

DOCKET NO. 598907

IN RE M D II ENTERTAINMENT INC.	§	BEFORE THE
D/B/A CHICAS LOCAS THEATRO, CENA	§	
Y CUARTO DE SHOW PARA ADULTOS	§	
PERMIT NOS. MB231269, LB231270	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2759)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 18th day of July 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert Jones, Jr. The hearing convened and adjourned on May 24, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 25, 2002. 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.

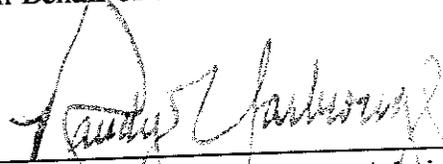
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED** effective **immediately**.

This Order will become final and enforceable on August 8, 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 or through the U.S. Mail, as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 18th day of July, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

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

M D II ENTERTAINMENT INC.
D/B/A CHICAS LOCAS THEATRO, CENA Y CUARTO
DE SHOW PARA ADULTOS
RESPONDENT
PO BOX 542225
Dallas, TX 75354
CERTIFIED MAIL NO. 7001 2510 0000 7278 8381

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

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 2001).

B. Jurisdictional Facts

Respondent's licensed premise is located at 3021 West Northwest Highway, Dallas, Dallas County, Texas. Respondent's mailing address is Post Office Box 542225, Dallas, Texas 75354. The TABC has issued mixed beverage permit MB231269 and mixed beverage late hours permit LB231270 to Respondent.

The ALJ recommends Respondent's conduct surety bond be forfeited.

III. PROPOSED FINDINGS OF FACT

1. Respondent's licensed premise is located at 3021 West Northwest Highway, Dallas, Dallas County, Texas.
2. The Texas Alcoholic Beverage Commission (TABC) has issued mixed beverage permit MB231269 and mixed beverage late hours permit LB231270 to Respondent.
3. Respondent has posted a conduct surety bond.
4. On April 24, 2002, the Staff of the TABC (Staff) served its Notice of Hearing (the NOH) on Respondent by certified mail, return receipt requested, to Respondent's mailing address, Post Office Box 542225, Dallas, Texas 75354. The mailing was claimed by Petitioner on May 28, 2002.
5. Section 11.63 of the Texas Alcoholic Beverage Code authorizes service of the NOH by sending it to Respondent's last known address as shown by the TABC's records.
6. 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."
7. The NOH alleged Respondent had violated the Code in several specified instances. It warned that the Staff would seek forfeiture of Respondent's conduct surety bond. It informed the Respondent the hearing would be held on May 24, 2002, 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.
8. On May 24, 2002, a public hearing was convened before Administrative Law Judge (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

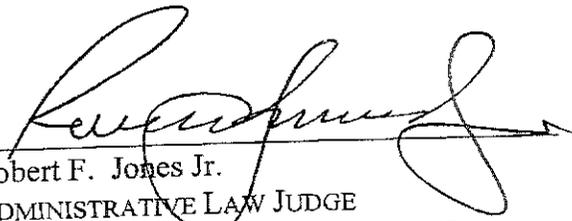
Commission's (TABC) Legal Division. Respondent failed to appear. The record was closed on June 12, 2002.

- 9. Respondent has been adjudicated of committing three violations of the Texas Alcoholic Beverage Code since September 1, 1995.

IV. PROPOSED CONCLUSIONS OF LAW

- 1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
- 2. 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 2001).
- 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 2001), and § 11.63 of the Code.
- 4. The factual allegations in the NOH are deemed true. 1 TEX. ADMIN. CODE § 155.55(c).
- 5. Based on the foregoing findings and conclusions, Respondent's conduct surety bond should be forfeited. §§ 11.11 and 61.13 of the Code; 16 TEX. ADMIN. CODE § 33.24.

SIGNED June 25, 2002.



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