

DOCKET NO. 615675

TGT

IN RE SULPHUR SPRINGS SOCIAL CLUB INC. D/B/A CACTUS CANYON PERMIT/LICENSE NOS. N-569345	§ § § § § § § §	BEFORE THE TEXAS ALCOHOLIC BEVERAGE COMMISSION
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ORDER

CAME ON FOR CONSIDERATION this 15th day of February 2006, in the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Michelle Kallas. The hearing convened on December 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 January 26, 2006. 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.

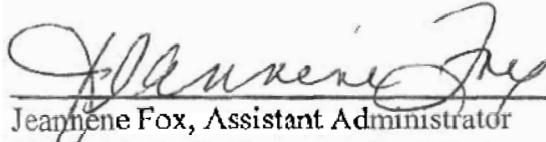
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permits and licenses be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on March 8, 2006 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 15th day of February 2006.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Michelle Kallas
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

Sulphur Springs Social Club Inc.
d/b/a Cactus Canyon
RESPONDENT
955 IH 30E
Sulphur Springs, Texas 75482
VIA CM/RRR NO. 7001 2510 0000 7274 2994

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

SOAH DOCKET NO. 458-06-0461



TEXAS ALCOHOLIC BEVERAGE COMMISSION
Petitioner

BEFORE THE STATE OFFICE

V:

OF

SULPHUR SPRINGS SOCIAL CLUB INC.
D/B/A CACTUS CANYON
Respondent

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ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

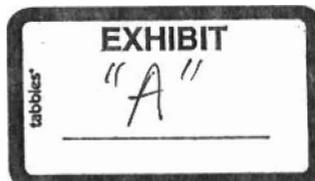
The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Sulphur Springs Social Club Inc. d/b/a Cactus Canyon (Respondent), alleging that Respondent made a false or misleading statement in its original or renewal application, in violation of the Texas Alcoholic Beverage 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. § 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 November 4, 2005, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known designated mailing address: 955 Interstate 30 East, Sulphur Springs, Texas, 75482, via certified mail, return receipt requested.¹ The notice was received by Respondent on November 17, 2005, and contained a statement of the time, place, and nature of the hearing; a

¹ Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the permittee's last known address as reflected in the commission's records. A certificate of service to such address shall be prima facie evidence of adequate service on the permittee. 16 TEX. ADMIN. CODE § 37.3.



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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, 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 December 7, 2005, a hearing convened before SOAH ALJ Michelle Kallas 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 December 7, 2005.

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. Petitioner's Notice of Hearing complies 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, the ALJ recommends that Respondent's permits be canceled.

III. FINDINGS OF FACT

1. Sulphur Springs Social Club, Inc. d/b/a Cactus Canyon (Respondent) holds a Private Club Registration Permit, N-569345 and a Beverage Cartage Permit, PE-569346, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 955 Interstate 30 East, Sulphur Springs, Hopkins County, Texas, 75482.

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2. On November 4, 2005, 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 December 7, 2005.
3. The notice of hearing was received by Respondent on November 17, 2005.
4. 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.
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 Michelle Kallas, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on December 7, 2005. 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 or about November 24, 2004, Respondent made a false or misleading statement in its original or renewal application to Petitioner.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §11.61.
2. 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 § 37.3.
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).

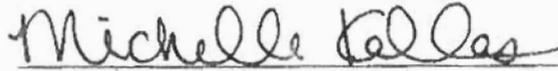
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6. Respondent's permits should be canceled. TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(4).

SIGNED January 26, 2005.



MICHELLE KALLAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Sulphur Springs Social Club Inc. d/b/a Cactus Canyon

DOCKET NUMBER: 458-06-0461

AGENCY CASE NO: 615675

Timothy Griffith
Staff Attorney
8700 Stemmons Freeway, Ste. # 460
Dallas, Texas 75247
Telephone No: (214) 678-4000
Fax No: (214) 678-4001

AGENCY COUNSEL
VIA FAX (214) 678-4001

Sulphur Springs Social Club Inc.
d/b/a Cactus Canyon
955 Interstate 30 East
Sulphur Springs, Texas 75482

RESPONDENT
VIA REGULAR MAIL

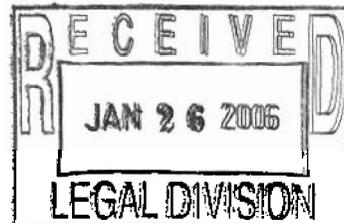
as of January 26, 2006

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State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



January 26, 2006

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-06-0461
TABC VS. SULPHUR SPRINGS SOCIAL CLUB
D/B/A CACTUS CANYON

Dear Ms. Fox:

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,

Michelle Kallas
Administrative Law Judge

MK/sr
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, Via Fax,
Sulphur Springs Social Club., Inc., Respondent, Via Mail