

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 27, 2008

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA HAND DELIVERY

RE: Docket No. 458-08-2409; Texas Alcoholic Beverage Commission v. Patrick Alan Lednicky D/B/A Shadowland (TABC CASE NOS. 573675 & 573381)

573685

Dear Mr. Steen:

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.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kerry D. Sullivan".

Kerry D. Sullivan

Administrative Law Judge

KDS/cm
Enclosure

xc ✓ Emily E. Helm, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA HAND DELIVERY**

Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA HAND DELIVERY**

Patrick Alan Lednicky 22119 IH 35N, West, TX 76691-1813 - **VIA REGULAR MAIL**

DOCKET NO. 458-08-2409

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner

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BEFORE THE STATE OFFICE

V.

OF

PATRICK ALAN LEDNICKY
D/B/A SHADOWLAND
(TABC CASE NOS. 573675 & 573381),
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC), brought this enforcement action against Patrick Alan Lednicky D/B/A Shadowland (Respondent), alleging that Respondent consumed or allowed others to consume alcohol on the licensed premises during prohibited hours and also gave a check or draft for the purchase of beer that was dishonored when presented for payment. Based on Respondent's failure to appear at the scheduled hearing, the Administrative Law Judge (ALJ) deems the allegations in the TABC's pleadings admitted as true. As set out in the findings below, the ALJ agrees with TABC that Respondent's actions violated applicable provisions of the Texas Alcoholic Beverage Code (Code) and recommends a 24-day suspension of Respondent's license. Pursuant to Code § 11.64, Respondent should be allowed to pay a \$3,600 civil penalty (\$150 per day) in lieu of suspension of his permit

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened on May 8, 2008, before ALJ Kerry D. Sullivan in the hearings facilities of the State Office of Administrative Hearings in Waco, Texas. Staff was represented by Emily E. Helm, Staff Attorney. Respondent failed to appear, and the Department moved for a default. That motion was granted.

Staff offered competent evidence establishing jurisdiction and demonstrating that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law. Additionally, Staff offered brief testimony by TABC Officer Danny Pavlas in support of the requested penalty. Officer Pavlas testified that he had previously warned the Respondent for permitting after hours consumption of alcoholic beverages. He further testified that the incident at issue in this proceeding occurred at approximately 2:15 a.m., a full hour after the close of authorized hours, and that Respondent was aware that his actions were in violation of the law. Officer Pavlas further observed that the bar has not been operating since January 1, 2008.

II. FINDINGS OF FACT

1. Patrick Alan Lednicky D/B/A Shadowland (Respondent) holds Permit No. BE668304, issued by the Texas Alcoholic Beverage Commission (TABC).
2. On April 3, 2008, TABC's staff (Staff) sent a Notice of Hearing seeking suspension of Respondent's license by certified mail to Respondent at 22119 IH 35 North, Waco, Texas 76691-1813. The return receipt was signed for on behalf of Respondent.
3. The notice 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 short, plain statement of the matters asserted.
4. The notice of hearing contained the following language in at least 12-point boldface type: "If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought herein may be granted by default. (1 TAC § 155.55)"
5. The hearing convened on May 8, 2008. Respondent did not appear and was not represented. The record closed on that date.
6. On or about December 30, 2007, Respondent or Respondent's agent, servant, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.
7. On or about December 31, 2007, Respondent or Respondent's agent, servant, or employee gave a check or draft for the purchase of beer that was dishonored when presented for payment.

III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to Section 5.43 and Chapter 61 of the TEX. ALCO. BEV. CODE (Code).
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. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based upon Finding of Fact No. 6, Respondent violated Code §§ 61.71(a)(18) and 105.06.
5. Based upon Finding of Fact No. 7, Respondent violated Code §§ 61.73 and 102.31.
6. Based on the Findings of Fact and Conclusions of Law, the TABC is entitled to a default decision against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.
7. Based on the foregoing findings and conclusions, a 24-day suspension of Respondent's permit (12 days for each violation) is warranted.
8. Pursuant to Code § 11.64, Respondent should be allowed to pay a \$3,600 civil penalty (\$150 per day) in lieu of suspension of its permit.

SIGNED May 27, 2008


KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS