

DOCKET NO. 608315

| | | |
|---------------------------------|---|---------------------|
| IN RE MOOSE & VINNY'S CLUB | § | BEFORE THE |
| D/B/A MOOSE & VINNY'S PUB | § | |
| PERMIT NOS. N-241842, NL241843, | § | |
| PE241844 | § | TEXAS ALCOHOLIC |
| | § | |
| DALLAS COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-04-7732) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 1st day of December, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on September 23, 2004, and adjourned on September 23, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 12, 2004. 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. 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.

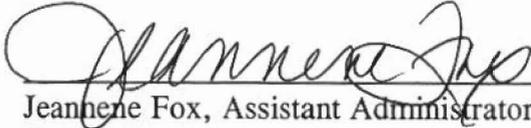
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's Renewal Application for the above-referenced permits be **DENIED**.

This Order will become final and enforceable on December 22, 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 1st day of December, 2004.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeannene Fox", is written over a horizontal line.

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

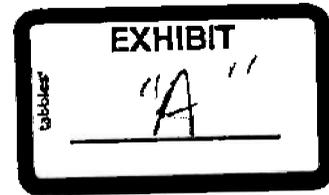
The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

MOOSE & VINNY'S CLUB
D/B/A MOOSE & VINNY'S PUB
RESPONDENT
9220 Skillman Suite 115
Dallas, TX 75243
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1902 1934

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office



SOAH DOCKET NO. 458-04-7732

| | | |
|---------------------------------------|---|--------------------------------|
| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE STATE OFFICE |
| COMMISSION, Petitioner | § | |
| | § | |
| V. | § | OF |
| | § | |
| MOOSE & VINNY'S CLUB | § | |
| D/B/A MOOSE & VINNY'S PUB, | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Moose & Vinny's Club d/b/a Moose & Vinny's Pub (Respondent). Petitioner sought denial of Respondent's pending renewal application, alleging that Respondent filed an incomplete application in violation of § 11.46(a)(4) of the Texas Alcoholic Beverage Code. Based on Respondent's failure to attend the hearing and default, the Administrative Law Judge (ALJ) recommends denial of Respondent's pending renewal application.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01 and 11.61. 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 30, 2004, Petitioner issued its notice of hearing, directed to Respondent. The notice of hearing was received by Respondent on or about August 2, 2004. 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, as required by TEX. GOV'T CODE ANN. §

2001.052. 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."

On September 23, 2004, a hearing convened before SOAH ALJ Brenda Coleman at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on September 23, 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 (TAC) § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 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. Based on the deemed factual findings in this case, Respondent's renewal application should be denied.

III. FINDINGS OF FACT

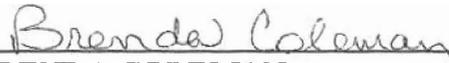
1. Moose & Vinny's Club d/b/a Moose & Vinny's Pub (Respondent), holds a Private Club Registration Permit, N-241842, a Private Club Late Hours Permit, NL 241843, and a Beverage Cartage Permit, PE-241844, issued by the Texas Alcoholic Beverage Commission (Petitioner), for the premises located at 9220 Skillman Street, Suite 115, Dallas, Dallas County, Texas.
2. On July 30, 2004, Petitioner issued its notice of hearing to Respondent. The notice of hearing was received by Respondent on August 2, 2004.
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 Brenda Coleman, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on September 23, 2004. Petitioner appeared through its Staff Attorney, Timothy Griffith. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
6. On November 14, 2003, Respondent filed an incomplete renewal application. The personal history sheets of the application were not originals, were not notarized, failed to include criminal history, and failed to include a complete employment history.
7. Respondent also failed to include resident alien cards, naturalization papers and passports, organizational minutes voting in new officers, and the publisher's affidavit.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01 and 11.61.
2. The SOAH has jurisdiction to conduct the 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. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.
5. Respondent violated the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. §11.46(a)(4).
6. Respondent's renewal application should be denied. TEX. ALCO. BEV. CODE ANN. § 11.46 (a)(4).

SIGNED November 12, 2004.

A handwritten signature in cursive script that reads "Brenda Coleman". The signature is written in black ink on a light-colored background.

BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Moose & Vinny's Club d/b/a Moose & Vinny's Pub

DOCKET NUMBER: 458-04-7732

AGENCY CASE NO: 608315

Timothy Griffith
Staff Attorney
825 N. McDonald, Ste. 180
McKinney, Texas 75068
Telephone No: (972) 547-5092
Fax No: (972)547-5093

AGENCY COUNSEL

VIA FAX (972) 547-5093

Moose & Vinny's Club d/b/a
Moose & Vinny's Pub
9220 Skillman Suite 115
Dallas, TX 75243

RESPONDENT

VIA REGULAR MAIL

as of November 12, 2004