

**DOCKET NO. 503475**

<b>IN RE COWBOY CANTINA INC.</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>d/b/a Cowboy Cantina</b>	<b>§</b>	
<b>PERMIT NOS. PE-600327, N</b>	<b>§</b>	
	<b>§</b>	
	<b>§</b>	<b>ALCOHOLIC</b>
	<b>§</b>	
<b>WOOD COUNTY, TEXAS</b>	<b>§</b>	
<b>(SOAH DOCKET NO. 458-06-1985)</b>	<b>§</b>	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 27<sup>th</sup> day of February, 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Michelle Kallas. The hearing was convened August 22, 2006 and closed on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 22, 2006. The 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. No exceptions or responses were filed by either party.

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.

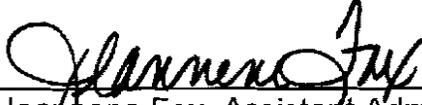
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permits shall be suspended for a period of 20 days commencing at 12:01 on April 11, 2007, unless a civil penalty in the sum of \$3,000.00 is paid by the Respondent to the Commission on or before 12:01 a.m. on April 4, 2007.**

**This Order will become final and enforceable on March 20, 2007, unless a Motion for Rehearing is filed before that date.**

By copy of this Order, service shall be made upon all parties as indicated below.

**SIGNED** on this 27<sup>th</sup> day of February 2007, at Austin, Texas.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Michelle Kallas  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
**VIA FACSIMILE: 214-956-8611**

**COWBOY CANTINA INC.**  
**RESPONDENT**  
**d/b/a Cowboy Cantina**  
873 CRD 4990  
Quitman, Texas 75783  
**VIA FACSIMILE: 903-967-2962 &**  
**REGULAR MAIL**

Diane Brown  
**ATTORNEY FOR PETITIONER**  
**VIA FACSIMILE 214-678-4050**

Licensing Division

Longview District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § §	BEFORE THE STATE OFFICE     OF    ADMINISTRATIVE HEARINGS
V.		
COWBOY CANTINA INC., d/b/a COWBOY CANTINA, Respondent		

### PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Cowboy Cantina Inc. (Respondent), alleging that on or about July 22, 2005, Respondent, or its agent, servant, or employee sold or delivered an alcoholic beverage to an intoxicated person, in violation of the Texas Alcoholic Beverage Code (Code). The Administrative Law Judge (ALJ) recommends the Respondent's permits be suspended for a period of 20 days, or in lieu of any suspension, the Respondent pay a civil penalty in the amount of \$3,000.00.

#### I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 §§ 11.61, and 61.71. 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 April 25, 2006, Petitioner issued its notice of hearing directed to Respondent. On June 5, 2006, the case was continued to August 22, 2006, at 10:30 a.m. On August 22, 2006, a hearing convened before SOAH ALJ Michelle Kallas at 227-C North Spring Avenue, Tyler, Smith County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared *pro se*. The record closed on August 22, 2006.

## II. DISCUSSION

### A. Applicable Law

The Commission or administrator may suspend for not than 60 days or cancel an original or renewal permit if it is found that the permittee sold or delivered an alcoholic beverage to an intoxicated person. TEX. ALCO. BEV. CODE ANN. § 11.61 (b) (14).

### B. Evidence

#### 1. Petitioner's Evidence

##### a. Marcus Stokke

Marcus Stokke, an Enforcement Agent for TABC, testified that on July 22, 2005, he and other TABC agents conducted an investigation of Respondent's premises located at 3607 Highway 154 West, Yantis, Wood County, Texas, to determine if Respondent was selling alcoholic beverages to intoxicated persons.

Agent Stokke testified that while undercover at Respondent's establishment, he initially encountered a patron, Larry Roby, in the restroom. Agent Stokke observed Mr. Roby from 11:25 p.m. until 11:55 p.m. According to Agent Stokke, Mr. Roby appeared extremely intoxicated. He had extremely slurred speech; red, glassy eyes; poor balance; and slow deliberate movements. Agent Stokke testified that he could not make sense of anything Mr. Roby was saying. He observed that Mr. Roby was always in possession of a Bud Light beer.

At approximately 11:30 p.m., Agent Stokke observed that Mr. Roby had been served a new beer. However, due to the crowd conditions in the club, he was unable to determine who in fact

served the beer to Mr. Roby. He only heard a waitress state that "Larry" wanted another beer.

At approximately 11:55 p.m., Mr. Roby approached the bar where Agent Stokke was sitting with another undercover agent, Agent Peel. Mr. Roby ordered another beer and advised the bartender that he wanted to close his tab. Again, Agent Stokke observed signs of intoxication. In addition to the previously observed signs of intoxication, Mr. Roby experienced difficulty removing his credit card from his wallet and leaned against the bar to hold himself up. At this time, Agent Stokke observed Nancy Loggins, Respondent's bartender working behind the bar, serve a Bud Light beer to Mr. Roby. Mr. Roby was subsequently arrested for public intoxication by Agent Pearson.

Agent Stokke later reviewed the TABC seller-server records and discovered that Ms. Loggins was not certified on the day in question.

**b. Jeff Pearson**

Jeff Pearson testified that he is an agent for TABC. Agent Pearson was working in an open capacity along with Agents Stokke and Peel, who were undercover. Agent Stokke contacted Agent Pearson and informed him of the situation inside the club. When Agent Pearson entered the club, he observed Mr. Roby. Agent Stokke had provided Mr. Roby's physical description to Agent Pearson. Agent Pearson observed that Mr. Roby had very slurred speech; red eyes; breath smelling of an alcoholic beverage; and very poor balance. Mr. Roby would not cooperate with regards to field sobriety tests. There was no question in Agent Pearson's mind that Mr. Roby was intoxicated.

Agent Pearson also made contact with Ms. Loggins. She informed him that her seller-server certification was expired at that time.

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**c. Jeff Peel**

Jeff Peel testified that he is an agent with TABC. On July 22, 2005, he was working in Respondent's establishment in an undercover capacity along with Agent Stokke.

Agent Stokke informed him that he had encountered a very intoxicated person in the restroom. According to Agent Peel, they had been observing at least three other people, in addition to Mr. Roby, who were possibly intoxicated on the premises. Once Agent Stokke identified Mr. Roby, Agent Peel began to observe him. Agent Peel observed that, while Mr. Roby was walking, he was holding onto chairs and tables to regain his balance. Agent Peel was not close enough to Mr. Roby to confirm that he had slurred speech. According to Agent Peel, Mr. Roby's balance was horrible. Agent Peel observed Mr. Roby approach the bar next to Agent Stokke and order another beer. He observed that Mr. Roby leaned his chest against the bar, experienced difficulty with his coordination, and fumbled with his wallet while retrieving his credit card. In Agent Peel's opinion, it was obvious that Mr. Roby was intoxicated. According to Agent Peel, Mr. Roby was exhibiting textbook signs of intoxication which bartenders are trained to look for in customers.

**2. Respondent's Evidence**

Respondent did not provide any evidence at the hearing.

**C. Discussion and Recommendation**

The evidence in this case establishes that Respondent's bartender, Nancy Loggins, sold an alcoholic beverage to an intoxicated person. Both Agents Stokke and Peel observed that, on July 22, 2005, at approximately 11:55 p.m., Ms. Loggins served a Bud Light beer to Mr. Roby. The only issue is whether Mr. Roby was intoxicated at the time of the sale.

While undercover, Agents Stokke and Peel observed that Mr. Roby exhibited classic indicia of intoxication, including, poor balance, extremely slurred speech, red eyes, slow deliberate movements, and difficulty removing a credit card from a wallet. Agent Stokke contacted Agent Pearson who, upon contact with Mr Roby, observed poor balance, red eyes, slurred speech, and breath smelling of an alcoholic beverage. Mr. Roby would not cooperate with regards to field sobriety tests. All three agents testified that it was obvious that Mr. Roby was intoxicated.

The evidence on the record is sufficient to establish that Respondent sold an alcoholic beverage to an intoxicated person in violation of § 11.61 (b) (14) of the Code. Therefore, the ALJ recommends that Respondent's permit be suspended for a period of 20 days, or in lieu of any suspension, the Respondent pay a civil penalty in the amount of \$3,000.00.

### III. FINDINGS OF FACT

1. Cowboy Cantina, Inc. (Respondent) holds a Private Club Registration Permit, N-600327, which includes the Beverage Cartage Permit, issued July 5, 2005, by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 3607 Highway 154 West, Yantis, Wood County, Texas.
  2. On July 22, 2005, at approximately 11:55 p.m., Agent Stokke and Peel observed Nancy Loggins, Respondent's bartender, serve a Bud Light beer to Larry Roby, a patron in Respondent's establishment.
  3. At that time, Mr. Roby exhibited signs of intoxication. Specifically, Agents Stokke, Peel, and Pearson observed that Mr. Roby had: slurred speech; red, glassy eyes; the odor of an alcoholic beverage on his breath; poor balance; deliberate slow movements; and difficulty removing his credit card from his wallet.
  4. Mr. Roby would not cooperate with regards to field sobriety tests. He was arrested by Agent Pearson.
  5. On April 25, 2006, Petitioner sent a notice of hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records, informing Respondent of the date, time, and place of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
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6. The hearing on the merits convened August 22, 2006, at the State Office of Administrative Hearings, 227-C North Spring Avenue, Tyler, Smith County, Texas, before ALJ Michelle Kallas. Petitioner was represented by TABS Staff Attorney, Timothy Griffith. Respondent appeared *pro se*. The record closed on August 22, 2006.

#### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61 and 61.71.
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, I T EX. ADMIN. CODE (TAC) § 155.55 and 16 TAC § 37.3.
4. Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61 (b) (14).
5. Respondent's permits should be suspended for a period of 20 days, or in lieu of any suspension, the Respondent pay a civil penalty in the amount of \$3,000.00.

**SIGNED September 22, 2006.**



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**MICHELLE KALLAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

September 22, 2006

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

**RE:** Docket # 458-06-1985  
TABC VS. COWBOY CANTINA INC.,  
D/B/A COWBOY CANTINA *file #*

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Michelle Kallas".

Michelle Kallas  
Administrative Law Judge

MK/sr  
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission; **Via Fax**,  
Cowboy Cantina Inc., D/B/A Cowboy Cantina, Respondent; **Via Regular Fax**

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