

DOCKET NO. 578251

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	OF
JLM ENTERTAINMENT, L.C., ET AL	§	
D/B/A WOODY'S	§	
PERMIT NOS. MB-424669 & LB-424670	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-2482)	§	ADMINISTRATIVE HEARINGS

ORDER

CAME ON FOR CONSIDERATION this 18th day of May, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge James Kuvet. The hearing convened on December 22, 1999, and reconvened on January 18, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 19, 2000. This 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, 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.

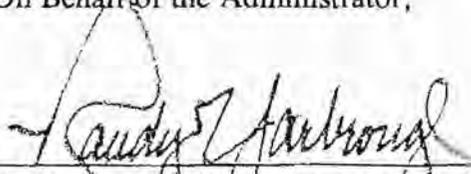
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. MB-424669 & LB-424670 are herein **SUSPENDED** for a period of two hundred and forty days (240) beginning at 12:01 A.M. on the 12th day of July, 2000, unless a civil penalty in the amount of \$36,000.00 is paid on or before the 5th day of July, 2000.

This Order will become final and enforceable on **June 8, 1999**, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 18th day of May, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Hon. Ruth Casarez
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

JLM Entertainment, L.C., et al
d/b/a Woody's
RESPONDENT
826 San Pedro
San Antonio, Texas 78212-4640
CERTIFIED MAIL NO. Z 473 040 592

Dewey A. Brackin
ATTORNEY FOR PETITIONER

San Antonio District Office
Licensing Division

DOCKET NO. 458-99-2482

TEXAS ALCOHOLIC
BEVERAGE COMMISSION

V.

JLM ENTERTAINMENT L.C., *ET. AL.*
D/B/A WOODY'S
PERMIT NOS. MB-424669 & LB-424670
BEXAR COUNTY, TEXAS
(TABC CASE NO. 578251)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. Background

The staff of the Texas Alcoholic Beverage Commission (Staff) brought this enforcement action against JLM Entertainment L.C. *et. al.* d/b/a Woody's (Respondent) for alleged violations of the Texas Alcoholic Beverage Code and Texas Alcoholic Beverage Commission's (Petitioner or Commission) rules. The violations alleged included (1) possession of cocaine on the licensed premises, (2) possession of distilled spirits without an invalidated serial number identification stamp, (3) possession of alcoholic beverages unfit for consumption, and (4) engaging in, or permitting the conduct of its employee, agent, or servant, which was lewd, immoral, or offensive to public decency. Respondent appeared at the hearing, but did not appear at the reconvened hearing, which was reset at his request. Staff recommended that Respondent's permits be suspended for a total of 240 days or that it pay a fine of \$36,000.00 in lieu of suspension. The undersigned Administrative Law Judge (ALJ) who reviewed the evidence in the case agrees with the Staff's recommendation.

II. Jurisdiction, Notice, And Procedural History

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 the notice 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.

The hearing in this matter began on December 22, 1999, before ALJ James Kuvet at the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Staff was

represented by Dewey A. Brackin, Assistant Attorney General. Respondent was represented by its Chairman of the Board, Jim Lee Montague.

III. Witness Testimony

During the hearing on December 22, 1999, a certified copy of the Respondent's permit and violation history was admitted as Petitioner's Exhibit 1. Detectives Troy Marek, Wayne Shoquist, and Gerard Lopez of the San Antonio Police Department (SAPD), and TABC agent Nicolas Gutierrez was called as witnesses for the Commission. The testimony of each witness was recorded at the hearing on December 22, 1999, and is summarized below.

A. Detective Troy Marek

Detective Troy Marek, a licensed police officer for 17 years, (10 years with the SAPD vice unit), testified that he investigated a complaint of lewd and immoral conduct from the Commission in an undercover capacity on August 5, 1998. On that date, he entered the bar known as Woody's, sat down at the bar, and observed the male dancers who were performing. He observed patrons tipping the dancers. As the tips were given, he observed the dancers exposing themselves by pulling down their G-strings. Det. Marek witnessed two dancers expose themselves, and shortly after that, was also propositioned by one of the male dancers. Det. Marek left the bar and informed police officers staged outside of the bar of the dancers who were exposing themselves. The dancers arrested by the officers were identified by Det. Marek as the dancers he had observed exposing themselves or propositioning patrons.

B. Detective Wayne Shoquist

On February 14, 1998, Detective Wayne Shoquist, a licensed police officer for 10 years with the SAPD, (4 years with the narcotic's division) investigated information received from a confidential informant regarding the sale of cocaine at Woody's. Det. Shoquist stated the informant had described the clothing of the person who was selling cocaine at Woody's. Det. Shoquist, who was working undercover, identified the person as Gregory Ciuk, the bartender. Randy Smith, the detective's partner, entered the bar at approximately 6:00 p.m.; Det. Shoquist entered the bar ten minutes later and observed four or five people in the bar who were customers, not employees. Det. Shoquist observed Mr. Ciuk going back and forth behind the bar, presumably making change for customers. Uniformed officers were staged outside the bar, and when they entered the bar, Det. Shoquist observed Mr. Ciuk reaching in his pocket and attempted to discard two packets on the floor when he saw the two officers enter the bar. Det. Shoquist grabbed Mr. Ciuk and advised Mr. Ciuk that he was a police officer and that he had seen him attempting to drop the packets on the floor. Mr.

Ciuk attempted to pull away from him. Det. Shoquist stated that Mr. Ciuk had a total of fourteen packets of cocaine in his pocket (approximately 4.6 grams), and that it was packaged for sale. After Mr. Ciuk was arrested, he told Det. Shoquist that he worked at Woody's as the bartender.

C. Detective Gerard Lopez

Detective Gerard Lopez has been a licensed police officer for 14 years with the SAPD (6 years with the vice unit). On February 14, 1998, Det. Lopez was called to the premises by Det. Shoquist regarding information concerning narcotics being sold on the premises of Woody's by an employee. Det. Shoquist advised Det. Lopez that Mr. Ciuk had been arrested for selling narcotics. Det. Lopez stated that Mr. Ciuk told him he was not an employee of Woody's, and that he was not on the clock. However, Mr. Ciuk was the only person with a key to the bar, and he was observed giving change from the cash box. Lopez did an inspection of the bar and discovered several empty vodka bottles that had no invalidated stamps or that contained bugs. Det. Lopez then contacted the owner of the bar. Mr. Montague came to bar and fired Mr. Ciuk on the spot after being told of the violations.

D. TABC Enforcement Officer Nicolas Gutierrez

TABC agent Nicolas Gutierrez, a licensed police officer 10 years with the Commission (6 years as liaison to the SAPD), testified that he was called to assist Detectives Shoquist and Lopez to inspect the bar for any violations of the Commission's rules. He entered the bar at 7:00 p.m. and found a bottle with bugs in it, and two empty vodka bottles that had the local distributor's stamp intact. Agent Gutierrez explained the purpose of mutilating the identification stamps on empty liquor bottles. He also testified that he found a bottle that seemed to have insects in it, and that he shined a flashlight on the bottle and observed that, indeed, there were dead bugs in the liquid. He further stated that it takes a couple of days for bugs to collect in a bottle.

IV. Respondent's Request to Reconvene

Mr. Montague was given the opportunity to cross examine each witness. After his attempt at cross examination, Mr. Montague requested that the matter be reset to another day so that he could obtain proper counsel and subpoena witnesses to support his defense. Staff objected to the request. After considering the request and staff's objections, the ALJ recessed the hearing and advised the parties the hearing would be reconvened at 11:00 a.m. on January 18, 2000. The ALJ clearly stated, on the record, that no further notice would be sent to the parties concerning the new hearing date.

V. Reconvened Hearing

The hearing reconvened on January 18, 2000. Staff appeared through Dewey A. Brackin, Assistant Attorney General. Respondent did not appear, through Mr. Montague or through any other representative. Because of Respondent's failure to appear at the reconvened hearing, the ALJ will only consider the evidence that was presented at the hearing held on December 22, 1999.

VI. ALJ's Recommendation

Based on the evidence presented, the ALJ agrees with Staff that Respondent's permits should be suspended sixty days for each violation, for a total of 240 days, or in lieu of suspension, that Respondent pay a fine of \$36,000.00.

VII. Findings of Fact

1. JLM Entertainment L.C. *et. al.* d/b/a Woody's (Respondent), located at 826 San Pedro, San Antonio, Bexar County, Texas 78212-4640, holds Permit Nos. MB-424669 and LB-424670, issued by the Texas Alcoholic Beverage Commission (the Commission).
2. On November 3, 1999, the staff of the Commission (Staff) sent proper and timely notice of hearing to Respondent at the address provided in Finding of Fact No. 1.
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 short, plain statement of the matters asserted.
4. The notice of hearing also contained the following language in 10-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.
5. The hearing was convened on December 22, 1999, at the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Mr. Jim Lee Montague, Chairman of the Board of JLM Entertainment L.C., appeared on behalf of Respondent. Dewey A. Brackin, Assistant Attorney General, represented Staff.

6. On December 22, 1999, after hearing testimony of the Commission's witnesses and attempting cross examination, Respondent requested the hearing be continued so that he could obtain proper counsel.
7. The hearing was recessed, and the parties were advised the hearing would reconvene at 11:00 a.m. on January 18, 2000, without further notice.
8. The hearing was reconvened on January 18, 2000, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Mr. Montague did not appear nor did any other representative of Respondent. Dewey A. Brackin, ~~Assistant Attorney General~~, represented Staff.
9. On or about the 5th day of August 1998, a male dancer, employed by Respondent, exposed his genitals while dancing at Woody's, the licensed premises.
10. On or about the 14th day of February 1998, Respondent's employee, bartender Gregory Ciuk, possessed packets of cocaine while working at Woody's.
11. On or about the 14th day of February 1998, there were two empty bottles of distilled spirits on the licensed premises without invalidated, serially numbered identification stamps.
12. On or about the 14th day of February 1998, there was a bottle of liquor on the licensed premise that had dead bugs in it and was unfit for consumption.

VIII. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, and 11.61 (Vernon 1995 & Supp. 2000).
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. ALCO. BEV. CODE ANN. § 5.43 (Vernon 1995 & Supp. 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Proper and timely notice of the hearing was provided to Respondent pursuant to Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000), and 1 TEX. ADMIN. CODE (TAC) § 155.55(d) (1999).



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 206-3333
http://www.tabc.state.tx.us Fax: (512) 206-3498

Doyle Bailey, Administrator

May 12, 2000

Mr. Randy Yarbrough
Assistant Administrator
Texas Alcoholic Beverage Commission
P. O. Box 13127
Austin, Texas 78711-3127

Re: Docket No.: 578251
TABC v. JLM Entertainment, L.C.d/b/a Woody's

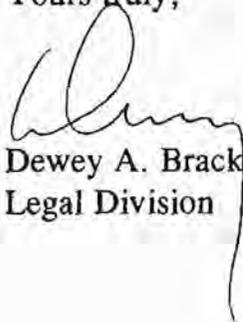
Dear Mr. Yarbrough:

Please find enclosed a Proposal for Decision and exhibits in the above-referenced cause. No exceptions to the proposal were filed by either party.

After your review, please inform this office of your decision. We will then draft an Order conforming with your judgment.

Thank you for your attention to this matter.

Yours truly,


Dewey A. Brackin
Legal Division

DAB/yt

*Adopt proposal for
Decision.
240 day Suspension
or \$36,000 fine
Randy Yarbrough
5/12/2000*