

DOCKET NO. 536988
DOCKET NO. 550357

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
CENTERFOLDS INC.	§	
D/B/A CHICAS LOCAS THEATRO CENA Y	§	ALCOHOLIC
QUARTO DE SHOW PARA ADULTOS	§	
PERMIT/LICENSE NO(s). MB235656	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-2883)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this day the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge. The hearing convened on 17th day of July, 2007 and adjourned on July 17, 2007. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 23rd day of July, 2007. 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. 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 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.

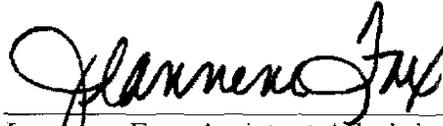
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that your permit(s) and/or license(s) is/are hereby canceled.

This Order will become final and enforceable on the 12th day of September, 2007, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this the 17th day of August, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DBS

CENTERFOLDS INC.
d/b/a CHICAS LOCAS THEATRO
CENA Y CUARTO DE SHOW PARA ADULTOS
PO BOX 542225
DALLAS, TX 75354
RESPONDENT
VIA US MAIL

DANIELLE SCHICK
ATTORNEY FOR PETITIONER
TABC/Dallas Legal Section

Licensing Division

DOCKET NO. 458-07-2883¹

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner**

V.

**CENTERFOLDS, INC. D/B/A CHICAS
LOCAS THEATRO CENA Y QUARTO DE
SHOW PARA ADULTOS,
Respondent**

§
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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Centerfolds, Inc. d/b/a Chicas Locas Teatro Cena Y Cuarto De Show Para Adultos (Respondent), alleging that Respondent committed two violations² in relation to its operation of this licensed premises. As Respondent did not appear and was not represented at the hearing, the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) deems TABC Staff's allegation to be true and recommends cancellation of Respondent's permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 6, 11, 28 and 29. 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 findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2001.

¹ This case is consolidated with SOAH Docket No. 458-07-2884 for purposes of making the record in both of these cases and issuance of a single Proposal For Decision for TABC's consideration in reference to this Permittee/Respondent.

² The Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found after notice and hearing, that any permittee violated a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2).

On May 23, 2007,³ and May 24, 2007,⁴ TABC Staff issued Notices of Hearing to Respondent at its mailing address of record⁵ reflected on Respondent's permits. These Notices of Hearing were sent⁶ by U.S. Post Office certified mail, return receipt requested. TABC Staff presented copies of return receipt "green cards," which were received⁷ at Respondent's address on May 30, 2007, by Steve Reeves. In addition to the signed return receipt cards evidencing actual notice of these proceedings, the Notices of Hearing are presumed to have been received at Respondent's address of record pursuant to 1 TEX. ADMIN. CODE § 155.25(d),⁸ based upon the Certificate of Service included in TABC Staff's Notices of Hearing.

A hearing was convened as scheduled before ALJ Tanya Cooper at the SOAH office located at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Texas, on July 17, 2007. TABC Staff was represented at the hearing by Danielle Boazeman-Schick, TABC Staff Attorney. Respondent did not

³ TABC Case No. 536988, alleged violation: *permitting a child to work nude.*

⁴ TABC Case No. 550257, alleged violation: *breach of the peace.*

⁵ Respondent's mailing address of record is P.O. Box 542225, Dallas, TX 75354.

⁶ 1 TEX. ADMIN. CODE § 155.25 provides that any person filing a document with SOAH in a case shall, on the same date as the document is filed, provide a copy to each party . . . by regular, certified, or registered mail.

⁷ TABC's Rule 37.3 provides that service of notices of hearing, . . . related to contested cases shall be by certified mail addressed to the licensee/permittee/certificate holder's last known address as reflected in the commission's records. A certificate of service to such address shall be prima facie evidence of adequate service on the licensee/permittee/certificate holder. This rule further requires that licensee/permittee/certificate holders and applicants for licenses, permits, or certificates, and their representatives, shall notify the commission in writing of any change of address within seven days of such change. Licensee/permittee shall file their change of address with the Licensing Division of the Texas Alcoholic Beverage Commission. 16 TEX. ADMIN. CODE § 37.3.

⁸ 1 TEX. ADMIN. CODE § 155.25 provides as follows:

...

(d) Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding the party's receipt of documents served by another party:

...

(3) If a document was sent by regular mail, certified mail, or registered mail, the judge shall presume that it was received no later than three days after mailing.

appear and was not represented at the hearing. During the hearing, TABC Staff offered evidence to support a default decision against Respondent. The hearing concluded and the record closed on that same day.

II. ANALYSIS

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. TABC Staff's Notices of Hearing complied with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE. ANN. § 11.63.⁹ Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the Notices of Hearing are deemed admitted as true. Accordingly, the ALJ incorporates these allegations into the Findings of Fact below.

At the conclusion of the hearing, TABC Staff requested that Respondent's permits be cancelled for cause. The ALJ agrees that TABC Staff's penalty recommendation is appropriate. Based upon Respondent's failure to appear at the hearing as scheduled and the Code violations deemed to have been committed by Respondent, cancellation of Respondent's permits is recommended.

III. FINDINGS OF FACT

1. Centerfolds, Inc. d/b/a Chicas Locas Teatro Cena Y Cuarto De Show Para Adultos (Respondent) holds a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit, MB-235656, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 3401 W. Division Street, Arlington, Tarrant County, Texas.
2. On May 23, 2007, and May 24, 2007, the TABC Staff issued Notices of Hearing to

⁹ At least 10 days' notice shall be given when a hearing is provided by this code. A notice of hearing for refusal, cancellation, or suspension of a license or permit may be served personally by a representative of the commission or sent by registered or certified mail addressed to the licensee or permittee. TEX. ALCO. BEV. CODE ANN. § 11.63.

Respondent at its mailing address of record reflected on Respondent's permits: P.O. Box 542225, Dallas, Texas 75354. These notices were sent by U.S. Post Office certified mail, return receipt requested, and were received at that address on May 30, 2007.

3. The Notices 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 statement of the matters asserted.
4. The Notices of Hearing properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice will be deemed to be admitted as true, and the relief sought may be granted by default.
5. On July 17, 2007, a hearing was convened at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. TABC Staff was represented at the hearing by Danielle Boazeman-Schick, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. On or about May 31, 2006, Respondent, or its agent, servant or employee, permitted a child to work nude or topless on the licensed premises.
7. On or about September 20, 2006, a breach of the peace occurred on the licensed premises or a premises under Respondent's control.
8. The breach of the peace referred to in Finding of Fact No. 7, was not beyond the control of Respondent, or its agent, servant, or employee.
9. The breach of the peace referred to in Findings of Fact Nos. 7 and 8 resulted from the Respondent's improper supervision of persons permitted to be on the licensed premises or on a premises under Respondent's control.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. chs. 5, 6, 11, 28 and 29.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting 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. c1, 2001.
3. Based upon Findings of Fact Nos. 2 - 4, TABC Staff issued its Notices of Hearing in

compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.

4. Based upon Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 11.61(b)(2), 11.61(b)(7), and 29.03 and 16 TEX. ADMIN. CODE § 35.31.
6. Based upon Findings of Fact Nos. 7 - 9, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 28.11, and 29.03.
7. Based upon Findings of Fact Nos. 1 - 9, and Conclusions of Law Nos. 1 - 6, Respondent's permits should be cancelled.

DATE SIGNED: JULY 23, 2007



**TANYA COOPER,
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**
