

DOCKET NO. 577138

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
ROBERT CLINTON CROSS	§	
D/B/A PALM SHADOWS LOUNGE	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BG544249	§	
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-08-4307)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 8th day of January 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Melissa M. Ricard. The hearing convened on October 14, 2008 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 12, 2008. 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.

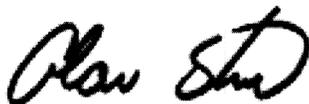
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision and incorporates those Findings 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 conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on February 2, 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 8TH day of January, 2009, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Administrative Law Judge
State Office of Administrative Hearings
5155 Flynn Parkway; Suite 200
Corpus Christi, TX 78411
VIA FACSIMILE (361) 884-5427

Robert Clinton Cross
D/B/A Palm Shadows Lounge
RESPONDENT
200 N Val Verde Rd.
Donna, TX 78537
VIA FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

SKP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 12, 2008

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

VIA INTERAGENCY MAIL

**RE: Docket No. 458-08-4307 / TEXAS ALCOHOLIC BEVERAGE COMMISSION
vs. ROBERT CLINTON CROSS**

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,


MELISSA M. RICARD
Administrative Law Judge

MMR/MAR
Enclosure

xc SANDRA K. PATTON, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA INTERAGENCY MAIL
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA MAIL INTERAGENCY MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA
INTERAGENCY MAIL**
Robert C. Cross, Respondent, 200 N.Val Verde Road, Donna, Texas 78537 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 458-08-4307

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

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BEFORE THE STATE OFFICE

VS.

**ROBERT CLINTON CROSS
d/b/a PALM SHADOWS LOUNGE
PERMIT NO. BG544249
HIDALGO COUNTY, TEXAS
(TABC CASE NO. 577138)**

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Robert Clinton Cross d/b/a Palm Shadows Lounge (Respondent). The Respondent's License was cancelled for cause on August 16, 2005. The TABC requests the Respondent's conduct surety bond be forfeited in accordance with TEX. ALCO. BEV. CODE ANN. (Code) § 11.1. The Administrative Law Judge (ALJ) grants this request.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on October 14, 2008, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces, County, Texas. The staff of the Commission (Staff) was represented by its counsel, Sandra Patton, by telephone. Respondent did not appear. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

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PROPOSAL FOR DECISION

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II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

CODE § 11(b)(2) and 16 TEXAS ADMINISTRATIVE CODE (TAC) § 33.24 provides that the holder of a permit must provide a conduct surety bond with an application for a permit and that the permittee agrees that the amount of the surety bond shall be paid to the state if the permit is revoked.

Staff introduced two exhibits into evidence:

Exhibit A is the affidavit of Amy Harrison, TABC Licensing Department Director, which shows that Permit No. BG544249 was issued to Robert C. Cross, doing business as Palm Shadows Lounge, 200 N. Val Verde Road, Donna, Hidalgo County, Texas, by the Commission. Attached to the affidavit is the permit and violation history which shows that the permit was cancelled for cause on August 16, 2005, and that Respondent posted Staff Conduct Surety Bond Number 506307, dated September 10, 2004, in the amount of \$5,000, payable to the State of Texas.

Exhibit 2 is the US Postal Service Track & Confirm letter that the Notice of Hearing sent to Respondent by certified mail 7006 0810 0000 2143 5272 was refused on August 22, 2008, and returned to the TABC. The Notice of Hearing was also sent by regular mail, and it was refused on August 22, 2008, and returned to the TABC.

The ALJ issued Order No.1-Setting Hearing and Establishing Requirements for Participation on September 30, 2008. The Order was mailed to the Defendant on October 1, 2008, and sent to the Respondent's address of record by regular mail. The item was returned on October 10, 2008, with the notation that the addressee was "not at this address."

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PROPOSAL FOR DECISION

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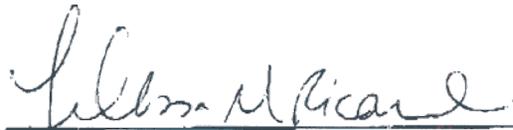
7. Order No. 1, issued September 30, 2008, set this matter for hearing on October 14, 2008 and was mailed to the Respondent by regular mail. It was marked "not at this address" and returned on October 10, 2008.
8. The hearing on the merits was held on October 14, 2008, at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Sandra Patton. Respondent did not appear and was not represented at the hearing.
9. The hearing proceeded on a default basis, and the factual allegations were deemed admitted.

V. CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71.

2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE (TAC) § 155.55.
5. Based upon the Findings of Fact and TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) and 16 TAC § 33.24, Staff Conduct Surety Bond Number 506307, dated September 10, 2004, in the amount of \$5,000, should be forfeited.

SIGNED December 12, 2008.



MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS