

DOCKET NO. 580265

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§ § § § § § § § § §	BEFORE THE TEXAS
VS.		
WEBWORLD MARKETING GROUP L.L.C. D/B/A D.B. COOPERS MANSION PERMIT NO(s). MB614835, LB		ALCOHOLIC
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-09-2256)		BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this day, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on March 27, 2009 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 20, 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 are herein **SUSPENDED for twenty (20) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$4,000.00** on or before the **11th day of August 2009**, all rights and privileges under the above described permits will be **SUSPENDED for a period of twenty (20) days beginning at 12:01 A.M. on the 19th day of August 2009**.

This Order will become final and enforceable on July 16, 2009, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED on June 22, 2009



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

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

Charles Frye
ATTORNEY FOR RESPONDENT
808 Travis Street
Suite 1101
Houston, Texas 77002
VIA FACSIMILE: (713) 229-8031

Webworld Marketing Group L.L.C.
d/b/a D.B. Coopers Mansion
RESPONDENT
22565 Ih 45 North
Spring, Texas 77389
VIA U.S. FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston Enforcement Office

SKP/aa

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 580265

REGISTER NUMBER:

NAME: WEBWORLD MARKETING GROUP L.L.C.

TRADENAME: COOPERS MANSION

ADDRESS: 22565 IH-45 NORTH, SPRING, TEXAS 77389

DUE DATE: AUGUST 11, 2009

PERMITS OR LICENSES: MB614835, LB

AMOUNT OF PENALTY: \$4,000.00

Amount remitted \$ _____ Date remitted _____

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.

Mail this form with your payment to:

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711
Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.

Attach this form and please make certain to include the Docket # on your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

RECEIVED

MAY 21 2009

**TABC HOUSTON
LEGAL**

May 20, 2009

VIA REGULAR MAIL

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

**RE: Docket No. 458-09-2256; Texas Alcoholic Beverage Commission vs
Webworld Marketing Group, LLC d/b/a D.B. Coopers Mansion**

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 "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX
77008- **VIA REGULAR MAIL**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731- **VIA REGULAR MAIL**
Charles B. Frye, Attorney for Respondent, 808 Travis Street, Suite 101, Houston, Texas 77002- **VIA REGULAR
MAIL**

SOAH DOCKET NO. 458-09-2256

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	
	§	
WEBWORLD MARKETING GROUP, L. L. C.	§	OF
D/B/A D. B. COOPERS MANSION	§	
PERMIT/LICENSE NO. MB614835, LB	§	
	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 580265)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Webworld Marketing Group, doing business as D. B. Coopers Mansion (Respondent) seeking cancellation or suspension of Respondent’s Mixed Beverage and Mixed Beverage at Hours Permit, MB614835. TABC alleged Respondent’s permit be suspended for a period of 20 days because the Respondent’s agent, servant, or employee, solicited or permitted solicitation of a person for immoral or sexual purposes in violation of Texas Alcoholic Beverage Code §§ 61 (b) (2) and 04.01

This Proposal for Decision finds the allegations by TABC to be proven and adopts the recommendation of the staff that the permit be suspended for a period of 20 days and that Respondent be allowed to pay a civil penalty of \$200 per day in lieu of suspension

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter convened on March 27, 2009. Attorney Sandra Patton represented ABC Respondent was represented by Attorney Charles B. Frye Administrative Law Judge (ALJ) Rex A Shaver presided. The record closed on that same date. No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law

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any taxes or pay unemployment insurance taxes on the dancers because all entertainers are carried on the books as independent contractors such as plumbers and electricians. The dancers pay Web World Marketing Group, L. L. C. to work at D. B. Cooper's Mansion. Rocio Longoria was one of the dancers.

Terry Dale Allen testified that he was familiar with Rocio Longoria prior to the July 17, 2008 raid at D. B. Cooper's Mansion. He recalled that she had worked there a couple of months but did not dispute the written record that showed she was hired on July 6, 2008 he would not argue the point. In July of 2008 he worked both the back office and as manager of D. B. Cooper's Mansion. All dancers are told by management the rules of dress and conduct as well as what activities are allowed and which are forbidden. All violations of the law or TABC rules were forbidden. The managers at D. B. Cooper's Mansion monitor the dancers to be sure that they are following the rules. There are managers constantly walking the floor to assure compliance. The management put posters on the walls in the dance and dressing rooms setting out forbidden activities.

III. STATUTORY AUTHORITY

TEX. ALCO. BEV. CODE ANN. § 61 (b) states

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: ... (2) the permittee violated a provision of this code or a rule of the commission; ...

TEX. ALCO. BEV. CODE ANN § 104.01 states

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts: ... (7) permitting solicitations of persons for immoral or sexual purposes; ...

IV DISCUSSION

Respondent did not deny the allegation that on July 17, 2008, Deputy Walker, was solicited by a dancer at the Respondent's place of business for immoral or sexual purposes. There was no denial that the solicitation took place on the Respondent's premises. The Respondent argued that the dancer known as "Cherry" was not an employee of Webworld Marketing Group, L.L.C., doing business as D. B. Cooper's Mansion. In support of this position Respondent presented testimony that the Respondent did not pay the dancers but, rather, received payment from the dancers in the form of a "Floor Fee." The Respondent's witness indicated that the dancers had a relationship to Respondent similar to that of a plumber or electrician.

The evidence shows, however, that the Respondent did exercise control over how, when, and where the dancer's services were provided. Respondent required that the dancers' costumes covered certain portions of the dancers' anatomy. The dancer, Ms. Longoria, received and signed for a notice instructing her that she must be properly dressed when on the floor or stage and instructing her to see the "House Mom," apparently to clarify the Respondent's dress requirements. This same notice forbade the simulation of "masturbation, intercourse or oral copulation." In addition this notice forbade "erotic touching or fondling of human genitals (female breasts, pubic region, buttocks or anus) whether clothed or nude." Respondent's witness, Mr. Allen, testified that the managers on duty were continually walking the floor to assure that the dancers followed the Respondent's directions. It should be noted that, in addition to the stage area, the Respondent provided a private room where "private dances" were performed by the dancers.

Before Ms. Longoria was permitted to dance on the Respondent's premises she was required to provide a social security card, a current driver's license or DPS identification card, an Internal Revenue Service form W-9, and to acknowledge receipt of Respondent's "Drug Free/Weapons Free Memo." The paperwork contained in Respondent's personnel files includes a photocopy of Ms. Longoria's Social Security Card and her Texas DPS Identification Card. This photo copy bears the handwritten notation "Hired on 7/6/08" (TABC Exhibit 9). The Respondent's file also contained a photo of Ms. Longoria bearing the handwritten notations "Hired on 7-6-08" and "Cherry 1721" (TABC Exhibit 3).

It is clear that the Respondent had the power or right to control and direct Ms. Longoria in the material details of the work she performed. In effect, she was respondent's employee. Ms. Longoria solicited a person for a sexual act on her employer's premises. The manager on duty and the general manager permitted such solicitation by allowing her to go to the private dance room.

Based on the evidence the ALJ concludes that the allegations by TABC are proven and recommends that the permit be suspended for a period of 20 days and that Respondent be allowed to pay a civil penalty of \$200 per day in lieu of suspension.

V. PROPOSED FINDINGS OF FACT

Webworld Marketing Group L. L. C. (Respondent) is the holder of Mixed Beverage Permit MB-614835, which includes the Mixed Beverage Late Hours Permit.

- 2 On January 28, 2009, Texas Alcoholic Beverage Commission Staff issued a notice of hearing notifying the parties that a hearing would be held on the denial, refusal, cancellation or suspension of that permit.
- 3 The notice of hearing included a statement regarding the time, place, and nature of the hearing; referenced the legal authority upon which the hearing would be held; cited the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
- 4 The hearing was held on March 27, 2009, at the State Office of Administrative Hearings field office, 2020 North Loop West, Suite 111, Houston, Harris County, Texas, before Rex A. Shaver, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings. The hearing concluded and the record closed that same date.
- 5 On July 17, 2008 a Harris County Deputy Sheriff entered Respondents licensed premises in an undercover capacity.
- 6 On July 17, 2008, a Harris County Deputy Sheriff entered into a conversation with a dancer, Rocio Longoria, on Respondent's licensed premises. This conversation involved an offer by the dancer to engage in oral sex and/or intercourse with the deputy in exchange for money.

On July 17, 2008, Rocio Longoria was an agent, servant or employee of Respondent doing business as D. B. Cooper's Mansion.
- 8 On July 17, 2008, Steven C. Fisher was working as an on duty manager of Respondent's place of business and licensed premises, and was Respondent's servant, agent or employee

and permitted the solicitation of a person for immoral or sexual purposes.

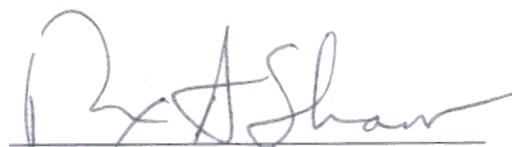
9. On July 17, 2008, Terry Dale Allen was the general manager of Respondent's place of business and licensed premises, was Respondent's servant, agent or employee and permitted the solicitation of a person for immoral or sexual purposes.

VI. PROPOSED CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.11.

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. On July 17, 2008 Respondent's servants, agents or employees permitted solicitation of a person for immoral or sexual purposes on the Respondent's premises, and this solicitation constituted conduct on the premises which was lewd, immoral or offensive to public decency in violation of TEX. ALCO. BEV. CODE ANN §§ 11.61 (b) (2) and 104.01 (7).
5. On July 17, 2008 Respondent's servant, agent or employee solicited a person for immoral or sexual purposes on the Respondent's premises, and this solicitation constituted conduct on the premises which was lewd, immoral or offensive to public decency in violation of TEX. ALCO. BEV. CODE ANN §§ 11.61 (b) (2) and 104.01 (7).
6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Mixed Beverage Permit MB-614835, which includes the Mixed Beverage Late Hours Permit, should be suspended for a period of 20 days or Respondent be allowed to pay a civil penalty of \$200 per day in lieu of suspension.

SIGNED MAY 20, 2009.



REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS