

DOCKET NO. 603890

IN RE DOYLE LEE FULLER	§	BEFORE THE
D/B/A CLUB FRENADNA'S	§	
PERMIT/LICENSE NOS. BG281960	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-8280)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 3rd day of December, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert Jones. The hearing convened on October 29, 2004 and adjourned on October 29, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 16, 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, 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.

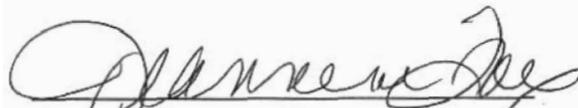
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the above-referenced permit/license be **CANCELLED**.

This Order will become final and enforceable on December 27, 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.

SIGNED this 3rd day of December, 2004

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

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

Doyle Lee Fuller
d/b/a Club Frennadna's
RESPONDENT
1905 E. Vickery Street, Suite A
Fort Worth, Texas 76104-1832
VIA CM/RRR NO. 7000 1530 0003 1902 1965

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Fort Worth District Office

DOCKET NO. 458-04-8280

TEXAS ALCOHOLIC BEVERAGE
COMMISSION§
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BEFORE THE STATE OFFICE

VS.

OF

DOYLE LEE FULLER D/B/A
CLUB FRENNADNA'S
TARRANT COUNTY, TEXAS
(TABC CASE NO. 603890)

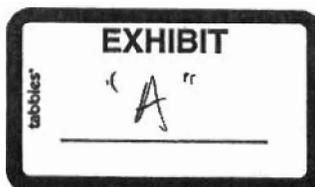
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought cancellation of Doyle Lee Fuller d/b/a Club Frennadna's (Respondent) wine-and-beer retailer's permit and retail dealer's on-premise late hours license. The Administrative Law Judge (ALJ) recommends the permit and license be canceled.

I. PROCEDURAL HISTORY

Notice and jurisdiction were not contested issues, and those matters are addressed only in the Findings of Fact and Conclusions of Law. The Staff notified Respondent of its intent to cancel Respondent's permit and license for alleged violations of the Texas Alcoholic Beverage Code (the Code). The matter was referred to the State Office of Administrative Hearings (SOAH). On October 29, 2004, a hearing convened before ALJ Robert F. Jones Jr. at the SOAH Fort Worth office located at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy Griffith, an attorney with the TABC Legal Division. Respondent was represented by his manager, Gina Jackson. The record closed on October 29, 2004.



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PROPOSAL FOR DECISION

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II. DISCUSSION

A. Applicable Law

The holder of a wine and beer permit may not possess distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises.¹ If he does, his permit may be canceled.²

A city or town may levy and collect a fee for each permit issued for premises located within its jurisdiction.³ If the permittee does not pay the local fee, the TABC may cancel his permit.⁴

B. Evidence

TABC issued wine-and-beer retailer's permit BG281960 and retail dealer's on-premise late hours license BL281961 to Respondent. Respondent's licensed premises are located at 1905 East Vickery Street "A," Fort Worth, Tarrant County, Texas.

On January 11, 2003, Fort Worth police officer Ed Adcock took part in a health inspection of Respondent's licensed premises. Officer Adcock found a 1.75 liter bottle labeled Seagram's Gin. The label indicated the contents were "80 proof," which Officer Adcock testified meant the liquid was 40% alcohol by volume. Officer Adcock identified the liquid in the bottle as gin by sight and smell. He stated the liquid was clear and smelled of juniper berries as gin, in his experience, does.

Ruby Coleman is the Assistant Treasurer of the city of Fort Worth, Texas. She testified that the governing body of Fort Worth assessed a yearly license fee on Respondent for his wine-and-beer retailer's

¹ TEX. ALCO. BEV. CODE ANN. § 25.09 (Vernon 2004) (the Code).

§§ 11.61(b)(2) and 61.71(u)(1) of the Code.

³ §§ 61.36(a) and 11.38(a) of the Code.

⁴ §§ 61.36(b) and 11.38(b) of the Code.

permit and his on-premise late hours license. The original assessment of \$1,700 for 1995, and each subsequent yearly assessment, remain unpaid.

C. Discussion

Respondent offered no evidence or argument. The uncontradicted evidence shows that Respondent possessed distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises, and has not paid the local fee assessed by Fort Worth.

Therefore, the ALJ recommends Respondent's wine-and-beer retailer's permit and retail dealer's on-premise late hours license be canceled.

III. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued wine-and-beer retailer's permit BG281960 and retail dealer's on-premise late hours license BL281961 to Doyle Lee Fuller d/b/a Club Frennadna's (Respondent).
2. Respondent's licensed premises are located at 1905 East Vickory Street "A," Fort Worth, Tarrant County, Texas.
3. On January 11, 2003, Fort Worth police officer Ed Adcock found a 1.75 liter bottle labeled Seagram's Gin on the premises.
4. The bottle contained gin, a distilled spirit, which was 40% alcohol by volume.
5. The governing body of Fort Worth assessed a yearly license fee on Respondent for his wine-and-beer retailer's permit and his on-premise late hours license.
6. The original assessment of \$1,700 for 1995, and each subsequent yearly assessment, remain unpaid.
7. On March 11, 2003, the TABC's Staff sent Respondent a letter notifying Respondent of the Staff's intention to cancel his wine-and-beer retailer's permit and retail dealer's on-premise late

- hours license.
8. Respondent filed a request for a hearing which was referred to the State Office of Administrative Hearings (SOAH).
 9. On August 17, 2004, the Staff served its Notice of Hearing (NOH) on Respondent.
 10. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
 11. The NOH scheduled a hearing for September 10, 2004, at 2:00 p.m.
 12. On September 10, 2004, Respondent appeared and requested a continuance.
 13. Respondent's motion for a continuance was granted, and ALJ Tanya Cooper orally rescheduled the hearing for October 29, 2004, at 10:00 a.m.
 14. ALJ Cooper's oral setting was confirmed by Prehearing Order No. 3, which was served on Respondent on or about September 22, 2004.
 15. On October 29, 2004, a hearing convened before ALJ Robert F. Jones Jr. at the SOAH Fort Worth office located at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy Griffith, an attorney with the TABC Legal Division. Respondent was represented by his manager, Gina Jackson. The record was closed on October 29, 2004.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2004).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2004).

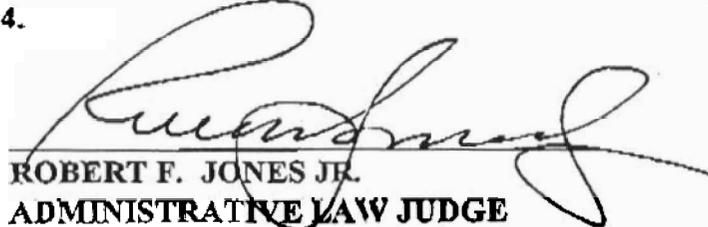
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PROPOSAL FOR DECISION

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4. Based on the foregoing findings and conclusions, Respondent's wine-and-beer retailer's permit and his on-premise late hours license should be canceled pursuant to §§ 25.09; 11.61(b)(2) and 61.71(a)(1); 61.36(a) and 11.38(a); 61.36(b) and 11.38(b) of the Code.

SIGNED November 16, 2004.



ROBERT F. JONES JR.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS