

DOCKET NO. 575704

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
JCO INC.	§	
D/B/A WOODY'S BAR & GRILL	§	ALCOHOLIC
PERMIT NO(s).	§	
RM655133, FB, PE, LB,	§	
	§	
JEFFERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-08-4448)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this 12th day of March, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened on November 14, 2008 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on January 12, 2009. 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. Exceptions and Reply to Exceptions were filed to which the Administrative Law Judge replied and recommended that no changes be made to the Proposal for Decision.

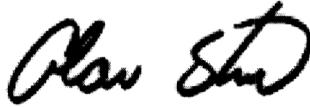
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision and incorporates those Findings of Fact and 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 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 and licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on April 6, 2009, unless a Motion for Rehearing is filed **before** that date.

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

SIGNED this the 12th day of March, 2009 at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Judge Stephen Burger
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Allen Parker
ATTORNEY FOR RESPONDENT
1 Plaza Square
Port Arthur, Texas 77642
VIA FACSIMILE TO (409) 985-2833

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Lt. Debra Jones
TABC Beaumont District Office

Agent Bruce Boardman
TABC Austin

Licensing Division

RMP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 12, 2009

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

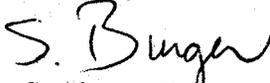
VIA REGULAR MAIL

**RE: Docket No. 458-08-4448; Texas Alcoholic Beverage Commission v. JCO Inc.
D/B/A Woody's Bar & Grill**

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 TEX. ADMIN CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Stephen J. Burger
Administrative Law Judge

SJB/jh
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona Perry, Attorney, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, Texas 77008
VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Allen Parker, The Parker Law Firm, 1 Plaza Square, Port Arthur, Texas 77642 -**VIA REGULAR MAIL**

RECEIVED

JAN 13 2009

**TABC HOUSTON
LEGAL** 2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001
<http://www.soah.state.tx.us>

SOAH DOCKET NO. 458-08-4448

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner

VS.

JCO INC.,
D/B/A WOODY'S BAR AND GRILL
PERMIT NO. RM-655133, FB, PE, LB,
JEFFERSON COUNTY, TEXAS
(TABC CASE NO. 575704)
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) requested that the permit of JCO Inc., d/b/a Woody's Bar and Grill, 8484 Central Mall Drive, Port Arthur, Jefferson County, Texas 77642 (Respondent) be cancelled, because Respondent violated the Texas Alcoholic Beverage Code (Code) by failing to qualify for the Food and Beverage Certificate (FB), to wit: the gross receipts of mixed beverages sold by Respondent exceed 50% of the total gross receipts from the premises in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 28.18.

The Administrative Law Judge (ALJ) finds the TABC has proven Respondent committed the alleged violation, and agrees with its recommendation that Respondent's permit be cancelled.

I. PROCEDURAL HISTORY AND JURISDICTION

There are no contested issues of notice or jurisdiction, and these matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits convened November 14, 2008, at the Office of Administrative Hearings (SOAH), 2020 North Loop West, Suite 111, Houston, Texas, before ALJ

The TA presented by Arney Ra Berry
appears to be a valid one.

ALL INFORMATION AND LEGAL STANDARD

Pursuant to the provisions of the
Food and Beverage Regulation Act, the
Commissioner of the Department of
Health and Senior Services may suspend
or revoke a permit issued under the
Act if the holder thereof fails to
comply with the provisions of the
Act or if the holder thereof is
found to be in violation of the
provisions of the Act.

EVIDENCE ANALYSIS AND RECOMMENDATION

A. Arney

Test of Lisha Carter

Lisha Carter, a resident of the
District of Columbia, has applied for
a permit to operate a Food and Beverage
Restaurant. She has provided the
Commissioner with the following
information: She has been operating
the restaurant since 2008 and has
received a permit from the
Department of Health and Senior
Services. She has provided the
Commissioner with the following
information: She has been operating
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received a permit from the
Department of Health and Senior
Services. She has provided the
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the restaurant since 2008 and has
received a permit from the
Department of Health and Senior
Services.

B. ALJ's analysis and recommendation.

A review of the evidence shows that Respondent presently holds a Mixed Beverage Restaurant Permit with a Food and Beverage Certificate. The permit and certificate were issued on March 23, 2007, and expire on March 22, 2009. The permit and certificate do not allow Respondent to have gross receipts of mixed beverages exceeding 50% of total gross receipts. Respondent does not dispute the figures indicating 93% of Respondent's total gross receipts are from the sale of mixed beverages

Respondent argues that there has been a mistake, and that the wrong type of permit is in existence. The exhibits do indicate that a Mixed Beverage Permit had been issued to prior owners of the premises until August 24, 2006. However, the issue of what type of TABC license or permit should have been issued to Respondent is not at issue here. The preponderance of the evidence clearly shows that from September 2007, to July 2008, Respondent's total gross receipts were 93% alcoholic beverages, exceeding the amount allowed by Respondent's permit.

The ALJ recommends cancelling Respondent's permit

IV. FINDINGS OF FACT

- 1 JCO Inc., d/b/a Woody's Bar and Grill, (Respondent), with premises at 8484 Central Mall Drive, Port Arthur, Jefferson County, Texas 77642 (Respondent) is the holder of a Mixed Beverage Restaurant Permit with a Food and Beverage Certificate, RM-655133, issued by the Texas Alcoholic Beverage Commission (TABC).
- 2 On September 2, 2008, the TABC sent a Notice of Hearing to Respondent.
3. The September 2, 2008, Notice of Hearing contained a statement of the location and the 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 allegations and the relief sought by the TABC.

4. On November 14, 2008, a public hearing was held before Administrative Law Judge Stephen J. Burger. The TABC appeared through its staff attorney Ramona Perry. Respondent appeared through its attorney Allen Parker. Evidence was presented and the record closed.
5. From September 2007, to July 2008, 93% of Respondent's total gross receipts from sales at its premises were derived from mixed beverages sold.

V. CONCLUSIONS OF LAW

The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.61.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed 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 provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052; TEX. ALCO. BEV. CODE ANN. §11.63; and 1 TEX. ADMIN. CODE (TAC) §155.55.
4. Based on the above Findings of Fact, Respondent failed to qualify for its Mixed Beverage Restaurant Permit with a Food and Beverage Certificate, as Respondent's gross receipts of mixed beverages sold by Respondent exceeded 50% of the total gross receipts from the permitted premises, in violation of TEX. ALCO. BEV. CODE § 28.18.
5. Based on Conclusion of Law 4, Respondent's Permit is cancelled pursuant to TEX. ALCO. BEV. CODE ANN. §11.61(b)(2).

SIGNED January 12, 2009.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS