

**DOCKET NO. 603751**

IN RE CELIA LANORE CLASSEN	§	BEFORE THE
D/B/A J.C.'S NOSTALGIA	§	
PERMIT NOS. MB-246260 & LB-246261	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-3790)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 20th day of October, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Nancy Sorenson. On August 19, 2004, the file was transferred to Administrative Law Judge Monica Garza, who reviewed the record in its entirety and issued the Proposal. The hearing convened on May 11, 2004, and adjourned same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 15, 2004. 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 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 should be issued a fee of \$75.00 as a **SANCTION**, pursuant to Section 11.64(c) of the Code.

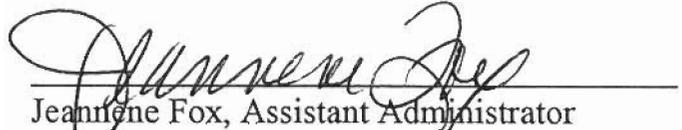
**IT IS FURTHER ORDERED** that the Respondent pay a fee of \$75.00 as a **SANCTION**, on or before the 8th day of December, 2004 or the permit will be **SUSPENDED** for a period of five (5) days, beginning the 17th day of December, 2004.

**This Order will become final and enforceable on November 10, 2004, 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 20th day of October, 2004.**

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

Monica Garza  
Administrative Law Judge  
State Office of Administrative Hearings  
Fort Worth, Texas  
*VIA FACSIMILE: (817) 377-3706*

Celia Lanore Classen  
J.C.'s Nostalgia  
**RESPONDENT**  
18741 Redland Rd.  
San Antonio, Texas 78259  
**CERTIFIED MAIL NO. 7000 1530 0003**  
**RETURN RECEIPT REQUESTED**

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

SANCTION REMITTANCE

DOCKET NUMBER: 603751

REGISTER NUMBER:

NAME: CELIA LANORE CLASSEN

TRADENAME: J.C.'S NOSTALGIA

ADDRESS: 5516 Evers Road

DATE DUE: December 8, 2004

PERMITS OR LICENSES: MB-246260 & LB-246261

AMOUNT OF PENALTY: \$75.00

---

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 8th DAY OF DECEMBER, 2004, 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

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78731

**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.

SOAH DOCKET NO. 458-04-3790  
 TABC DOCKET NO. 603751

TEXAS ALCOHOLIC BEVERAGE  
 COMMISSION, Petitioner

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

v.

OF

CELIA LANORE CLASSEN  
 D/B/A J.C.'S NOSTALGIA,  
 Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Celia Lanore Classen d/b/a J.C.'s Nostalgia (Respondent), alleging that Respondent purchased liquor during a time when Respondent held an outstanding debt for liquor purchases, in violation of TEX. ALCO. BEV. CODE ANN. § 102.32(d). Petitioner requested that Respondent's permits be suspended for five days, or in lieu of suspension, that Respondent pay a civil penalty of \$750. Petitioner further requested that a TEX. ALCO. BEV. CODE ANN. § 11.64(b) sanction be assessed as an alternative to suspension if the Administrative Law Judge (ALJ) found the existence of mitigating circumstances. Because the ALJ finds that (1) Respondent did not knowingly violate the Texas Alcoholic Beverage Code, (2) Respondent's violation was technical in nature, and (3) Respondent demonstrated good faith to cure the violation once she became aware of the problem, the ALJ recommends a \$75 sanction as an alternative to suspension.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 6.01 and 11.61. 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.

SOAH Docket No. 458-04-3790

Proposal for Decision

Page 2

On March 24, 2004, Petitioner issued its notice of hearing, directed to Respondent, 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.

On May 11, 2004, a hearing convened before SOAH ALJ Nancy Sorenson at 10300 Heritage, Suite 250, San Antonio, Bexar County, Texas. Petitioner was represented at the hearing by Dewey Brackin, TABC Staff Attorney. Respondent appeared *pro se*. Following presentation of evidence, the record closed on May 11, 2004. On August 19, 2004, the file was transferred to ALJ Monica Garza, who reviewed the record in its entirety and issues this Proposal for Decision.

## II. APPLICABLE LAW

TEX. ALCO. BEV. CODE ANN. § 102.32(d) provides as follows:

Each delivery of liquor shall be accompanied by an invoice giving the date of purchase. If a retailer becomes delinquent in the payment of an account for liquor, the wholesale dealer immediately shall report that fact in writing to the commission or administrator. No wholesale dealer may sell any liquor to a retailer who is delinquent until the delinquent account is paid in full and cleared from the records of the commission. An account becomes delinquent if it is not paid when it is required to be paid under Subsection (c) of this section.

As referenced in the preceding section, TEX. ALCO. BEV. CODE ANN. § 102.32(c) provides as follows:

On purchases made from the 1<sup>st</sup> through 15<sup>th</sup> day of a month, payment must be made on or before the 25<sup>th</sup> day of that month. On purchases made on the 16<sup>th</sup> through the last day of a month, payment must be made on or before the 10<sup>th</sup> day of the following month.

Although not plead by Petitioner in its Notice of Hearing, TEX. ALCO. BEV. CODE ANN. § 104.03 is also relevant:

A retail dealer or his agent, servant, or employee commits an offense if he conspires with another person to violate or accepts the benefits of a violation of this code or a valid rule of the commission.

Finally, TEX. ALCO. BEV. CODE ANN. § 11.64 provides alternatives to suspension as follows:

(b) In the case of a violation of this code by a permittee or a licensee, the commission or administrator may relax any provision of the code relating to the suspension or cancellation of the permit or license and assess a sanction the commission or administrator finds just under the circumstances, and the commission or administrator may reinstate the license or permit at any time during the period of suspension on payment by the permittee or licensee of a fee of not less than \$75 nor more than \$500, if the commission or administrator finds that any of the circumstances described in Subsection (c) exists.

(c) The following circumstances justify the application of Subsection (b): (1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence; (2) that the permittee or licensee was entrapped; (3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee; (4) that the permittee or licensee did not knowingly violate this code; (5) that the permittee or licensee has demonstrated good faith, including the taking of actions to rectify the consequences of the violation and to deter future violations; or (6) that the violation was a technical one.

### III. EVIDENCE

Respondent holds a Mixed Beverage Permit and Mixed Beverage Late Hours Permit for the premises located at 5516 Evers Road, San Antonio, Bexar County, Texas. On December 28, 2002, Respondent purchased liquor from Alamo City Liquor while on TABC's delinquent list. Respondent's name was placed on the delinquent list following a report from Gabriel's Liquor regarding nonpayment for

liquor. Respondent purchased \$191.56 worth of liquor from Gabriel's Liquor on November 27, 2002. Although payment for that invoice was due on or before December 10, 2002, payment was not received for the invoice until February 12, 2003. Further, Respondent purchased \$258.79 worth of liquor from Gabriel's Liquor on December 13, 2002. Although payment for that invoice was due on or before December 25, 2002, payment was not received until February 12, 2003.

Respondent testified that she had an ongoing arrangement with Gabriel's Liquor for payment of Respondent's invoices on a Discover Card. She indicated that she expected the November 27, 2002 and December 13, 2002 invoices from Gabriel's Liquor to be charged to her Discover Card. Respondent offered evidence of her daily available balances for her Discover Card from the period of November 27, 2002 through February 12, 2003. This evidence shows that Respondent had sufficient available credit to cover the liquor purchases, had each invoice been charged to her account on the date of purchase. Petitioner introduced a letter from a representative at Gabriel's Liquor indicating that she attempted to charge the \$191.56 invoice to the Discover Card on December 12, 2002, but that the charge was declined. However, Respondent's records indicate she had an available balance of \$629.08 on that date.

Respondent indicated that she did not know she had been placed on the delinquent list until February 12, 2003, when she was contacted in person by a TABC agent. She testified that neither Gabriel's Liquor nor TABC contacted her regarding the reported delinquency before that date. Once the TABC agent notified her of the delinquency, she immediately contacted Gabriel's Liquor and cured the delinquency. Regarding her purchase of liquor from Alamo City Liquor, Respondent indicated that she had placed an order with Gabriel's Liquor on December 27, 2002 for a special event occurring on December 28, 2002. When Gabriel's Liquor inexplicably failed to make delivery, Respondent attempted to contact Gabriel's Liquor. Because the wholesale department of Gabriel's Liquor was closed, Respondent was forced to contact another vendor, Alamo City Liquor, to obtain a rush delivery. Based on Gabriel's Liquor's failure to deliver the shipment and the price savings offered by the new vendor, Respondent continued making purchases at Alamo City Liquor.

SOAH Docket No. 458-04-3790

Proposal for Decision

Page 5

#### IV. ANALYSIS

Based on the evidence presented by both parties, the ALJ finds that Respondent violated the Texas Alcoholic Beverage Code. Respondent purchased liquor from Alamo City Liquor while she was on the TABC delinquent list. TEX. ALCO. BEV. CODE ANN. § 102.32(f) forbids wholesale dealers to sell to delinquent retailers. This section does not govern the activities of the delinquent retailers themselves. However, TEX. ALCO. BEV. CODE ANN. § 104.03 forbids retailers from conspiring to violate or benefitting from a wholesale dealer's violation of TEX. ALCO. BEV. CODE ANN. § 102.32(d). Respondent clearly did not conspire with Alamo City Liquor to violate TEX. ALCO. BEV. CODE ANN. § 102.32(d), as Respondent was not on notice and had no reason to believe her name appeared on the delinquent list. However, Respondent benefitted from the purchases she made from Alamo City Liquor. Because of this benefit, Respondent was technically in violation of TEX. ALCO. BEV. CODE ANN. § 104.03.

Although Respondent violated the Texas Alcoholic Beverage Code, the ALJ finds the existence of mitigating circumstances. Respondent was placed on the delinquent list for nonpayment of liquor invoices, even though she had arranged for timely payment of the invoices. Because she had arranged for timely payments, Respondent had no reason to believe her name would appear on the TABC delinquent list. Neither TABC nor Gabriel's Liquor put Respondent on notice that she was on the delinquent list until February 12, 2003, when a TABC agent spoke to Respondent in person. Once she was made aware of the problem, Respondent immediately cured the delinquency. Due to these mitigating circumstances, the ALJ finds that a \$75 sanction as an alternative to suspension is appropriate.

#### V. PROPOSED FINDINGS OF FACT

1. Celia Lanore Classen d/b/a J.C.'s Nostalgia (Respondent) holds a Mixed Beverage Permit and Mixed Beverage Late Hours Permit for the premises located at 5516 Evers Road, San Antonio, Bexar County, Texas.

SOAH Docket No. 458-04-3790

Proposal for Decision

Page 6

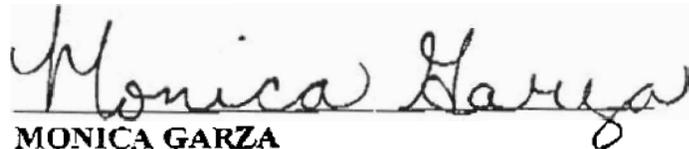
2. On December 28, 2002, Respondent purchased liquor from Alamo City Liquor while on the list of retailers holding outstanding debts for liquor purchases, i.e. the delinquent list.
3. Respondent was unaware that she was delinquent in payment for liquor purchases because she had an ongoing arrangement with the reporting wholesaler, Gabriel's Liquor, to charge liquor invoices to her Discover Card.
4. Neither Gabriel's Liquor nor TABC contacted Respondent regarding the delinquency until February 12, 2003, when a TABC agent contacted Respondent in person.
5. Once the TABC agent notified Respondent of the delinquency, she immediately contacted Gabriel's Liquor and cured the delinquency.
6. On March 24, 2004, the Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) issued its notice of hearing, directed to Respondent, via certified mail, return receipt requested.
7. 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.
8. On May 11, 2004, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Nancy Sorenson at 10300 Heritage, Suite 250, San Antonio, Bexar County, Texas. Petitioner was represented at the hearing by Dewey Brackin, TABC Staff Attorney. Respondent appeared *pro se*. Following presentation of evidence, the record closed on May 11, 2004.
9. On August 19, 2004, the file was transferred to ALJ Monica Garza, who reviewed the record and issues this Proposal for Decision.

## VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 6.01 and 11.61.
2. 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. TEX. GOV'T CODE ANN. ch. 2003.

3. Respondent received proper notice of the hearing. TEX. GOV'T CODE ANN. § 2001.052.
4. Respondent violated the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. §§ 102.32(d) and 104.03.
5. Respondent has satisfied the requirements for assessment of a sanction as an alternative to suspension. TEX. ALCO. BEV. CODE ANN. § 11.64(c).
6. Respondent should be assessed a \$75 sanction as an alternative to suspension. TEX. ALCO. BEV. CODE ANN. § 11.64(b).

SIGNED September 15, 2004.



**MONICA GARZA**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**