

DOCKET NO. 613398

IN RE GAYLE FAYE TATUM	§	BEFORE THE
D/B/A THE NEW LITTLE MEXICO	§	
PERMIT/LICENSE NOS. BG451963,	§	
BL451964	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-4394)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 2nd day of June, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis Cranz. The hearing convened on April 7, 2005 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 May 6, 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.

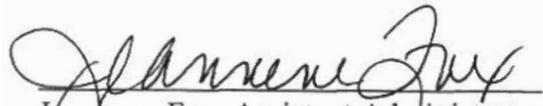
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permits and licenses be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on June 23, 2005 unless a Motion for Rehearing is filed before that date.

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

SIGNED this 2nd day of June, 2005

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Phyllis Crazz
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

GAYLE FAYE TATUM
d/b/a THE NEW LITTLE MEXICO
RESPONDENT
PO BOX 136308
FORT WORTH, TX 76136-0308
VIA CM/RRR NO. 7000 1530 0003 1929 3157

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Fort Worth District Office

DOCKET NO. 458-05-4394

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner**

V.

**GAYLE FAYE TATUM D/B/A
THE NEW LITTLE MEXICO
TARRANT COUNTY, TEXAS
Respondent
(TABC No. 613398)**

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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 Gayle Faye Tatum, d/b/a The New Little Mexico (Respondent), alleging that a breach of the peace occurred on the licensed premises, and Respondent failed to control the licenses premises by calling the police before a stabbing incident. The hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permit and license be cancelled.

I. PROCEDURAL HISTORY

On March 3, 2005, TABC Staff issued a notice of hearing to Respondent at its mailing address of record as reflected in TABC's records and on Respondent's permit and license: P.O. Box 136308, Fort Worth, Texas 76136-0308. The notice of hearing was sent by certified mail (7000 1530 0003 1930 1296), return receipt requested. The notice of hearing was received at that address but was never collected, as evidenced by the "green card" and envelope with the notice that was returned to TABC Staff by the U.S. Postal Service on March 23, 2005.



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PROPOSAL FOR DECISION

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A hearing was convened as scheduled before ALJ Phyllis Crazz at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Texas, on April 7, 2005. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.

During the hearing, TABC Staff offered documents that would support a recommendation for default against Respondent and which were admitted into evidence. The hearing concluded on April 7, 2005, and the record closed on that same day. The ALJ will proceed with consideration of TABC Staff's request for a default recommendation and penalty, as discussed below.

II. ANALYSIS

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that TABC Staff issued notice of the hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, TEX. ALCO. BEV. CODE. ANN. § 11.63, and 16 TEX. ADMIN. CODE § 37.3 (August 1, 2004) (Tex. Alco. Bev. Comm'n., Service of Pleadings and Notice of Hearing). 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 Findings of Fact below.

TABC Staff requested that the ALJ recommend cancellation of Respondent's permits. TABC Staff provided a copy of Respondent's licensing history, which is maintained by TABC Staff, in support of its penalty request. The licensing history contained multiple violations.

III. FINDINGS OF FACT

1. The New Little Mexico (Respondent) holds a Wine and Beer Retailer's Permit BG-451963 and a Retail Dealer's Late Hours License BL-451964, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 1520 Mitchell Boulevard, Fort Worth, Tarrant County, Texas.

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2. On March 3, 2005, the TABC Staff issued a notice of hearing to Respondent at its mailing address of record as reflected in the TABC records and on Respondent's permit and license: P.O. Box 136308, Fort Worth, Texas 76136-0308. This notice was sent by certified mail (7000 1530 0003 1930 1159), return receipt requested, and was received at that address but was never collected, as evidenced by the "green card" and envelope with the notice returned to TABC Staff by the U.S. Postal Service on March 23, 2005.
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. TEX. GOV'T CODE ANN. §2001.052.
4. The notice of hearing 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 April 7, 2005, a hearing was convened before ALJ Phyllis Crazz at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. On or around January 26, 2004, a breach of the peace occurred on the licensed premises and the breach was not beyond the control of the licensee and resulted from his improper supervision of persons permitted to be on the licensed premises in that Respondent or its agent, servant, or employee, Toni Martinez, failed to control the licensee's premises by calling the police before a stabbing incident.
7. Respondent's licensing history maintained by TABC Staff reflects several violations of the Texas Alcoholic Beverage Code and TABC rules.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and 6.
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 findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2001.
3. Based upon Findings of Fact Nos. 2 - 4, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, TEX. ALCO. BEV. CODE ANN § 11.63, and 16 TEX. ADMIN. CODE § 37.3.

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4. Based upon Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN § 69.13.
6. Based upon Findings of Fact Nos. 6 and 7, Conclusion of Law No. 5, and TEX. ALCO. BEV. CODE ANN. §§ 69.13, 70.03, and 25.04 (b), Respondent's permit and license should be canceled.

SIGNED MAY 6, 2005



PHYLLIS CRANZ,
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: Gayle Fay Tatum d/b/a The New Little Mexico

DOCKET NUMBER: 458-05-4394

AGENCY CASE NO: 613398

Tim Griffith
Staff Attorney
Texas Alcoholic Beverage Commission
Ph: 972/547-5092
Fax: 972/547-5093

AGENCY COUNSEL
BY FAX

Gayle Fay Tatum
d/b/a The New Little Mexico
P. O. Box 136308
Fort Worth, Texas 76136-0308

RESPONDENT
BY MAIL

As of April 6, 2005

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



May 9, 2005

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

Gayle Faye Tatum
P. O. Box 136308
Fort Worth, Texas 76136-0308

VIA REGULAR MAIL

**RE: Docket No. 458-05-4394; Texas Alcoholic Beverage Commission vs Gayle Faye Tatum
d/b/a The New Little Mexico (TABC Case No. 613398)**

Dear Mr. Steen:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to Gayle Faye Tatum, d/b/a The New Little Mexico, Respondent. The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Gayle Faye Tatum, d/b/a The New Little Mexico (Respondent), alleging that a breach of the peace occurred on the licensed premises, and Respondent failed to control the licenses premises by calling the police before a stabbing incident. The hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permit and license be cancelled.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Phyllis Cranz
Administrative Law Judge

attachments

xc: Tim Griffith, TABC Staff Attorney via facsimile 972/547-5093