

DOCKET NO. 458-98-1002
(TABC NO. 565257)

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
VS.	§	OF
	§	
BSSP, INC., D/B/A CLUB OASIS	§	
PERMIT NOS. MB-186814 & LB-186815	§	
MIDLAND COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

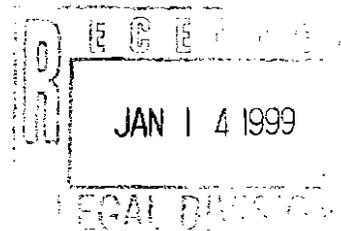
The Staff of the Texas Alcoholic Beverage Commission (Staff), Petitioner, brought this action against, BSSP, INC., D/B/A CLUB OASIS, Respondent, to suspend its Mixed Beverage Permit and its Mixed Beverage Late Hours Permit for violation of the Texas Alcoholic Beverage Code [hereinafter Code]. The basis for the action is that a breach of the peace occurred in the Respondent's premises which was not beyond the control of the Respondent and which resulted from improper supervision. The Petitioner requests a suspension of Respondent's permit for 60 days with an alternative penalty of \$9,000.00. This proposal recommends that there be no suspension.

I. Procedural History

On October 7, 1998, a hearing was held before Administrative Law Judge Louis Lopez in the Midland City Hall, City Council Chambers, 300 North Loraine, Midland, Texas. The Petitioner was represented by attorney Gayle Gordon. The Respondent was represented by attorney E. Jason Leach. Evidence was received, and the hearing was closed on the same day.

II. Jurisdiction and Notice

The sufficiency of jurisdiction and of the notice of hearing was stipulated by the parties. Authority and jurisdiction are found in Code Sections 5.31--5.44 and 6.01. Service of proper notice of the hearing was made on Respondent pursuant to Code Section 11.63 and the Administrative Procedure Act, Texas Government Code Sections 2001.051 and 2001.052.



III. Discussion

A. Statutory Provisions

The following provisions are relevant in the consideration of this cause of action:

Code Section 28.11:

BREACH OF PEACE. The commission or administrator may suspend or cancel a mixed beverage permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

Code Section 61.71(a):

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period;

...

Code Section 11.64:

ALTERNATIVES TO SUSPENSION, CANCELLATION. (a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission or administrator shall determine the amount of the penalty and in doing so shall consider the economic impact a suspension would have on the permittee or licensee. The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended. If the licensee or permittee does not pay the penalty before the sixth day after the commission or administrator notifies him of the amount, he loses the opportunity to pay it and the commission or administrator shall impose the suspension.

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B. Evidence Received

The witnesses called by the Petitioner were Tennia Cole, Jennifer Stephens (her daughter), John Cole (her husband), and TABC Agent Delbert Wise. The Respondent called Sandye Pierce, part owner and manager of the Club Oasis.

There was no dispute that a breach of the peace occurred in Respondent's establishment about 9:30 p.m. on Sunday, June 18, 1995, when Carolyn Summers attacked Tennia Cole. There was agreement among the witnesses on the following basic account of events: Tennia Cole went into the Club Oasis about 8:30 p.m. to hear Ray Roberts, the musician playing that night. Her husband John Cole, her daughter Jennifer D. Stephens, and Jennifer's husband came with her. They all sat down at a table. Roberts' girl friend, Carolyn Summers, was in the establishment that night. The two have since married. Roberts sat at the Cole table during a break during which the jukebox was playing music. Summers never sat at the table nor talked to anyone there. Ray Roberts and Tennia Cole had been good friends for more than twenty years. Tennia Cole called him her best friend.

A heated argument then began between Mr. Roberts and Ms. Summers near the Cole table. Mr. Roberts pushed Ms. Summers and she fell to the floor, but there was no further violence between the two after that. During this quarrel, the Cole party got up from their table to make sure they would be out of the way and went to stand on the dance floor. After a pause of about three minutes, Ms. Summers attacked Tennia Cole by throwing her down on the dance floor and pulling her by the hair. She never struck Mrs. Cole but instead pulled her by the hair for one to five minutes while both lay on the floor. At the same time as Mr. Cole tried to get Ms. Summers off his wife, Ms. Summers proceeded to bite the tip off one of his fingers. In trying to pull her off, Mr. Cole had inadvertently placed his finger in Ms. Summers' mouth. Mrs. Cole's daughter also got down on the floor to try to pry Ms. Summers off her mother. Summers kicked her legs very hard as she lay on the floor and, by doing this, managed to break Mrs. Stephen's hand. Mr. Cole's hand was bleeding so badly that he went to get a towel to try to tend it before being able to pry Ms. Summers off his wife. Ms. Summers was finally restrained by a customer named Ralph Gray. No Club Oasis employee ever became physically involved to try to break up the fray.

Mrs. Cole was very upset because her husband was bleeding seriously and tried to get to the telephone behind the bar in order to make a call to the police. She was not allowed behind the bar. The manager, Sandye Pierce, asked Mr. Cole if he wanted an ambulance called, but he declined. After several more minutes, the Cole family left for Memorial Hospital where Mrs. Cole called the police. The Midland police arrived at the Club Oasis 45 minutes after the incident.

Ms. Pierce and her mother own the Club Oasis. Carolyn Summers was a daytime, weekday bartender at the club. She had been working there for more than one year on the date of the incident. She was off-duty when she started this fight. There were four employees on duty that night. All were women. Ms. Summers had never been involved in a fight at the bar. The Coles had heard of a physical altercation in the apartment which

Mr. Roberts and Ms. Summers shared but knew nothing else about her being violent. They said they were not afraid of her and did not in any way fear for their safety before she attacked Mrs. Cole. There was no evidence that Ms. Pierce knew of any previous violent acts by Ms. Summers. The attack was entirely unexpected by all. On the stand, Mrs. Cole conjectured that it appeared that the attack was motivated by jealousy. Other than that conjecture, there was no evidence of the motive.

The major evidentiary dispute was whether Ms. Pierce called or had someone call 911. She insisted she had told bartender Janet Carlton to call while the Coles and Ms. Summers were on the floor. The Coles were not aware she had and said they had not been allowed to get to the telephone to make a call. Ms. Pierce said there was a policy of not letting patrons go behind the bar, and that is where the telephone is located. TABC Agent Delbert Wise testified he had checked records and found that no call was made to 911 or to the police from the Club Oasis. Another point of difference was on the time the two women involved in the fight had been on the floor. The Cole witnesses said it was about five minutes, but Ms. Pierce seemed to remember that it was closer to one minute.

Ms. Pierce's testimony was in agreement with the Coles on the extent of the confrontation between Mr. Roberts and Ms. Summers--shouting and a shove that sent Ms. Summers to the floor. She said that after the confrontation, Mr. Roberts and Ms. Summers calmed down and went to sit down at a bench. Ms. Pierce then went over to the couple and asked them if everything was going to be all right between them, and they told her that they would be fine. She felt that the situation was under control.

The witnesses at the hearing were Mrs. Stephens, the Coles, Agent Wise, and Ms. Pierce. A statement made by Ms. Pierce to Agent Wise on September 19, 1995, was admitted into evidence but was totally repudiated by Ms. Pierce. She claimed she had not said most of the things that were in it. According to the statement, Roberts did much more than just push Ms. Summers down. He cursed her repeatedly, threw a drink on her, threw her "across the room," and dragged her by the hair. In this statement, Ms. Pierce said that it was at this time that she told her bartender Janet Carlton to call the police.

C. Analysis

It is very unfortunate that this attack occurred and understandable that the Cole family is still upset about such a traumatic experience. Under Code Section 28.11, the Club Oasis is subject to a suspension of its permit if the breach of the peace was "not beyond the control of the permittee and resulted from improper supervision of persons permitted to be on the licensed premises . . ." It is clear that there was a breach of the peace and that it occurred on the licensed premises. There was never any dispute about these last two statutory elements.

What is important to consider are the two issues in the quote above. Was the breach beyond the control of Club Oasis? Did the breach result from the improper supervision of persons in the bar? This is a conjunctive requirement. Both elements must be found before the Respondent can be held liable. The failure of either element is sufficient to defeat the Petitioner's request for suspension of the Respondent's license.

It should be noted that all that the statute requires is supervision of persons in the bar. It does not make any special provision for closer supervision of employees as opposed to patrons. Thus, there was not a higher standard of responsibility for Club Oasis to follow because Carolyn Summers was an employee.

1. Beyond the Control

Agent Wise claimed that the Club Oasis could have controlled the fight between Ms. Summers and the Coles if it had called the police after the confrontation between Mr. Roberts and Ms. Summers. He also testified that there is no single avenue for a bar to follow whenever a disturbance occurs. What is necessary is that managers and employees take adequate steps to try to diffuse the situation. It is not automatically required that the police be called. Management can seek to control the situation in the most appropriate manner; it can warn the offending persons or, if necessary, eject them.

Looking at the circumstances behind the blow-up between Mr. Roberts and Ms. Summers, it is hard to see that Ms. Pierce should have done anything more than what she did. The version of the incident which came out of the testimony at the hearing is the one that will be adopted. The account was provided mostly by the Coles with widespread agreement from Ms. Pierce. This gives credence to her repudiation of the sworn statement. The version in Ms. Pierce's sworn statement will not be given much weight. The accepted version is that there was shouting between Mr. Roberts and Ms. Summers and that there was one shove which sent her to the floor. After that happened, Ms. Pierce went to the couple and inquired as to whether they were going to calm down. They assured her they would. At this point, there was not much else for her to do. The couple had gotten carried away, and there was every reason to believe that nothing more would happen.

To call the police at this point would have been an overreaction. Police presence would have not accomplished much. Ms. Summers could have pressed charges for misdemeanor assault against Mr. Roberts but probably would not have. The police would have wasted their time. There would have been no justification to remove the couple. The incident did not reach the point of constituting a fight so that they could have both been arrested and taken away. If either one was going to be removed, it would have been Mr. Roberts. There was no justification for removing Ms. Summers since she seemed to be the victim and not the aggressor. Thus, she would have remained on the premises and would have been just as likely to assault Mrs. Cole. If anything, seeing her boyfriend hauled away may have made her even more angry than she became.

It could be argued that the mere appearance of the police would have been effective in calming down Ms. Summers' emotions, but there is no guarantee of this. It is mere speculation. It may have postponed Ms. Summers' demonstration of rage, but the assault on Mrs. Cole could just as well have taken place later in the night. Again, the appearance of the police over such a small incident may have irrationally made her blame Tennia Cole and enraged her against Mrs. Cole even more.

It could be claimed that, even if she didn't call the police, Ms. Pierce should have herself ejected either Mr. Roberts or Ms. Summers or both from the club. This calls for the very same considerations as in the case of calling the police. If she had thrown out Mr. Roberts, Ms. Summers would have stayed in the bar to wreak havoc just the same. The incident was minor and apparently under control. Neither was there any indication that the quarrel between the couple would spread any further than the two participants. It would not have been fair to eject Ms. Summers, either alone or in tandem with her boyfriend. If Ms. Pierce had decided to eject Ms. Summers, there would be no guarantee that Ms. Summers would not have snuck back in and attacked Cole. Even if the more damaging account given of the quarrel is adopted--the one in Ms. Pierce's affidavit, there is no reason to maintain that Ms. Summers should have been asked to leave. In that version, she was even more of a victim. It is important to note that the Coles did not feel threatened by any of the events involving Mr. Roberts and Ms. Summers. The Cole witnesses each stated this upon cross-examination. They simply moved to the dance floor in order to be sure they would be out of the way but remained, calmly expecting that they would not be involved.

Even assuming that the police had been called as soon as the couple started quarreling, there is no evidence that they would have arrived very soon. Law enforcement agencies often have other calls to answer, and officers don't always show up at a scene in a few minutes. It appears that the quarrel took place for less than five minutes and then about three minutes elapsed between the time it ended and the assault on Mrs. Cole. The Coles estimated that the tussle on the dance floor lasted five minutes, but it's a good chance that the traumatic nature of the event would have made them feel that much more time passed than actually did. It will be assumed that the fight on the floor lasted no more than four minutes. That means that the time elapsed from the beginning of couple's quarrel to the end of the floor melee was at most twelve minutes. There is no assurance that the police would have arrived on time to break up the floor fight much less in time to prevent it. Nor does it seem that they could have arrived soon enough to prevent the injuries to Mr. Cole and his stepdaughter. Mr. Cole was severely bitten right away and even got up from the floor before the fight was over. At any rate, there is little evidence to indicate that the police should have been called at any time before the floor fight got underway.

It is not even clear that the club would have been expected to call the police within the first two minutes or so of the fight. It would not be out of the question for the management of a club to expect that a fight would be broken up soon after it began if people were involved in trying to separate the combatants. This is especially true if the fighters were females who, it can be safely said, generally are less inclined to violence than men. There was simply no warning that an attack would take place and that the ferocity of Ms. Summers would be so intense. No one heard Ms. Summers make any threat that she would attack Mrs. Cole. Once two minutes had passed and the melee was still going on, the duty clearly arose for the Club Oasis to call the police to come break up the fight. But it was then and only then that the duty arose. It is clear, however, that the police would have arrived after the fight had ended since the fight itself only lasted four minutes.

Ms. Pierce claimed she had the police called at least by the time the fight began. If that is true, she did her duty. It is found that Ms. Pierce was truthful in stating that she told a bartender to call the police or 911. She had the police called at the earliest point at which she saw there was a breach of the peace and at which it was not beyond her control to do something to stop it. Before that, the attack by Ms. Summers was not foreseeable and was thus beyond the control of Ms. Pierce. She did her duty and did not violate Code Sec. 28.11.

Several questions still arise. Should the employees of the Club Oasis have directly intervened to try to break up the dance floor fight? Agent Wise testified that employees are not only not expected to physically jump in to try to stop a fight, they are encouraged to refrain from it. All the employees were women. Should the club have had a bouncer or bouncers on duty in the event something like this happened? There was no evidence whatsoever on this, so apparently a business is not expected to hire peacemakers. Agent Wise said the appropriate action was to call the police. Was Ms. Pierce wrong in depending on an employee to call the police? The answer is no. She had the right to expect that an adult employee would follow her instructions and that she would not be held liable for her employee's failure.

At this point, it would be good to discuss the circumstances surrounding any instruction to call the police. Would it not be understandable that the bartender, Janet Carlton, may not have heard Ms. Pierce's order to call the police given the commotion? In addition to shouting that probably went on, loud music was being played on the jukebox. Might not the bartender have heard the instruction and have had every intention to call the police but not gotten around to it with all the excitement, especially since the disturbance soon became centered behind the bar? Once the fight was over the bartender may not have thought it was still necessary to call the police. These are all plausible explanations for there being no record of a call to police. There is no credible evidence that the bartender's failure to call the police was intentional or that Ms. Pierce failed to tell anyone to call the police. Is it not also understandable if Ms. Pierce, in all the panic and confusion, neglected to call or tell someone to call the police? Could this not have happened without any actual intention on her part to not have the police called? At any rate, Ms. Pierce is believed in her statement that she told the bartender to call 911 or the police.

Let it be repeated that it was not foreseeable that Carolyn Summers would attack Mrs. Cole. There were no indications that this would happen or that the attack would be as violent as it was. The Coles didn't fear it. None of them heard Ms. Summers make any threat whatsoever. No one ever said that Summers told anyone that she intended to ambush Mrs. Cole. She had never been involved in a fight in the bar before. She was argumentative with Mr. Roberts but did not physically attack him in any way. Consequently, the attack was beyond the control of Ms. Pierce. Once the fight began, she could have exercised some control by calling the police and should have done so, but that would not have prevented the attack which was the actual breach of the peace.

Perhaps, it could be argued that it was an ongoing breach of the peace and that Ms. Pierce was responsible for not taking action to prevent the extension of the breach of the peace more than a couple of minutes after the fight began. It has been found that Ms.

Pierce was not expected to call the police until one or two minutes after the fight began. If the police had been called at that time, it is highly doubtful that they would have arrived in time to catch the fight. It is possible that they could have been in the area without any other calls to take care of. This would have made it more likely that they could arrive quickly, but even then they would have had to arrive in two minutes or less to observe the fight. There is no evidence that this would have occurred, and, in fact, it is improbable that it would have. Therefore, even if the Club Oasis had called the police at the required moment, it would have probably had no effect in even breaking up the fight. Therefore, the curtailment of the fight was also beyond the control of the Respondent.

Even examining the worst case scenario for Ms. Pierce and assuming she fully intended to forego calling the police, the question still remains whether there was proximate cause between her omission and the ongoing fight. Proximate cause, or legal cause, is not a clearly defined term, but it is the notion that there has to be some connection between a person's action and an unfortunate event it brought about. If I run a red light and hit a car, my action is clearly the proximate cause of damages to the car and to its occupants. If I run a red light and there is a car coming on the cross street which drives right behind mine seemingly unaffected by my infraction, it may be another matter. Suppose right after passing behind my car, the other car veers to the right and hits a pedestrian on the sidewalk. Suppose that later the driver is found to have had a .20 reading of alcohol in his blood and even admits that he never saw my car. In that case, I should not be held liable even though I have clearly done a wrongful act. My running a red light was merely coincidental and had nothing to do with the other driver running over the pedestrian.

The application of the doctrine of proximate cause to this case involves finding that intentional failure to call the police allowed the fight to begin or to continue. The considerations involving a general failure have been examined in detail above, and it was found that calling the police at the right time would not have made any difference. The police most likely would not have arrived on time to even see the fight. In the event the failure to call was intentional, it wouldn't make any difference to the analysis. Under Section 28.11, there is no provision for different treatment for an intentional omission; an intentional omission to call is still examined in the same manner. Whatever the reason for the failure, it is still necessary to look at the effect it had. The result remains that even if the police had been called, they would have most likely arrived after the fight had ended.

2. Improper Supervision.

Under Section 28.11, it is sufficient to find that the breach of the peace was beyond the control of the Respondent in order to find that it was not liable. Nevertheless, the same considerations apply in deciding whether the breach of the peace resulted from improper supervision. Ms. Pierce engaged in appropriate supervision when she approached Mr. Roberts and Ms. Summers and asked whether there would be any further problems. They told her there wouldn't be. Afterward, there was no supervisory action that Ms. Pierce could have taken to prevent Ms. Summers from going on her rampage. The outbreak was completely unforeseen. Even if Ms. Summers had attacked Mr. Roberts--a much more likely victim, such an assault could not have been foreseen, since

Ms. Summers had never acted violently before. Once the fight got started, Pierce took proper action in telling an employee to call the police. Even if she failed to have the police called, that supervisory omission did not affect the outcome, which was that the fight was over before police could have arrived. The breach of the peace was not the result of improper supervision.

D. Recommendation

The Respondent's owner acted appropriately in a highly unusual situation that was beyond her control. The breach of peace did not result from any improper supervision. Consequently, the Respondent's mixed beverage permits should not be suspended.

FINDINGS OF FACT

A. Preliminary Matters

1. BSSP, INC., d/b/a CLUB OASIS, located at 3101 Bankhead Highway, Midland, Midland County, Texas, was issued Mixed Beverage Permit No. MB-186814 and Mixed Beverage Late Hours Permit No. LB-186815 by the Texas Alcoholic Beverage Commission (TABC) on November 21, 1986. The permits have been continuously renewed.
2. On October 7, 1998, a hearing was held before the undersigned Administrative Law Judge in the Midland City Hall, Council Chambers, 300 North Loraine, Midland, Texas. The Petitioner was represented by Assistant Attorney General Gayle Gordon. The Respondent was represented by attorney E. Jason Leach. Evidence was received, and the hearing was closed on the same day.
3. The Club Oasis is located at 3101 Bankhead Highway, Midland, Texas.
4. Sandye Pierce and her mother own the Club Oasis.

B. Basic Events

5. On June 18, 1995 at the Club Oasis, Carolyn Summers launched a physical attack on Tennia Cole, and in the process also injured Mrs. Cole's husband, John Cole, and Mrs. Cole's daughter, Jennifer Stephens.
6. Sandye Pierce was present as the manager of the club that night.
7. Ray Roberts, the musician playing at the club that night, had been a good friend of Tennia Cole for more than twenty years.
8. Mr. Roberts sat at the Cole table during a break during which the jukebox played music.

9. Mr. Roberts' girl friend, Carolyn Summers, was in the establishment that night but never sat at the Cole table nor talked to anyone there.
10. A heated argument began between Mr. Roberts and Ms. Summers while they were near the Cole table.
11. Mr. Roberts pushed Ms. Summers, and she fell to the floor, but there was no further violence between the two.
12. During the quarrel, the Coles and Mrs. Stephens did not feel any danger but did go stand on the dance floor in order to be sure they were out of the way.
13. Mr. Roberts and Ms. Summers calmed down and went to sit down together quietly at a bench.
14. Sandye Pierce went over to the couple and asked them if everything was going to be all right between them, and they told her that they would be fine.
15. No one heard Ms. Summers warn Mrs. Cole or inform anyone else that she would attack her.
16. About three minutes after the end of the quarrel, Ms. Summers attacked Tennia Cole, threw her down on the dance floor, and went into a rampage.
17. Ms. Summers never struck Cole but instead pulled her by the hair while both lay on the floor.
18. As Mr. Cole tried to pry Ms. Summers off his wife, Ms. Summers proceeded to bite the tip off one of his fingers. In kicking her feet violently as she lay on floor grasping Mrs. Cole, Ms. Summers also broke Mrs. Stephen's hand when the latter tried to restrain her.
19. Ms. Summers was finally restrained by a customer named Ralph Gray.
20. No Club Oasis employee ever became physically involved to try to break up the fray.
21. Mrs. Cole tried to get to the telephone behind the bar in order to call the police. She was not allowed behind the bar because it was the club's policy not to let patrons behind the bar.
22. Ms. Pierce asked Mr. Cole if he wanted an ambulance called, but he declined.
23. After fifteen minutes, the Cole family left for Memorial Hospital where Mrs. Cole called the police.
24. The Midland police arrived at the Club Oasis 45 minutes after the incident.

C. Background

25. Carolyn Summers was a daytime, weekday bartender at the Club Oasis.
26. Ms. Summers had been working there for more than one year and was off-duty on the date of the incident.
27. There were four employees on duty that night; all were women.
28. Ms. Summers had never been involved in any violence at the bar.
29. The Coles had no previous reliable information about Ms. Summers being violent.
30. The members of the Cole party were not afraid of her and did not in any way fear for their safety before she attacked Mrs. Cole.
31. There was no evidence that Ms. Pierce knew of any previous violent acts by Ms. Summers.
32. As the Coles and Ms. Summers struggled on the floor, Ms. Pierce told bartender Janet Carlton to call the police.
33. The Coles were not aware Ms. Pierce had told Carlton to call the police.

D. Ultimate Findings

34. After the Roberts-Summers confrontation had concluded, Ms. Pierce was justified in deciding that the situation was under control and in thus not calling the police at that time. She would not have been justified in removing anyone from the club.
35. The fight on the dance floor took place for no more than four minutes.
36. It is reasonable for the management of a bar to wait as long as two minutes after the beginning of a fight in order to see if the fight would end on its own before calling the police.
37. Once two minutes had passed and the melee was still going on without any sign of its ceasing, the duty arose for the Club Oasis to call the police to come break up the fight.
38. It is highly probable that the police would not have arrived before the fight ended since only two minutes passed between the time it was required that they be called and the time the fight ended.

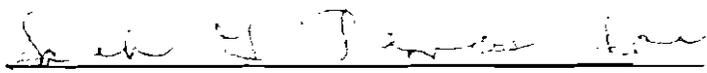
39. Since it was not foreseeable that Carolyn Summers would attack Mrs. Cole, the attack was beyond the control of the Respondent.
40. Since calling the police at the required moment would probably have had no effect in breaking up the fight, the curtailment of the fight after it had started was beyond the control of the Respondent.
41. Assuming that Ms. Pierce fully intended that the police not be called, the supposed omission would have made no difference since in any case the police most likely would not have arrived in time.
42. Based on Ms. Pierce's talking to Mr. Roberts and Ms. Summers after their quarrel and on her asking Ms. Carlton to call the police, she engaged in proper supervision in connection with the disturbances.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code [Code] Sections 5.31, 6.01(b), 25.04(b), and 61.71.
2. Service of proper notice of the hearing was made on Respondent pursuant to Code Section 11.63 and the Administrative Procedure Act, Texas Government Code Sections 2001.051 and 2001.052.
3. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to Code Section 5.43(a) and the Tex. Govt. Code Chapter 2003.
4. Employees of Respondent BSSP, Inc. d/b/a Club Oasis were not required to physically try to stop the fight.
5. Respondent was not required to hire guards, i.e. bouncers, to prevent or curtail disturbances.
6. Respondent cannot be held liable for her employee's failure to call the police.
7. A breach of the peace occurred at the Club Oasis on the night of June 18, 1995.
8. The breach of the peace was beyond the control of the Respondent.
9. The breach of the peace did not result from the improper supervision of persons permitted on the premises.

10. Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner TABC should not suspend Respondent's permits.

SIGNED this 10th day of January, 1999.



LOUIS R. LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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