

DOCKET NO. 607677

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|--------------------------------|---|---------------------|
| IN RE THE ANCHOR CLUB | § | BEFORE THE |
| D/B/A THE ANCHOR CLUB | § | |
| PERMIT NOS. N224020, PE224021, | § | |
| NL227003 | § | |
| | § | TEXAS ALCOHOLIC |
| | § | |
| POLK COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-04-7561) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 2nd day of November, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Roshunda Pringle. The hearing convened on August 13, 2004 and adjourned August 13, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 13, 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 Permit Nos. N224020, PE224021, and NL227003 are herein **SUSPENDED**.

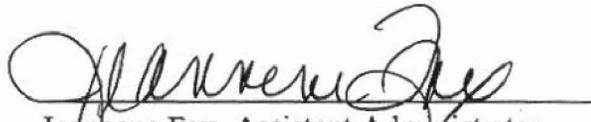
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$3,000.00 on or before the 5th day of January, 2005, all rights and privileges under the above described permits will be **SUSPENDED** for a period of twenty (20) days, beginning at 12:01 A.M. on the 12th day of January, 2005.

This Order will become final and enforceable on November 23, 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 on this the 2nd day of November, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/tc

The Honorable Roshunda Pringle
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE (713) 812-1001

The Anchor Club
RESPONDENT
d/b/a The Anchor Club
P.O. Box 58
Onalaska, TX 77360
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1930 2354

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 607677

REGISTER NUMBER:

NAME: The Anchor Club

TRADENAME: The Anchor Club

ADDRESS: P.O. Box 58, Onalaska, Texas 77360

DATE DUE: January 5, 2005

PERMITS OR LICENSES: N224020, PE224021, NL227003

AMOUNT OF PENALTY: \$3,000.00

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 5TH DAY OF JANUARY, 2005, 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

Overnight Delivery Address: 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.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

October 13, 2004

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-04-7561; The Anchor Club d/b/a The Anchor Club

Dear Ms. Fox:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Roshunda Pringle".

Roshunda Pringle
Administrative Law Judge

RP/mc
Enclosure

xc: Lindy To, TABC, 427 W. 20th Street, Ste. 600, Houston, Texas 77008 - VIA REGULAR MAIL
The Anchor Club d/b/a The Anchor Club, P.O. Box 58, Onalaska, Texas 77360 - VIA REGULAR MAIL



DOCKET NO. 458-04-7561

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

V.

**ANCHOR CLUB, THE
D/B/A ANCHOR CLUB, THE
POLK 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 disciplinary action against The Anchor Club d/b/a The Anchor Club (Respondent), alleging that Respondent, its agent, servant, or employee sold or delivered an alcoholic beverage to an intoxicated person, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit and license be suspended for 20 days, or in lieu of suspension, that Respondent pay a civil penalty of \$3,000. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, 61.71(a)(1), 61.73(b). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating 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 July 19, 2004, Petitioner issued its notice of hearing, directed to The Anchor Club d/b/a The Anchor Club, P.O. Box 58, Onalaska, Texas 77360, via certified mail, return receipt requested to Respondent's last known address as evidenced by the Notice of Hearing and the returned certified unclaimed letter that was received in Petitioner's office on August 10, 2004. Notice of the hearing was also sent to Respondent's physical location at Navajo Trail East Side .5 Mile South Highway 190 Dead End, Onalaska, Texas 77360. On August 13, 2004, a hearing convened before SOAH ALJ Roshunda Pringle at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Lindy To, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record closed on August 13, 2004.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

III. FINDINGS OF FACT

1. Respondent, The Anchor Club d/b/a The Anchor Club, holds a Private Club Registration Permit (N-224020), a Beverage Cartage Permit (PB-224021), and a Private Club Late Hours Permit (NL-227003), issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at Navajo Trail East Side .5 Mile South Highway 190 Dead End, Onalaska, Polk County, Texas.
2. On July 19, 2004, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on August 13, 2004. The notice of hearing was sent via certified mail to Respondent's last known

address as evidenced by the Notice of Hearing and the returned unclaimed certified letter that was received in Petitioner's office on August 10, 2004. Notice of Hearing was also sent by regular mail to Respondent's physical location.

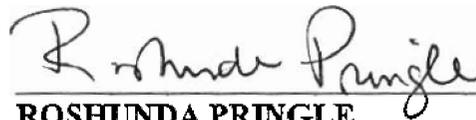
3. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The notice of hearing also contained the following language in 12-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. A hearing convened before Roshunda Pringle, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on August 13, 2004. The record closed on August 13, 2004. Respondent did not appear and was not represented at the hearing.
6. On or about October 23, 2003, Respondent, its agent, servant, or employee sold or delivered an alcoholic beverage to an intoxicated person.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.73(b).
2. SOAH has jurisdiction over all matters relating 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.
3. Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(14) (Vernon 1995 and Supp. 2004).

6. Based upon TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(14) (Vernon 1995 and Supp. 2004), Respondent's permit and license should be suspended for a period of 20 days.
7. Based upon TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$3,000 in lieu of suspension of the permit and license.

SIGNED October 13, 2004.



ROSHUNDA PRINGLE

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS