

DOCKET NO. 609219

IN RE GREEN MALLARD BOYS INC.	§	BEFORE THE
D/B/A VOODOO MICS	§	
PERMIT/LICENSE NOS. MB548623,	§	
LB548624, PE548625, CB548626	§	TEXAS ALCOHOLIC
	§	
POTTER COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-6653)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 20th day of May, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened on July 16, 2004 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 21, 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 Respondent's permits and licenses are hereby **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on June 10, 2005 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 20th day of May, 2005

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

CG/bc

The Honorable B. L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (806) 792-0149

GREEN MALLARD BOYS INC.
d/b/a VOODOO MICS
RESPONDENT
2511 W. 6TH AVE.
AMARILLO, TX 79106-6671
VIA CM/RRR NO. 7000 1530 0003 1929 2976

Christopher Gee
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Lubbock District Office

DOCKET NO. 458-04-6653

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner

V.

GREEN MALLARD BOYS INC.
D/B/A VODOO MICS,
POTTER COUNTY, TEXAS
(TABC NO. 609219),
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

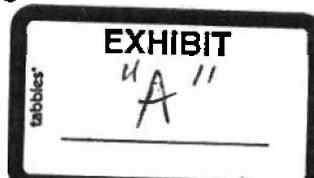
PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC, Staff) brought this disciplinary action against Green Mallard Boys, Inc. dba Voodoo Mics (Respondent), alleging that Respondent, its agent, servant, or employee sold or delivered an alcoholic beverage to an intoxicated person on or about February 20, 2004. A hearing was scheduled and convened; however, Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds Staff's allegations are true and recommends that Respondent's permits and/or licenses be denied or canceled as determined by the Commission.

I. PROCEDURAL HISTORY

On July 6, 2004, Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 2511 W. 6th Avenue, Amarillo, Texas, 79106-6671. The Notice was sent by certified mail, return receipt requested. The "green card" was not returned to Staff by the U.S. Postal Service, and the Staff attorney stated at the July 16, 2004, hearing that the licensed premises was no longer operating.

A hearing was convened before ALJ B. L. Phillips at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas, on July 16, 2004. TABC was represented at the hearing by Christopher Gee, Staff Attorney. Respondent did not appear and was not represented at the hearing. The hearing concluded and the record closed that same day.



II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. The ALJ finds that Staff issued notice in compliance with 1 TAC §§ 155.27 and 155.55, and § 11.63 of the Code. 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.

Staff requested that the ALJ recommend a penalty in this case of denial of renewal of Respondent's permits or cancellation of the same.

III. PROPOSED FINDINGS OF FACT

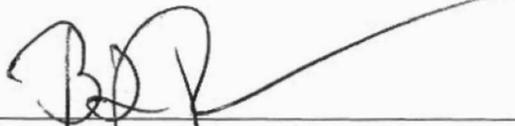
1. Green Mallard Boys, Inc., dba Voodoo Mics (Respondent) holds a Mixed Beverage Permit, MB548623, Mixed Beverage Late Hours Permit, LB548624, Beverage Cartage Permit, PE548625, and a Caterer's Permit, Cb548626, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2513 W. 6th Avenue, Amarillo, Potter County, Texas.
2. On July 6, 2004, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 2513 W. 6th Avenue, Amarillo, Texas 79106-6671. The Notice was sent by certified mail, return receipt requested. The "green card" was not returned. Respondent's licensed premises is no longer in business.
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 statement of the matters asserted.
4. The Notice of Hearing also properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice will be deemed as true, and the relief sought may be granted by default.
5. On July 16, 2004, a hearing was convened before Administrative Law Judge B. L. Phillips at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. TABC was represented at the hearing by Christopher Gee, Staff Attorney. Respondent did not appear and was not represented at the hearing.

6. Respondent committed the violation of sale or delivery of an alcoholic beverage to an intoxicated person on or about February 20, 2004.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.32, 5.44, 26.03, and 61.71.
2. The State Office of Administrative Hearings 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. Staff issued the notice of hearing in compliance with 1 TEX. ADMIN. CODE (TAC) §§ 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 TAC § 155.55.
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN § 11.61(b)(14).
6. Based upon Proposed Conclusion of Law No. 5, Respondent's permits should be canceled or denied.

SIGNED July 21, 2004



B. L. PHILLIPS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS