

DOCKET NO. 595145

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| IN RE THE CLUB HOUSE/THE CLUB | § | BEFORE THE |
| | § | |
| PERMIT NOS. N-209538, PE209539, NL264306 | § | TEXAS ALCOHOLIC |
| | § | |
| DALLAS COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-02-0953) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 28th day of February 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened and adjourned on January 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 6, 2002. 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. N-209538, PE209539, and NL264306, are hereby **SUSPENDED for five (5) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **24th** day of **April 2002**, all rights and privileges under the above described permits will be **SUSPENDED for a period of five (5) days, beginning at 12:01 A.M. on the 1st day of May 2002.**

This Order will become final and enforceable on March 21, 2002, 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 28th day of February 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

The Club House/The Club
RESPONDENT
1950 Hwy 287 E
Midlothian, Texas 76065
CERTIFIED MAIL/RRR NO. 7001 2510 0000 7279 0629

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 595145

REGISTER NUMBER:

NAME: THE CLUB HOUSE/THE CLUB TRADENAME:

ADDRESS: 1950 Hwy 287 E, Midlothian, Texas 76065

DATE DUE: April 17, 2002

PERMITS OR LICENSES: N-209538, PE209539, NL264306

AMOUNT OF PENALTY:

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 17TH, DAY OF APRIL, 2002, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

DOCKET NO. 458-02-0953

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|--------------------------|---|-------------------------|
| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE STATE OFFICE |
| COMMISSION | § | |
| | § | |
| | § | |
| VS. | § | OF |
| | § | |
| THE CLUB HOUSE/THE CLUB | § | |
| DALLAS COUNTY, TEXAS | § | |
| (TABC CASE NO. 595145) | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought suspension of The Club House/The Club's (Respondent) permits, or in the alternative payment of a penalty. The Staff alleged Respondent had paid for beer with checks which were dishonored. This proposal finds that the Staff's allegations are true. The Administrative Law Judge (ALJ) recommends that Respondent's permits be suspended, or in the alternative that Respondent pay a penalty.

I. PROCEDURAL HISTORY

On January 11, 2002, a public hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent failed to appear. The record was closed on January 11, 2002.

II. DISCUSSION

A. Notice

The Staff served its Notice of Hearing (the NOH) on Respondent on November 28, 2001. The NOH was mailed to Respondent at 1950 Highway 287 East, Midlothian, Texas, its last known mailing address according to TABC's records. It was filed with SOAH by facsimile transmission on the same day. The NOH contains a "disclosure, in 10-point, bold-face type, of the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default." 1 TEX. ADMIN. CODE § 155.55(c).

The NOH alleged Respondent had violated the Code in several specified instances. It informed the Respondent of the time, place, and nature of the hearing on the allegations. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2002).

B. Jurisdictional Facts

Respondent's licensed premises are located at 1519 South Hampton Road, Glenn Heights, Dallas County, Texas. The TABC has issued private club registration permit N 209538, private club late hours permit NL 264306, and beverage cartage permit PE 209539 to Respondent.

The Staff recommended that Respondent's permits be suspended for five days, or in the alternative Respondent pay a penalty of \$750.

The ALJ recommends Respondent's permits either be suspended for five days, or that Respondent pay a penalty of \$750.

III. PROPOSED FINDINGS OF FACT

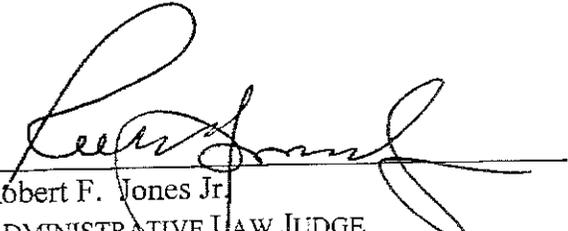
1. The Club House/The Club (Respondent) licensed premises are located at 1519 South Hampton Road, Glenn Heights, Dallas County, Texas.
2. The Texas Alcoholic Beverage Commission (TABC) has issued private club registration permit N 209538, private club late hours permit NL 264306, and beverage cartage permit PE 209539 to Respondent.
3. On November 28, 2001, the Staff served its Notice of Hearing (the NOH) by mailing it to Respondent at 1950 Highway 287 East, Midlothian, Texas, its last known mailing address according to TABC's records.
4. The NOH contained a disclosure, in 10-point, bold-faced type, of the fact that upon failure of the Respondent to appear at the hearing, "the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
5. The NOH alleged Respondent had violated the Texas Alcoholic Beverage Code (the Code) in several specified instances. It informed the Respondent the hearing would be held on January 11, 2002, at 1:30 p.m. at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
6. On January 11, 2002, a public hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent failed to appear. The record closed on January 11, 2002.
7. On January 26, 2001, Respondent gave a check as payment for beer and the check was dishonored when presented for payment.

8. On May 26, 2001, Respondent gave a check as payment for beer and the check was dishonored when presented for payment.
9. On June 1, 2001, Respondent gave two checks as payment for beer and the checks were dishonored when presented for payment.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Code.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of 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. 2003 (Vernon 2002).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2002).
4. The factual allegations in the NOH are deemed admitted. 1 TEX. ADMIN. CODE § 155.55(c).
5. Based on Findings of Fact Nos. 7 - 9, Respondent has violated §61.73(b) of the Code.
6. Based on the foregoing findings and conclusions, Respondent's permits should be suspended for five days, or in the alternative Respondent should pay a penalty of \$750.

SIGNED February 6, 2002.


Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS