

**DOCKET NO(s). 580241 & 579122**

|   |   |                     |
|---|---|---------------------|
| TEXAS ALCOHOLIC BEVERAGE COMMISSION   | § | BEFORE THE TEXAS    |
|   | § |                     |
| VS.   | § |                     |
|   | § |                     |
| HOGG ENTERTAINMENT INC.<br>D/B/A FROGGY BOTTOM'S BEACH CLUB<br>PERMIT/LICENSE NO(s). MB630948, LB | § | ALCOHOLIC           |
|   | § |                     |
| TARRANT COUNTY, TEXAS<br>(SOAH DOCKET NO. 458-09-1595)  | § | BEVERAGE COMMISSION |

**ORDER ADOPTING PROPOSAL FOR DECISION**

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

After proper notice was given, this case was heard by Administrative Law Judge Monica Garza. The hearing convened on March 13, 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 May 8, 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.

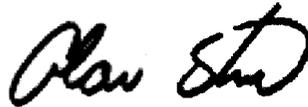
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision and incorporates those Findings of Fact and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



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
6777 Camp Bowie Blvd., Suite 400  
Forth Worth, Texas 76116  
**VIA FACSIMILE (817) 377-3706**

Hogg Entertainment Inc.  
d/b/a Froggy Bottom's Beach Club  
**RESPONDENT**  
4400 White Settlement Road  
Fort Worth, TX 76114  
**VIA REGULAR MAIL**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Fort Worth Enforcement Division

SKP/aa

STATE OFFICE OF ADMINISTRATIVE HEARINGS

FT. WORTH OFFICE  
6777 Camp Bowie Blvd Suite 400  
Fort Worth, Texas 76116  
Phone: (817) 731-1733  
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DATE:

05/08/2009

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

8

REGARDING:

PROPOSAL FOR DECISION

DOCKET NUMBER:

458-09-1595

JUDGE MONICA GARZA

FAX TO:

FAX TO:

HOGG ENTERTAINMENT, INC

VIA REGULAR MAIL

SANDRA K. PATTON (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

(713) 426-7965

LOU BRIGHT GENERAL COUNSEL (Alcoholic Beverage Commission, Texas)

(512) 206-3498

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT DIANA DUPRE(dsc) (817) 731-1733

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# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 8, 2009

Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

**VIA FACSIMILE 512/206-3498**

**Re: Docket No. 458-09-1595; Texas Alcoholic Beverage Commission,  
v, Hogg Entertainment, Inc. d/b/a Froggy Bottom's Beach Club  
(TABC 580241 & 579122)**

Dear Mr. Steen:

Enclosed please find the Proposal for Decision in the above-referenced case. It contains my recommendation and underlying rationale.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Monica Garza  
Administrative Law Judge

MG/dd

attachments



SOAH Docket No. 458-09-1595  
TABC Docket Nos. 580241 & 579122

Proposal for Decision

Page 2 of 5

On March 13, 2009, a hearing convened before SOAH ALJ Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Sandra K. Patton, TABC Staff Attorney. Mark R. Walden, Respondent's officer and authorized representative, appeared for Respondent. Following presentation of evidence, the record closed on March 13, 2009.

## II. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.38, TABC may cancel a permit if the permit holder fails to pay delinquent ad valorem taxes. Further, TEX. ALCO. BEV. CODE ANN. § 11.61(b)(5) provides that TABC may cancel a permit for failure to pay delinquent state taxes, fees, and penalties.

## III. EVIDENCE

### A. Respondent's Permit

Respondent holds a Mixed Beverage Permit, MB-630948, with accompanying Mixed Beverage Late Hours Permit, issued by TABC, for the premises located at 4400 White Settlement Road, Fort Worth, Tarrant County, Texas. This permit was originally issued on June 16, 2006, and it has been continuously renewed.

### B. Delinquent Ad Valorem Taxes

Jason Pricer, a delinquent accounts supervisor with the Tarrant County Tax Assessor-Collector's Office, testified that Respondent was sent a certified letter regarding his delinquent tax debt on August 23, 2008. The letter stated the amount due for city, county, and school taxes was \$3,120.94. Mr. Pricer testified that the debt was never paid and that the current amount due from Respondent was \$4,049.05.

SOAH Docket No. 458-09-1595  
TABC Docket Nos. 580241 & 579122

Proposal for Decision

Page 3 of 5

Mark Walden, Respondent's officer and authorized representative, testified that he refinanced the property in March 2008. He indicated the taxes became delinquent because he was under the mistaken impression that the property taxes had been paid by the financing entity.

### C. Delinquent State Sales Tax

Shay Rogers, an enforcement officer with the Texas Comptroller of Public Accounts, testified that Respondent owes approximately \$55,000 in delinquent sales tax. He indicated that most of the amount due came from a recent audit. Because Respondent did not request a redetermination, the amount is now due and payable under the Tax Code.

Mr. Walden testified that he thought he was paid in full until he found out about the audit. Because the audit information had been misplaced on the premises, he did not find out about the audit until the redetermination deadline had passed.

## IV. ANALYSIS

The evidence clearly establishes that Respondent owes both delinquent ad valorem taxes and delinquent state sales taxes. Respondent owes approximately \$4,000 to the Tarrant County Tax Assessor-Collector for city, county, and school taxes. Respondent owes approximately \$55,000 to the Texas Comptroller of Public Accounts for delinquent state sales taxes and penalties. Due to Respondent's failure to stay current with his tax obligations, the ALJ recommends cancellation of his permit.

## V. PROPOSED FINDINGS OF FACT

1. Hogg Entertainment, Inc. d/b/a Froggy Bottom's Beach Club (Respondent) holds a Mixed Beverage Permit, MB-630948, with accompanying Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 4400 White Settlement Road, Fort Worth, Tarrant County, Texas.
2. This permit was originally issued on June 16, 2006, and it has been continuously renewed.
3. Respondent owes approximately \$4,000 in delinquent city, county, and school taxes.
4. Respondent owes approximately \$55,000 in delinquent states sales taxes and penalties.
5. On January 27, 2009, TABC staff (Petitioner) issued its notice of hearing, directed to Respondent at his address of record.
6. The notice 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.
7. On March 13, 2009, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas.
8. Petitioner was represented at the hearing by Sandra K. Patton, TABC Staff Attorney. Respondent appeared through its officer and authorized representative, Mark R. Walden.
9. Following presentation of evidence, the record closed on March 13, 2009.

## VI. PROPOSED CONCLUSIONS OF LAW

- TABC has jurisdiction over this case. TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.38 and 11.61.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.

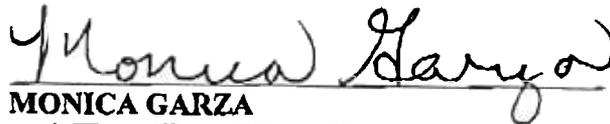
SOAH Docket No. 458-09-1595  
TABC Docket Nos. 580241 & 579122

Proposal for Decision

Page 5 of 5

3. Respondent received proper notice of the hearing. TEX. GOV'T CODE ANN. § 2001.052.
4. Respondent failed to pay delinquent ad valorem taxes. TEX. ALCO. BEV. CODE ANN. § 11.38.
5. Respondent failed to pay delinquent state sales taxes. TEX. ALCO. BEV. CODE ANN. § 11.61.
6. Respondent's permit should be cancelled. TEX. ALCO. BEV. CODE ANN. §§ 11.38 and 11.61.

SIGNED May 8, 2009.



**MONICA GARZA**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**