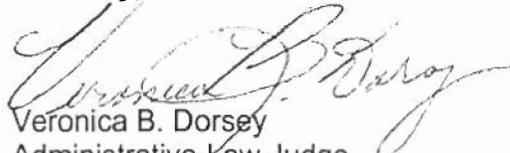
**RE: Docket No. 458-00-0307; TABC vs. Calvin Walker d/b/a Cotton Club VIP,
TABC Case No. MB-418224 and LB-418225**

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 Christopher Burnett, Staff Attorney representing the Texas Alcoholic Beverage Commission and Calvin Walker, d/b/a Cotton Club. 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,


Veronica B. Dorsey
Administrative Law Judge

VD/rfm
Enclosure

CC: Christopher Burnett, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - REGULAR MAIL
Calvin Walker, 2415 S. 11th Street, Beaumont, Texas, TX 77701-6427 -
VIA CERTIFIED MAIL NO. P 332 127 578. RETURN RECEIPT REQUESTED
Holly Wise, Docket Clerk, State Office of Administrative Hearings - VIA REGULAR MAIL

JUN 6

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

SOAH DOCKET NO. 458-00-0307

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

VS.

CALVIN WALKER INC.,
d/b/a Cotton Club VIP
MB-418224, LB-418225,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Calvin Walker Inc., d/b/a Cotton Club VIP (the 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 §28.11 occurred on or about November 15, 1998, when a breach of peace occurred which was not beyond permittee's, its agent's, servant's, or employees' control and which resulted from Permittee's its agent's, servant's, or employees' improper supervision of a person or persons permitted to be on the licensed premises. A violation of TEX. ALCO. BEV. CODE ANN §11.61(b)(21) occurred on November 15, 1998, when the Permittee, its agent, servant, or employee failed to promptly report to TABC a breach of peace which occurred on Permittee's licensed premises. A violation of TEX. ALCO. BEV. CODE ANN §106.13(a) occurred on March 5, 1999, when Permittee, its agent, servant, or employee with criminal negligence sold served, dispensed, or delivered an alcoholic beverage to a minor. A violation of TEX. ALCO. BEV. CODE ANN §§106.13(a) and 106.05 occurred on March 5, 1999, when Permittee, its agent, servant, or employee with criminal negligence permitted a minor to possess an alcoholic beverage. TABC also alleged the violations have been finally adjudicated.

The Permittee did not make an appearance at the hearing on April 6, 2000. 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 April 6, 2000, 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. Veronica B. Dorsey, 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 three violations of the Alcoholic Beverage Code since September 1, 1995.

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

Commission 1 is the file of Permittee MB418224 and LB418225, including an "Agreement and Waiver of Hearing," signed on March 19, 1999, and a "Waiver Order," signed on August 30, 1999.

Commission 2 is the unclaimed Notice of Hearing to Calvin Walker Inc., d/b/a The Cotton Club V.I.P. which shows Respondent received three notices on February 28, 2000, March 3, 2000, and March 14, 2000.

The ALJ took judicial notice of the Court's file which shows the hearing was scheduled on April 6, 2000. Notice was properly sent via certified mail on February 25, 2000.

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 Nos.-MB-418224 and LB418225 to Calvin Walker Inc., d/b/a The Cotton Club V.I.P. The mailing address of Calvin Walker is 2415 South 11th Street, Beaumont, Texas 77701-6427.

2. TABC sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Permittee, and the letter returned to TABC unclaimed.
3. The hearing on the merits was held on April 6, 2000, 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. Veronica B. Dorsey, Administrative Law Judge (ALJ) presided.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

On March 5, 1999, Permittee, its agent, servant, or employee, with criminal negligence, sold, served, dispensed, or delivered an alcoholic beverage to a minor.

On March 5, 1999, Permittee, its agent, servant, or employee, with criminal negligence, permitted a minor to possess an alcoholic beverage.

On or about November 15, 1998, a breach of peace occurred which was not beyond Permittee's, its agent's, servant's, or employees' control and which resulted from Permittee's its agent's, servant's, or employees' improper supervision of a person or persons permitted to be on the licensed premises.

On November 15, 1998, Permittee, its agent, servant, or employee failed to promptly report to TABC a breach of peace which occurred on Permittee's licensed premises.

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. Notice of the 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 three violations of the Alcoholic Beverage Code since September 1, 1995.
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 2nd day of June 2000.


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