

DOCKET NO. 610543 & 548295

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§ § §	BEFORE THE TEXAS
VS.	§ §	
ALIZEA INC. D/B/A CLUB NOZ PERMIT/LICENSE NO(s). MB548295 BEXAR COUNTY, TEXAS (SOAH DOCKET NO.458-07-0162)	§ § § § §	ALCOHOLIC BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of February, 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge, Robert M. Brown, II. The hearing convened on October 13, 2006 and adjourned on the same day. The Administrative Law made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 4, 2006. The 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 your permit is hereby **CANCELLED FOR CAUSE effective upon the signing of this order.**

This Order will become final and enforceable on March 12, 2007, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED on February 12, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jearmene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

CGG/vr

— Michael R. De La Paz
ATTORNEY FOR RESPONDENT
214 Dwyer, Suite 315
San Antonio, Texas 78204
VIA FAX (210) 227-0685

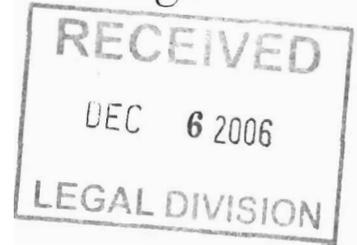
ALIZEA INC.
RESPONDENT
d/b/a CLUB NOZ
103 CHICKERING
SAN ANTONIO, TX 782105647
VIA REGULAR MAIL

Hon. Robert M. Brown II
State Office of Administrative Hearings
San Antonio, Texas
VIA FAX (210) 308-6854

Christopher G. Gee
ATTORNEY FOR PETITIONER
TABC Legal Section

— Licensing Division
San Antonio District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 4, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

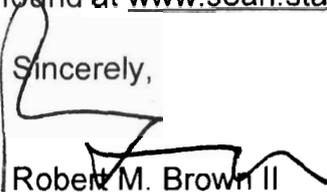
RE: Docket No. 458-07-0162 TABC vs Alizea Inc., d/b/a Club Ice f/k/a Club Noz

Dear Mr. Steen:

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

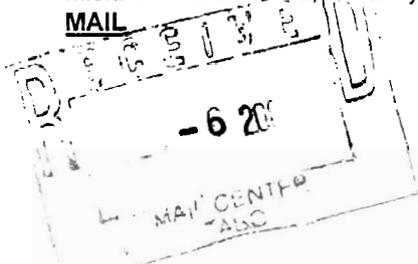
Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


Robert M. Brown II
Administrative Law Judge

RMB/llap
Enclosure

xc: **Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL**
Christopher G Gee, Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Michael R. De La Paz, Attorney at Law, 214 Dwyer, Suite 315, San Antonio, Texas 78204 -**VIA REGULAR MAIL**



SOAH DOCKET NO. 458-07-0162

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	
	§	
ALIZEA INC. d/b/a CLUB ICE	§	OF
f/k/a CLUB NOZ	§	
PERMIT/LICENSE NO(s).	§	
MB548295	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO. 610543 & 548295)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas Alcoholic Beverage Commission (TABC) seeks cancellation or suspension of the permit of Alizea Inc. doing business as (d/b/a) Club Ice (Respondent) formerly known as (f/k/a) Club Noz. TABC Staff moved and argued for a default and cancellation. The Administrative Law Judge (ALJ) agrees and recommends Respondent's permit be cancelled.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2) and 16 TEX. ADMIN. CODE (TAC) §§ 33.24 and 37.3. 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 findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003. There were no contested issues of jurisdiction.

On September 14, 2006, TABC sent its Notice of Hearing (Notice) to Respondent by certified mail, return receipt requested to the Respondent's mailing address. 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. The notice of hearing also included the following language in at least 12-point or larger boldface type: "Upon failure of a party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default." On September 15, 2006, Respondent signed for the Notice.

On October 13, 2006, the hearing convened before the undersigned ALJ at the SOAH office located in San Antonio, Texas. TABC was represented by Christopher G. Gee, Staff Attorney. Michael R. De La Paz, attorney, appeared as Respondent's attorney. After admission of jurisdictional documents and argument for default and cancellation, the record was closed.

II. DISCUSSION

Mr. De La Paz acknowledged Oscar Delgado's signature on the return receipt for the Notice and that Mr. Delgado is the Respondent's principal owner. In addition, Mr. De La Paz stated that his efforts to contact Mr. Delgado have been unsuccessful. Based on Mr. Delgado's receipt of Notice and failures to contact his attorney, respond to the Notice, or be present at the hearing, Mr. Gee, without an objection from Respondent's counsel, requested that the matter proceed as a default. The ALJ finds that TABC 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 are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact.

Violation of either TEX. ALCO. BEV. CODE §§ 11.68 or 28.06(c) provide for the cancellation or suspension of the Respondent's permit under TEX. ALCO. BEV. CODE. §11.61.

III. PROPOSED FINDINGS OF FACT

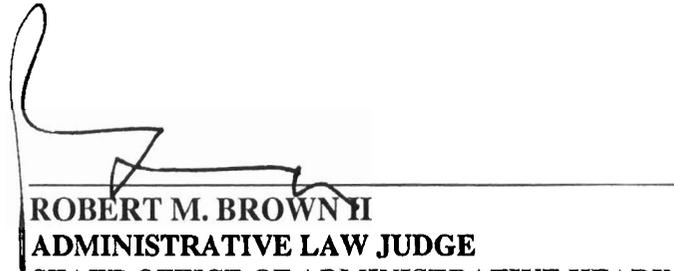
1. Alizea Inc. doing business as (d/b/a/) Club Ice (Respondent) holds a Mixed Beverage Permit, Mixed Beverage Late Hours Permit No. MB548295 (Permit) issued by the Texas Alcoholic Beverage Commission (TABC).

2. TABC issued Respondent's permit for the premises located at 1305 E. Houston Street, San Antonio, Bexar County, Texas.
3. Respondent's mailing address is Alizea Inc. d/b/a Club Ice, 103 Chickering, San Antonio, Texas 78210-5647.
4. Oscar Delgado is Respondent's principal owner.
5. On or about January 24, 2004, Respondent or its agents, servants, or employee, knowingly or permitted the possession of alcoholic beverages not covered by invoice.
6. On or after July 14, 2004, Staff notified Respondent that it intended to seek cancellation or suspension of Respondent's permit for violation of the TEX. ALCO. BEV. CODE. § 28.06.
7. On or about February 23, 2006, Respondent, or its agents, servants, or employee, sold, offered to sell, or delivered an alcoholic beverage while Respondent's permit was suspended.
8. On or after August 10, 2006, Staff notified Respondent that it intended to seek cancellation or suspension of Respondent's permit based on Respondent's violation of the TEX. ALCO. BEV. CODE. § 11.68.
9. On or after September 14, 2006, TABC issued its Notice of Hearing (Notice) to Respondent.
10. 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; references to particular sections of the statute and rules involved; and a short, plain statement of the matters asserted.
11. In addition, the Notice contained the following language in 12-point or larger bold face type: "If you fail to appear at the hearing, the allegations in this notice will be deemed to be admitted as true and the relief sought may be granted by default."
12. On September 15, 2006, Mr. Delgado acknowledged receipt of Notice.
13. On October 13, 2006, a hearing convened at the State Office of Administrative Hearings located at 10300 Heritage Boulevard, Suite 250, San Antonio, Bexar County, Texas with the personal appearance of counsel for the TABC and Respondent, Christopher G. Gee and Michael R. De La Paz, respectively.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE §§ 11.11 and 61.13.
2. SOAH has jurisdiction to conduct the administrative 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 Ch. 2003.
3. Based on the Proposed Findings of Facts, TABC provided Notice to Respondent as required by the 1 TAC §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE ANN. § 11.63 and the Administrative Procedure Act, TEX. GOV'T. CODE §§ 2001.051 and 2001.052.
4. Based on the Proposed Findings and above Proposed Conclusion of Law, the hearing proceeded on a default basis as authorized by 1 TAC § 155.55.
5. Based on the Proposed Findings and Conclusions, Respondent violated TEX. ALCO. BEV. CODE §§ 11.68 and 28.06(c).
6. Based on Proposed Conclusions, Respondent's Permit should be cancelled.

SIGNED: December 4, 2006.



ROBERT M. BROWN II
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS