

TEXAS ALCOHOLIC
BEVERAGE COMMISSION

V.

MICHAEL S. MURPHY
D/B/A STARLIGHT LOUNGE
PERMIT NO. BG-318073 &
LICENSE NO. BL-318074
DALLAS COUNTY, TEXAS
(TABC CASE NO. 578123)

§ BEFORE THE STATE OFFICE
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§ ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission brought this action seeking cancellation of the Wine and Beer Retailer's Permit and Retailer Dealer's On-Premise Late Hours License held by Michael S. Murphy, d/b/a Starlight Lounge (Respondent), because Respondent is shown on the records of the Comptroller of Public Accounts as subject for final determination of sales taxes due and payable under the Limited Sales, Excise and Use Tax Act. Following a hearing that Respondent failed to attend, the Administrative Law Judge (ALJ) recommends that the permit and license be cancelled based on the proof introduced by Staff.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on November 17, 1998, at the offices of the State Office of Administrative Hearings in Dallas, Dallas County, Texas. The staff of the Commission (Staff) was represented by its counsel, Timothy E. Griffith. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. THE ALLEGATIONS AND APPLICABLE STATUTORY PROVISIONS

There was one allegation in this proceeding, asserting the Respondent is shown on the records of the Comptroller of Public Accounts as subject for final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act, TEX. TAX CODE ANN. ch. 151, which constitutes a violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(c)(2) and 61.712(2).

III. RECOMMENDATION

In this case, Staff recommended cancellation of the Respondent's Wine and Beer Retailer's Permit and Retail Dealer's on Premise Late Hours License; the Administrative Law Judge agrees with the recommendation. Pursuant to both, TEX. ALCO. BEV. CODE ANN. §§ 11.61(c)(2) (permittee) and 61.712(2) (licensee), "the commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a permit/license if the commission or administrator finds that the permittee/licensee: . . . "is shown on the records of the comptroller of public accounts as being subject to final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code). . . ."

V. FINDINGS OF FACT

1. Michael S. Murphy d/b/a Starlight Lounge (Respondent), located at 4319 Main, Dallas, Dallas County, Texas 75226, holds Permit No. BG-318073 and License No. BL-318074.
2. On October 20, 1998, the staff of the Texas Alcoholic Beverage Commission sent a notice of hearing by certified mail, return receipt requested, to the Respondent at his address or record, regarding an alleged violation of the Texas Alcoholic Beverage Code.
3. The hearing on the merits was held on November 17, 1998, at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. The staff of the Commission (Staff) was represented by its counsel, Timothy E. Griffith.
4. The Respondent did not appear and was not represented at the hearing.
5. On or about March 6, 1998, the comptroller of public accounts certified that Respondent was subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (TEX. TAX CODE ANN. § 151).

VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 11.61(c), 61.71, and 61.712 (Vernon 1995 & Supp. 1999).
2. The State Office of Administrative Hearings 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 ANN. ch. 2003 (Vernon 1999).
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999), and 1 TEX. ADMIN. CODE § 155.55(d) (1998), which provides that service of notice

of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.

4. Respondent is shown on the records of the Comptroller of Public Accounts as subject for final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(c) and 61.712(2) (Vernon 1995).
5. Based on the foregoing Findings and Conclusions, cancellation of the Wine and Beer Retailer's Permit and Retail Dealer's On-Premise Late Hours License is warranted.

SIGNED this 8th day of March 1999.

for 
MARK S. RICHARDS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS