

**DOCKET NO. 574794**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
GERALD WAYNE HATCH D/B/A CLUB TIFFANY PERMIT/LICENSE NO(s). MB529339, LB529340, PE529341	§	ALCOHOLIC
	§	
JEFFERSON COUNTY, TEXAS (SOAH DOCKET NO. 458-08-3299)	§	BEVERAGE COMMISSION

**ORDER ADOPTING AMEDNED PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** on this 20th day of October 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge (ALJ) Rex Shaver. The hearing convened on July 11, 2008 and adjourned on the same day. On September 9, 2008 the case was assigned to the Administrative Law Judge Paul Keeper as a substitute ALJ in this matter.

ALJ Keeper made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on February 24, 2009. An Agreed Motion To Amend PFD was filed requesting the court to correct inconsistencies in the introductory paragraph with the Court’s analysis, findings of fact and conclusions of law. The Amended Proposal for Decision was issued on March 25, 2009. This Amended 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 permit(s) and/or license(s) **SHOULD NOT BE SUSPENDED OR CANCELLED**.

This Order will become final and enforceable on November 13, 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 20th day of October,  
2009, at Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

Judge Rex Shaver  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
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Judge Paul Keeper  
**ADMINISTRATIVE LAW JUDGE**  
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Marsha A. Normand  
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Gerald Wayne Hatch  
d/b/a Club Tiffany  
**RESPONDENT**  
200 Emory Ln  
Port Arthur, TX 77642  
**VIA REGULAR MAIL**

Ramona M. Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

TABC Beaumont Enforcement

RMP/aa

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

March 25, 2009

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

**VIA INTERAGENCY MAIL**

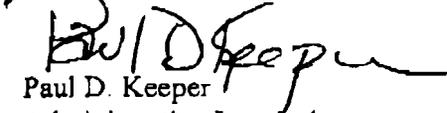
**RE: Docket No. 458-08-3299; Texas Alcoholic Beverage Commission v. Gerald Wayne Hatch d/b/a Club Tiffany MB529339, LB 529340, PE 529341**

Dear Mr. Steen:

Please find enclosed a Amended 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 § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

  
Paul D. Keeper  
Administrative Law Judge

PDK/cm  
Enclosure

xc Ramona Perry, Texas Alcoholic Beverage Commission, Legal Services 5806 Mesa Drive, Austin, TX 78731-  
**VIA INTERAGENCY MAIL**  
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
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**SOAH DOCKET NO. 458-08-3299****TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**§  
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§**BEFORE THE STATE OFFICE****V.****OF****GERALD WAYNE HATCH d/b/a  
CLUB TIFFANY  
MB 529339, LB 529340, PE 529341  
Respondent****ADMINISTRATIVE HEARINGS****AMENDED PROPOSAL FOR DECISION**

Staff of the Texas Alcoholic Beverage Commission (Staff/TABC) brought this enforcement action against Gerald Wayne Hatch d/b/a Club Tiffany, Respondent. Staff alleged violations of the Texas Alcoholic Beverage Code (Code) arising from a shooting death on the premises. Staff sought a suspension of Respondent's mixed beverage permit (MB 529339), mixed beverage late hours permit (LB 529340), and beverage cartage permit (PE 529341)<sup>1</sup> for a period of thirty days or the imposition of an administrative penalty of \$4,500.00. Staff did not prove its case, and the penalty should not be imposed.

**1. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

TABC has jurisdiction over this matter.<sup>2</sup> The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision.<sup>3</sup>

On June 6, 2008, Staff submitted its Request to Docket Case form to SOAH. On July 1, 2008, TABC issued its amended notice of hearing to Respondent. On July 11, 2008, Administrative Law Judge (ALJ) Rex Shaver convened a hearing on the merits at SOAH's offices in Houston, Texas. Counsel were Ramona Perry for Staff and Marsha Normand for Respondent. The

<sup>1</sup> References to the three permits will be to a single permit.

<sup>2</sup> TEX. ALCO. BEV. CODE ANN. § 11.61 and chs. 5 and 6; 16 TEX. ADMIN. CODE (TAC) ch. 35.

<sup>3</sup> TEX. GOV'T CODE ANN. ch. 2003.

record closed on July 18, 2008. On September 9, 2008, ALJ Paul Keeper was assigned as a substitute ALJ in this matter. ALJ Keeper reviewed the existing record and issued this proposal for decision.<sup>4</sup>

## II. EVIDENCE

In the early morning of November 25, 2007, the Port Arthur police were called to Club Tiffany in Port Arthur, Texas. The police arrived in response to a 911 call made by a person on the scene. The caller reported an injury by gunfire at the club. The injured man was Marcus Allen, a patron of the club, who later died of his gunshot wounds. The shooter was not identified.

The 911 call was made by Lorinda Harris, a 38-year old student at Lamar University in Port Arthur. She reported that there had been a fight on the dance floor, during which Mr. Allen had been knocked down and kicked. Ms. Harris heard a gunshot and then saw Gerald Wayne Hatch, the owner of the club, and another man lead two other men out of the club. Ms. Harris left the club ahead of this group to go outside to talk on her cell phone. There she saw Mr. Allen, one of the two men who had been led out of the club. He was on his back in some sort of distress. When she spoke to Mr. Allen, he told her that he had been shot. Ms. Harris then called 911.<sup>5</sup>

By the time that Port Arthur police officer William Crain arrived on the scene, he found a woman who identified herself as a nurse performing cardiopulmonary resuscitation on Mr. Allen. Officer Crain looked briefly at Mr. Allen's face and concluded that his condition was poor. Officer Crain stepped inside the club and saw that the crowd had dispersed and that the dance floor had been cleared, swept, and mopped. Officer Crain spoke with Mr. Hatch who stated that Mr. Allen might have been stabbed. According to Mr. Hatch, Mr. Allen had walked out of the club on his own.

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<sup>4</sup> 1 TAC § 155.17(e). Part of the tape recording of the hearing on the merits was garbled by a mechanical malfunction of the tape recorder. The restoration of the tapes took several months but produced an audible version for review.

<sup>5</sup> This version of the story is a compilation of the story given in Ms. Harris' written statement, Staff Ex. 6, and the oral testimony of Artie B. Freeman, a Staff investigator.

When the EMS officials arrived, Officer Crain went to the hospital and saw Mr. Allen's wounds, including the bullet holes and powder burns on his shirt.

Officer Crain and his colleague, Port Arthur police officer Kris Boneau, were very familiar with Club Tiffany. The club is well-known to the police as a problem for the residents of the neighborhood near the club. Club Tiffany is heavily attended on the weekends, and Port Arthur police officers are called to the club often, including every Friday and Saturday night. The types of calls are complaints about noise, public lewdness, traffic offenses, shootings, assaults, fights, auto thefts, parking violations, persons carrying weapons, criminal mischief, harassments, and gunfire. Between January 8, 2003, and June 25, 2008, the Port Arthur police department received 571 calls about Club Tiffany, or one call every 3.5 days.<sup>6</sup> Many of the calls happened around 2:00 a.m. when the club was closing. Among the clubs in Port Arthur, Club Tiffany has the reputation of having the largest and rowdiest crowds. When the Port Arthur police department receives complaints about Club Tiffany, its policy is to dispatch all available officers to the scene because of the size of the club's crowds.

In addition, Club Tiffany has the reputation of being a meeting ground for two opposing urban gangs, the Bloods and the Crips. The two gangs have a history of violent conflict in Port Arthur and at Club Tiffany. The gang members identify one another by their clothes: red shirts and black tennis shoes for the Bloods, and blue shirts and white tennis shoes for the Crips. The members of the gangs also identify themselves by displaying hand signals. According to Ms. Harris, she heard the gunshot during the club's playing of a song, "Give Me a Hand Clap" while gang members were giving their hand signs to one another.<sup>7</sup>

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<sup>6</sup> Staff Ex. 3.

<sup>7</sup> Staff Ex. 6 at 1.

DOCKET NO. 458-08-3299 AMENDED PROPOSAL FOR DECISION

PAGE 4

In addition, the club has been a problem for the Port Arthur fire department. Club Tiffany has received at least one citation for having more people than permitted by the fire code.<sup>8</sup>

Artie B. Freeman, a TABC staff investigator with more than 20 years of experience, is also familiar with Club Tiffany. He has known and worked with Mr. Hatch for years in trying to diminish the club's law enforcement problems. Those problems have included fighting inside the club and at least one other shooting outside the club. Mr. Freeman has suggested that Mr. Hatch raise the minimum age for admission to the club, lower the number of persons that are admitted, provide more off-street parking, and provide better security, including metal detectors. Mr. Hatch has adopted many of Mr. Freeman's suggestions, including using club security to pat down patrons, searching handbags at the door, and using metal detectors and wands to check patrons for weapons. The club has added signs prohibiting guns, knives, and gang colors.<sup>9</sup>

Despite the many law enforcement problems with the club, Staff has issued only five citations to Club Tiffany for violations of TABC laws since 2003, not including the shooting death of Mr. Allen. These violations have been: (1) three minor infractions that were resolved with a written warning; (2) the club's employment of a minor, an issue that was resolved with a five-day suspension or a civil penalty of \$750.00; and (3) one unresolved matter involving "miscellaneous violations."<sup>10</sup>

After the shooting, Mr. Hatch voluntarily closed Club Tiffany for two weeks. During that period, he repeatedly offered his cooperation to Staff in the investigation of the matter.

In the hearing on the merits, Club Tiffany did not dispute the events of November 25, 2007. But, the club offered a markedly different perspective about its public reputation. Three Port Arthur city council members, Michael Shane Sinegal, John Beard, Jr., and Willie Lewis, Jr., testified that

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<sup>8</sup> Staff Ex. 7.

<sup>9</sup> Staff Exs. 5 and 8; Respondent Ex. 1. The three exhibits are photographs of the signs on the exterior of the club. Respondent's photograph shows two signs that are not present in Staff's photographs: "24 AND UNDER STRICTLY ENFORCED" and "NO SMOKING CLUB."

<sup>10</sup> Staff Ex. 2 at 3; Staff Exs. 6 and 7.

the club is an important part of the city's African-American community. They characterized the restaurant in the club as a popular location for all age groups, and each of the city council members stated that they and their families have eaten there. They do not feel threatened, and they believe that security is appropriate when they are at the club. They do not feel that the club is a public nuisance.

In addition, Club Tiffany offered the testimony of Donald Ray Frank, Sr., pastor of the New Hope Baptist Church in Port Arthur. Pastor Frank testified that he and his family members have often been to the club. He allows his 16-year old son to go to the club on nights when alcohol is not served. Pastor Frank joined the city council members in his belief that the club is not a threat to the community.

### III. ANALYSIS

Staff's amended notice of hearing sought administrative sanctions against Club Tiffany based on three separate allegations. First, Staff alleged that the breach of the peace on November 25, 2007, was "not beyond" the club's control and resulted from the club's improper supervision of persons permitted to be on the premises.<sup>11</sup>

Second Staff alleged that the place or manner in which Club Tiffany conducted its business on November 25, 2007, warranted the cancellation or suspension of its permit. The allegation relied on the need to protect the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.<sup>12</sup>

Third, Staff alleged that on November 25, 2007, Club Tiffany used or allowed others to use the premises in a manner that constituted a common nuisance.<sup>13</sup>

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<sup>11</sup> TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 28.11. The "not beyond" language is part of the statute.

<sup>12</sup> TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7).

<sup>13</sup> TEX. ALCO. BEV. CODE ANN. §§ 81.001, 81.002, 81.003, and 81.005.

**A. First allegation****1. Was there a breach of the peace on Club Tiffany's premises?**

Staff's evidence was sufficient to prove that Mr. Allen was shot on the premises of Club Tiffany. As a matter of law, the shooting was a breach of the peace.<sup>14</sup>

**2. Was the breach "not beyond" Club Tiffany's control?**

Club Tiffany made a series of successful legal arguments to ALJ Shaver about this issue at the hearing. First, the club asserted that Staff had the burden of proving its allegations based on the events of the night of the shooting. ALJ Shaver upheld that assertion based on SOAH's procedural rules,<sup>15</sup> noting that Staff's complaint made specific reference to the events of November 25, 2007, and not to the club's general history or other legal problems. Second, at the hearing on the merits, Staff asked ALJ Shaver for permission to file a second amended complaint that would have expanded the scope of Staff's allegations. ALJ Shaver denied the motion as untimely and required Staff to proceed on the allegations as presented. Third, Club Tiffany objected to Staff's presentation of evidence about other alleged violations of law on other dates. In part, those objections were based on the club's argument that many of the problems created by its patrons happened after the patrons had left the club's premises and were beyond the club's control.<sup>16</sup> Although ALJ Shaver allowed Staff to present this evidence, it was considered as background information rather than as proof of the violations alleged in Staff's first amended complaint. This proposal for decision relies on ALJ Shaver's rulings.

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<sup>14</sup> *Head v. State*, 96 S.W.2d 981, 983 (Tex. Crim. App. 1936).

<sup>15</sup> 1 TAC § 155.427.

<sup>16</sup> Club Tiffany's control over its patrons in its parking lot was not an issue in this proceeding. Mr. Freeman testified that Club Tiffany's patrons parked their cars on the streets because the club's parking lot space was so limited.

The only evidence about the events before the shooting was the written statement of Ms. Harris, one of Staff's witnesses. Ms. Harris stated:

During the time that I was inside Club Tiffany, I did not see anything that I considered a problem. There were no hard feelings or confrontations that I observed. There was no arguing or fussing. Everyone was on the dance floor and everyone had their hands up and were waving them. I do not know what they were doing or what it means, but I guess that they were giving their [gang] signs.

The song that was playing is known as "Give Me a Hand Clap." Everyone was responding to the song and the music. Everyone seemed to be having a good time.<sup>17</sup>

Officers Crain and Boneau arrived after the crowd had dispersed and while the club was shutting down. They were unable to observe the presence or absence of any improper or illegal activities in the club or what type of security Club Tiffany had in place before closing. Staff inspector Freeman was not at the club that night, but he did testify that Mr. Hatch, the club's owner, had actively cooperated in the investigation of the shooting. Staff did not call Mr. Hatch as a witness or offer his written statement. From the paucity of the direct evidence about the events of that evening, the ALJ concludes that the fight happened with no warning. The music was loud, and the shooting of Mr. Allen apparently happened as part of the fight. There was no evidence that the club personnel allowed the fight to happen or tolerated it once it had begun. Therefore, the evidence does not support a conclusion that the club allowed the sudden breach of the peace to go beyond the club's control.

**3. Was the breach of the peace the result of Club Tiffany's improper supervision?**

Mr. Freeman testified that Club Tiffany had adopted some of his suggestions about security measures. But, Staff presented no evidence about the club's efforts on the night of the shooting to exclude persons with weapons. The only testimony about the club's supervision of its patrons was in relation to the speed with which club personnel stopped the fight and ejected those involved. There was no testimony about other fights or other improper behavior at the club on November 25, 2007.

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<sup>17</sup> Staff Ex. 6.

Ms. Harris, the only eyewitness who presented evidence, stated that she did not see anything that she considered a problem and that there were “no hard feelings or confrontations” and no “arguing or fussing” before the fight started. At most, Staff’s evidence was that Mr. Allen was involved in a fight on the dance floor, he was shot at some point during or after the fight, club personnel escorted him outside when they saw the fight begin, and Ms. Harris made the 911 call. The evidence does not support Staff’s allegation that Club Tiffany failed to provide proper supervision of its patrons.

Staff cannot be faulted for these gaps in proof. They were not present on the night of the fight, and neither Officers Crain nor Boneau had first-hand details of the security systems that were in place or the specifics of the shooting itself. Mr. Freeman testified that he had not been inside Club Tiffany in years.

The testimony of Pastor Frank and Port Arthur city council members Sinegal, Beard, and Lewis, though apparently heartfelt, was merely anecdotal and provided no additional information about the events of November 25, 2007. As background information, their perspective of Club Tiffany as a beloved community gathering hall must be evaluated in light of the overwhelming number and types of public complaints made by the public to the police about Club Tiffany’s patrons.

But, the patrons’ history of bad behavior is not proof of Club Tiffany’s violations on the night of November 25, 2007. Staff’s evidence was not sufficient to sustain its burden of proof that Club Tiffany violated those obligations under this allegation.

**B. Second allegation**

1. **Did the actions of Club Tiffany warrant a suspension of its permit?**

In many of the published judicial opinions about alleged violations of this statute, the issue is whether the permit holder was liable for the acts of its employees.<sup>18</sup> In contrast, the issue in this case is whether Club Tiffany was legally liable for the acts of its patrons. The evidence is that the club was not liable. The testimony of the only eyewitness, Mr. Harris, reflected that she saw no evidence of a problem before the fight. When the fight broke out, Ms. Harris noted that the club's management quickly identified those involved and ejected them. There was no evidence that there had been any other trouble that evening or that the management had tolerated gang activity other than hand signals during a song. Ultimately, Staff did not show that Club Tiffany played a role in the events that led to the shooting of Mr. Harris or that Club Tiffany's actions or inactions warranted a suspension of its permit.

## 2. Did Club Tiffany's actions or failures to act jeopardize the public?

Staff was required to show that its proposed penalty is based on a need to protect the general welfare, health, peace, morals, and safety of the people and the public sense of decency.<sup>19</sup> The law does not provide a set formula in determining whether a permit holder conducts its business in a way that jeopardizes these goals.<sup>20</sup> One event or a series of events may be sufficient to prove a violation.<sup>21</sup> And, a homicide is a sufficiently serious violation of law to constitute a threat to the public's welfare, health, peace, morals, or sense of decency.

But, a showing that a homicide occurred at Club Tiffany does not prove that the club tolerated the behavior that led to the event or that the club encouraged an atmosphere that allowed the homicide to happen. The proof must be found in evidence that materially supports the

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<sup>18</sup> *Id.*; *Tex. Alcoholic Bev. Comm'n v. I Gotcha, Inc.*, 104 S.W.3d 345 (Tex. App.--Amarillo 2006, pet. denied); *Texas Alcoholic Bev. Comm'n v. Top of the Strip, Inc.*, 993 S.W.2d 242 (Tex. App.--San Antonio 1999, pet. denied).

<sup>19</sup> *Id.*

<sup>20</sup> *Four Stars Food Mart, Inc. v. Tex. Alcoholic Beverage Comm'n*, 923 S.W.2d 266, 272 (Tex. App.--Fort Worth 1996, no writ);

<sup>21</sup> *I Gotcha, Inc. v. Tex. Alcoholic Bev. Comm'n*, 2008 Tex. App. LEXIS 5733, at \*14, fn 24 (Tex. App.--Fort Worth July 31, 2008, no pet.)

allegations made in the complaint. As has been repeated in this analysis, there was no evidence that Club Tiffany's actions or inactions on November 25, 2007, created a threat to the public.

**C. Third allegation**

Staff also alleged that Club Tiffany used or allowed others to use the licensed premises in a manner that constituted a common nuisance in violation of Code sections 81.001, 81.002, 81.003, and 81.005.

Generally, a statute is presumed to be prospective in its operations unless expressly made retrospective.<sup>22</sup> Chapter 81 applies only to licenses or renewals filed after June 15, 2007.<sup>23</sup> Club Tiffany proved that its permit renews on February 4 of each year.<sup>24</sup> The alleged violation occurred on November 25, 2007, thereby making the effective date of the then-current renewal permit February 4, 2007. The club's renewal permit was in effect before the effective date of Chapter 81, so the chapter did not apply to the club's renewal.

Given the facts in this case, Club Tiffany's actions did not violate the law. Club Tiffany's permit should not be suspended, and an administrative penalty should not be imposed against Club Tiffany's owner.

#### IV. FINDINGS OF FACT

1. Gerald Wayne Hatch d/b/a Club Tiffany, Respondent, holds a mixed beverage permit (MB 529339), mixed beverage late hours permit (LB 529340), and beverage cartage permit (LB 529341) issued by the Texas Alcoholic Beverage Commission (TABC).

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<sup>22</sup> TEX. GOV'T CODE ANN. § 311.022.

<sup>23</sup> Acts 2007, 80<sup>th</sup> Leg., R.S., ch. 896, sec. 2, eff. June 15, 2007.

<sup>24</sup> Staff Ex. 2.

2. Between 2003 and November 25, 2007, Staff issued Club Tiffany five citations for administrative violations: (1) three minor infractions that were resolved with a written warning; (2) the club's employment of a minor, an issue that was resolved with a five-day suspension or a civil penalty of \$750.00; and (3) one unresolved matter involving "miscellaneous violations."
3. Club Tiffany adopted suggestions made by Staff of the TABC (Staff) to improve its security, including using club personnel to pat down patrons before entry, searching handbags at the door, and using metal detectors and wands to search patrons for weapons.
4. On November 25, 2007, a fight occurred on the dance floor at Club Tiffany, and Marcus Allen, a patron, was shot in the club following the fight.
5. Mr. Allen later died in the hospital of his gunshot wounds.
6. Before the fight, there was no evidence of any problem at the club.
7. When the fight broke out, the club's management quickly identified those involved and ejected them.
8. After the shooting of Mr. Allen, Club Tiffany voluntarily closed for two weeks, and Mr. Hatch offered his cooperation to Staff in the investigation of the shooting.
9. On June 6, 2008, Staff submitted its Request to Docket Case form to the State Office of Administrative Hearings (SOAH).
10. On July 1, 2008, Staff issued an amended notice of hearing to Club Tiffany.
11. On July 11, 2008, Administrative Law Judge Rex Shaver convened a hearing on the merits at SOAH's office in Houston, Texas.
12. On July 18, 2008, the administrative record was closed.
13. Club Tiffany's alcoholic beverage permits renew on February 4 of each year.
14. The effective date of the then-current renewal permits was February 4, 2007.
15. The club's renewal permits were in effect before the effective date of TEX. ALCO. BEV. CODE ANN. ch. 81.

**V. CONCLUSIONS OF LAW**

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. §§ 11.61 and chs. 5 and 6; 16 TEX. ADMIN. CODE (TAC) ch. 35.
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. TEX. GOV'T CODE ANN. ch. 2003.
3. Gerald Wayne Hatch d/b/a Club Tiffany, Respondent, received proper and timely notice of the hearing on the merits. TEX. GOV'T CODE ANN. ch. 2001, 1 TAC § 155.55 and 16 TAC § 37.3.
4. The breach of the peace that occurred on November 25, 2007, was beyond the control of Club Tiffany and did not result from Club Tiffany's improper supervision of persons permitted to be on the licensed premises or on premises under Club Tiffany's control. TEX. ALCO. BEV. CODE ANN. §§ 28.11 and 11.61(b)(2).
5. The place or manner in which Club Tiffany conducts its business does not warrant the cancellation or suspension of its permits. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) and (7).
6. TEX. ALCO. BEV. CODE ANN. ch. 81 applies only to licenses or renewals filed after June 15, 2007. Acts 2007, 80<sup>th</sup> Leg., R.S., ch. 896, sec. 2, eff. June 15, 2007.
7. TEX. ALCO. BEV. CODE ANN. ch. 81 does not apply to this dispute.

**SIGNED March 25, 2009.**

  
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**PAUL D. KEEPER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings

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Cathleen Parsley

Chief Administrative Law Judge

DATE: September 15, 2009

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 14

SOAH DOCKET NO.: 458-08-3299

REGARDING: Amended PFD

FROM: JUDGE Paul D. Keeper

FAX TO:	FAX NO.:
Alejandra TABC	713/426-7965

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