

DOCKET NO. 577154

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
ALFREDIA ROBERSON WOMACK D/B/A CLUB NINETEEN NINETEEN PERMIT/LICENSE NO(s). MB553111, CB, LB & PE	§	ALCOHOLIC
	§	
	§	
DALLAS COUNTY, TEXAS (SOAH DOCKET NO. 458-09-1358)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

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

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on February 27, 2009 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 April 28, 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. As of this date no exceptions have been filed.

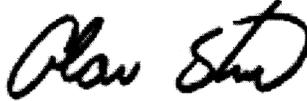
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision and incorporates those Findings of Fact and 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 July 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 June, 2009, at
Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150-A
Dallas, Texas 75235
VIA FACSIMILE (214) 956-8611

Alfredia Roberson Womack
d/b/a Club Nineteen Nineteen
RESPONDENT
7791 Los Gatos
Dallas, TX 75232
VIA REGULAR MAIL

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

SAL/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 28, 2009

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

VIA FACSIMILE 512/206-3203

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.
ALFREDIA WOMACK D/B/A CLUB NINETEEN NINETEEN
SOAH DOCKET NO. 458-09-1358**

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 § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Brenda Coleman

Brenda Coleman
Administrative Law Judge

BC/lan
Enclosure

xc Shelia A. Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**
Alfredia Womack, **VIA REGULAR MAIL, 7791 Los Gatos Dallas, Texas 75232**

SOAH DOCKET NO. 458-09-1358

**TEXAS ALCOHOLIC BEVERAGE,
COMMISSION,
Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**ALFREDIA WOMACK D/B/A,
CLUB NINETEEN NINETEEN,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission or Petitioner) brought this enforcement action against Alfredia Womack d/b/a Club Nineteen Nineteen (Respondent). Petitioner sought cancellation of Respondent's permits, alleging that Respondent has engaged in conduct prohibited by the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.61. 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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On February 10, 2009, the Commission issued its notice of hearing setting the matter for hearing on February 27, 2009. The notice of hearing was sent by regular mail and certified mail, return receipt requested, to Respondent at Respondent's last known address. 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

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statutes and rules involved; and a short, plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice of hearing also contained the following language in 12-point or larger boldface type: "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default." The US Postal Service attempted to deliver the certified mail on February 12, 2009, and left a notice. The certified mail was unclaimed by Respondent.

On February 27, 2009, a hearing convened before SOAH ALJ Brenda Coleman. The Commission was represented at the hearing by Shelia Lindsey, Staff Attorney. Respondent did not appear and was not represented at the hearing. The record closed on that same date.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.501, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Findings of Fact below. Based on the deemed factual findings in this case, Respondent's permits should be cancelled.

III. FINDINGS OF FACT

Alfredia Womack d/b/a Club Nineteen Nineteen (Respondent), holds a Mixed Beverage Permit, Mixed Beverage Late Hours Permit, Beverage Cartage Permit and Caterer's Permit, issued by the Commission, for the premises located at 1919 S. Industrial Boulevard, Dallas, Dallas County, Texas.

2. On April 20, 2008, Respondent or its agent, servant, or employee, sold or offered to sell mixed beverages during prohibited hours.
3. On April 20, 2008, Respondent or its agent, servant, or employee, failed to immediately mutilate the identification stamp on an empty bottle that contained distilled spirits.

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4. On April 20, 2008, Respondent or its agent, servant, or employee, possessed or permitted another to possess, on the licensed premises, distilled spirits in a container not bearing a serially numbered identification stamp.
5. On April 20, 2008, Respondent or its agent, servant, or employee, knowingly possessed or permitted the possession of alcoholic beverages not covered by invoice.
6. On February 10, 2009, the Commission issued its notice of hearing by regular mail and certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for February 27, 2009.
7. The US Postal Service attempted to deliver the certified mail on February 12, 2009 and left a notice. The certified mail was unclaimed by Respondent.
8. 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.
9. The notice of hearing also contained the following language in 12-point or larger boldface type: "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
10. A hearing convened before SOAH ALJ Brenda Coleman on February 27, 2009. The Commission appeared through its Staff Attorney, Shelia Lindsey. Respondent did not appear and was not represented at the hearing. The record closed on that same date.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. 5 and § .61.
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. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.501 and 16 TAC § 37.3.
4. A default judgment should be entered against Respondent pursuant to TAC § 155.501

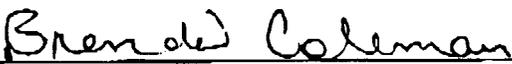
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5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61, 28.06, 28.09, 28.15, and 105.03, and 16 TAC § 41.72.
6. Respondent's permits should be cancelled.

SIGNED April 28, 2009.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS