

DOCKET NO. 610553

IN RE FS MANAGEMENT CORP.	§	BEFORE THE
D/B/A THE THIN ROOM	§	
PERMIT NOS. MB439154,	§	
LB439155	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-0882)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 4th day of February, 2005, 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 November 15, 2004, and adjourned on November 15, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 12, 2005. 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.

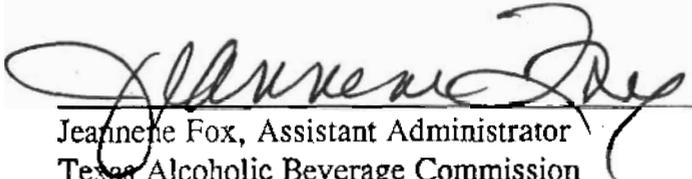
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that above described permits/licenses are hereby **CANCELED**.

This Order will become final and enforceable on February 25, 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 on this 4th day of February, 2005, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

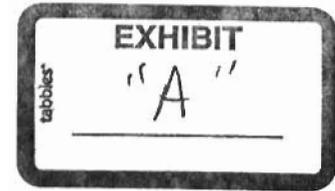
The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

FS MANAGEMENT CORP.
D/B/A THE THIN ROOM
RESPONDENT
2708 ELM ST.
DALLAS, TX 75226
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1930 1012

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office



SOAH DOCKET NO. 458-05-0882

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,**
Petitioner

§
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§
§
§

BEFORE THE STATE OFFICE

V.

OF

FS MANAGEMENT CORP.
D/B/A THE THIN ROOM,
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against FS Management Corp. d/b/a The Thin Room (Respondent), alleging that Respondent made false or misleading statements in connection with a renewal application executed on September 23, 2003, in violation of the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permits be canceled for cause. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits.

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 October 1, 2004, Petitioner issued its notice of hearing, directed to Respondent. The notice of hearing was received by Respondent on or about October 28, 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.

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PROPOSAL FOR DECISION

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§ 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 November 15, 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, TA 3C Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on November 15, 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 permits should be canceled.

III. FINDINGS OF FACT

1. FS Management Corp. d/b/a The Thin Room (Respondent), holds a Mixed Beverage Permit, MB-439154, and a Mixed Beverage Late Hours Permit, LB-439155, issued by the Texas Alcoholic Beverage Commission (Petitioner), for the premises located at 2708 Elm Street, Dallas, Dallas County, Texas.
2. On October 4, 2004, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for November 15, 2004.
3. The notice of hearing was received by Respondent on October 28, 2004. The return receipt was signed by Rob Nabors.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a

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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.

5. 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."
6. A hearing convened before Brenda Coleman, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on November 15, 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.
7. On September 23, 2003, Respondent executed a renewal application. Respondent made false or misleading statements in response to questions four and five of the application. Respondent listed Donald Earl Cass and Earl Dean Tooke as stockholders.

IV. CONCLUSIONS OF LAW

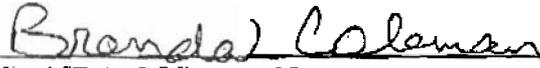
1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01 and 11.61.
2. The SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant 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, 1 TEX. ADMIN. CODE (TAC) § 155.55 and 16 TAC § 311.3.
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. §11.61(b)(4).
6. Respondent's permits should be canceled. TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(4).

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SIGNED January 12, 2005.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS