

DOCKET NO. 600540

IN RE DOYLE LEE FULLER	§	BEFORE THE
D/B/A CLUB FRENNADNA'S	§	
LICENSE NO. BG281960	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2336)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 6th day of October 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica Garza. The hearing convened on June 20, 2003, and adjourned on June 20, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 21, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. 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.

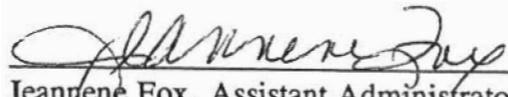
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the renewal of License No. BG281960 is hereby **GRANTED**.

**This Order will become final and enforceable on October 27, 2003**, unless a Motion for Rehearing is filed before that date.

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

**SIGNED** this 6th day of October, 2003.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable Monica Garza  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (817) 377-3706

Morris Overstreet  
**ATTORNEY FOR RESPONDENT**  
PO Box 12817  
Austin, TX 78711  
**CERTIFIED MAIL NO. 7001 2510 0003 8687 1359**

DOYLE LEE FULLER  
D/B/A CLUB FRENNADNA'S  
**RESPONDENT**  
1905 E Vickery St. 'A'  
Fort Worth, TX 76104-1832  
**CERTIFIED MAIL NO. 7001 2510 0003 8687 1366**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division

Fort Worth District Office

DOCKET NO. 458-03-2336

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

v.

DOYLE LEE FULLER  
D/B/A CLUB FRENNADNA'S  
TARRANT COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

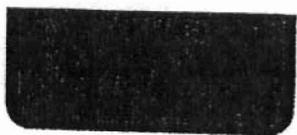
The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Doyle Lee Fuller d/b/a Club Frennadna's (Respondent). Petitioner alleged that Respondent possessed an unauthorized alcoholic beverage on its licensed premises and engaged in a subterfuge or unauthorized use of its permit and license, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit and license be canceled. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends against cancellation of Respondent's permit and license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCOHOLIC BEVERAGE CODE ANN. ch. 5 and §§ 25.04 and 61.71(a)(1) and (9). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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.

On May 16, 2003, Petitioner issued its notice of hearing, directed to Respondent's attorney, via certified mail, return receipt requested. 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, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice was successfully delivered to Respondent's attorney, as evidenced by the signature on the return receipt.

On June 20, 2003, a hearing convened before SOAH Administrative Law Judge J. Monica Garza at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared and was represented by





2. Analysis

In reference to Respondent's ability to possess a bottle of gin on its premises, TEX. ALCO. BEV. CODE ANN. § 25.09 provides as follows:

No wine and beer retailer's permittee, nor officer of the permittee, may possess distilled spirits or liquor containing alcohol in excess of 14 percent by volume on the licensed premises.

Although a bottle of gin, clearly in excess of 14 percent alcohol by volume, was present on the licensed premises, the ALJ finds the bottle was in the possession of Mr. Johnson, not Respondent. The evidence established that Mr. Johnson, a regular patron of Respondent, brought his gin bottle to the "Pink Lady," and that the gin bottle was within reach of Mr. Johnson as he played dominoes with other patrons. The fact that Mr. Johnson was not actively consuming gin when Agent Watkins arrived does not necessarily mean that he had relinquished control of his gin bottle. The ALJ finds that Respondent did not possess the prohibited alcoholic beverage as alleged by Petitioner.

C. Subterfuge or Unauthorized Use of Respondent's Permit and License

1. Evidence

Petitioner asserts that Respondent failed to maintain exclusive possession of its licensed premises by leasing the "Vernon Garrett's House of Blues" club to Vernon Garrett. Agent Watkins testified that during her inspection, Doyle Fuller indicated that he rented out this portion of the premises to Mr. Garrett for \$1,000 a month. She acknowledged that she did not attempt to confirm the existence of a lease between Respondent and Mr. Garrett, but asserted that the name of the club, "Vernon Garrett's House of Blues," was consistent with the information she obtained from Mr. Fuller.

Respondent denied the existence of any type of lease agreement with Mr. Garrett. Mr. Garrett testified that he is a recording artist, and that he travels throughout the country performing as an entertainer. He denied leasing, operating, or selling wine and beer at "Vernon Garrett's House of Blues" or any other club. Mr. Garrett indicated that he had allowed Respondent to use his name to help attract customers to the club. He stated the only financial dealings between himself and Respondent involved money paid to him by Respondent for any booked performances of his band.

2. Analysis

In reference to Respondent's duty to maintain exclusive control of its premises, TEX. ALCO BEV. CODE ANN. § 109.53 provides as follows:

Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful.

The only evidence provided by Petitioner as to the existence of a lease agreement between Respondent and Mr. Garrett is the conversation with Mr. Fuller as relayed by Agent Watkins. The ALJ notes that Agent Watkins did not make any further investigation regarding the existence of a lease agreement. Agent Watkins' belief in the existence of a lease agreement could reasonably have resulted from a miscommunication by Mr. Fuller. Such miscommunication could have occurred when Mr. Fuller explained Respondent's relationship with Mr. Garrett after Agent Watkins inquired regarding the club name, "Vernon Garrett's House of Blues." As indicated by Mr. Garrett, no such lease agreement existed, and he simply had allowed Respondent the use of his name to help attract customers to the club. Based on the evidence presented, the ALJ finds that Respondent did not surrender exclusive control of a portion of its premises to Mr. Garrett as alleged by Respondent.

### III. PROPOSED FINDINGS OF FACT

1. Doyle Lee Fuller d/b/a Club Frennada's (Respondent) holds Wine and Beer Retailer's Permit, BG-281960, and Retail Dealer's On-Premise Late Hours License, BL-281961, issued by the Texas Alcoholic Beverage Commission (TABC), at its premises located at 1905 E. Vickery Street 'A,' Fort Worth, Tarrant County, Texas.
2. Several smaller establishments at that location comprise Respondent's premises. On May 31, 2002, these establishments bore the names, "Pink Lady," "19<sup>th</sup> Hole," "Honey Blues Club," and "Vernon Garrett's House of Blues."
3. On that date, TABC Agent Tana Watkins conducted an inspection of Respondent's premises, resulting in this enforcement action by Petitioner.
4. During her inspection of the "Pink Lady" portion of Respondent's premises, Agent Watkins located a bottle of Seagram's Extra Dry Gin on a ledge separating the larger bar from an area where a group of gentlemen were playing dominoes.
5. Curtis Johnson, a regular patron of Respondent, had brought this gin bottle to the "Pink Lady," and the gin bottle was within reach of Mr. Johnson while he played dominoes with other patrons.
6. Respondent did not possess the gin bottle.

7. Vernon Garrett, a recording artist, allowed Respondent to use his name to help attract customers to the "Vernon Garrett's House of Blues" portion of Respondent's premises.
8. The only financial dealings between Mr. Garrett and Respondent involved money paid to the entertainer by Respondent for any booked performances of his band.
9. Mr. Garrett did not lease, operate, or sell alcoholic beverages at "Vernon Garrett's House of Blues."
10. On May 16, 2003, TABC staff (Petitioner) issued its notice of hearing, directed to Respondent's attorney, via certified mail, return receipt requested. The notice was successfully delivered to Respondent's attorney, as evidenced by the signature on the return receipt.
11. 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.
12. On June 20, 2003, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Monica Garza at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared and ~~was represented~~ by its attorney, Morris Overstreet. Following presentation of evidence, the record closed on June 20, 2003.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 25.04 and 61.71(a)(1) and (9).
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner issued proper and timely notice of the hearing. TEX. GOV'T CODE ANN. ch. 2001.
4. Petitioner failed to demonstrate Respondent's possession of an unauthorized alcoholic beverage on its licensed premises. TEX. ALCO. BEV. CODE ANN. § 25.09.
5. Petitioner failed to demonstrate Respondent's subterfuge or unauthorized use of its permit and license. TEX. ALCO. BEV. CODE ANN. § 109.53.

6. Respondent's permit and license should not be canceled

SIGNED this 21st day of July, 2003.

  
MONICA GARZA  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS