

DOCKET NO. 585950

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
WEBWORLD MARKETING GROUP L.L.C. D/B/A D.B. COOPERS MANSION, Respondent PERMIT NO(s). MB614835, LB	§	ALCOHOLIC
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-10-0802)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this 10th day March 2010, the above-styled and numbered cause.

The hearing in the above numbered and styled matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Lindy Hendricks, presiding. The hearing convened on December 18, 2009 and the record was closed on the same day. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on February 10, 2010. The time for filing Exceptions to the PFD has passed and Respondent has not filed Exceptions to the PFD.

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

It is Ordered that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

It is further Ordered that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

IT IS THEREFORE ORDERED that Respondent's permits be **CANCELED FOR CAUSE**.

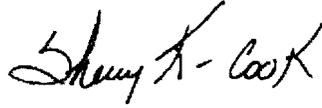
IT IS FURTHER ORDERED that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on April 05, 2010, 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 10th day of March

2010 at Austin, Texas



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

Hon. Lindy Hendricks
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
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.
RESPONDENT
d/b/a D.B. Coopers Mansion
22565 IH 45 North
Spring, Texas 77389
VIA U. S. FIRST CLASS MAIL

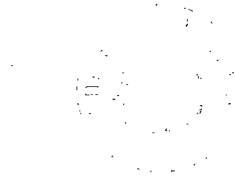
Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement Division-Houston District Office

RMP/dp

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 10, 2010

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STATE OFFICE OF ADMINISTRATIVE HEARINGS

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

VIA REGULAR MAIL

RE: Docket No. 458-10-0802; Texas Alcoholic Beverage Commission vs. Webworld Marketing Group, L.L.C. 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,

Lindy Hendricks
Administrative Law Judge

LH/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL
Ramona Perry, 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 Fryc, Attorney at Law, 808 Travis Street, Suite 1101, Houston, Texas 77002 -VIA REGULAR MAIL

SOAH DOCKET NO. 458-10-0802

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
	§	
	§	
VS.	§	OF
	§	
	§	
WEBWORLD MARKETING GROUP, L.L.C. d/b/a D.B. COOPERS MANSION PERMIT NOS. MB614835, LB, (TABC Docket No. 585950)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Webworld Marketing Group, L.L.C. d/b/a D.B. Coopers Mansion (Respondent) is the holder of Mixed Beverage Permit MB614835 and Mixed Beverage Late Hours Permit issued by the Texas Alcoholic Beverage Commission (Petitioner or TABC) for the premises located at 22565 IH 45 North, Spring, Harris County, Texas.

Petitioner brought this enforcement action, alleging Respondent's agent, servant, or employee engaged in or permitted the exposure of a person and that Respondent violated a law by operating a sexually-oriented business (SOB) without a SOB permit, violation of which is detrimental to the general welfare, health, peace, and safety of the people. TABC is requesting cancellation of Respondent's permits.

After considering the arguments and evidence presented, the Administrative Law Judge (ALJ) recommends that the permits be cancelled for the exposure of a person but finds the evidence insufficient on the violation of a law by operating a sexually-oriented business without a SOB permit.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On December 18, 2009, a public hearing was convened on this matter in Houston, Texas, before ALJ Lindy Hendricks. TABC was represented by Ramona Perry, staff attorney. Respondent failed to appear. The hearing concluded and the record closed that same day.

II. DISCUSSION AND ANALYSIS

A. Applicable Law

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2), TABC may suspend for not more than 60 days or cancel a permit if the permit holder violates a provision of the code. Further, TEX. ALCO. BEV. CODE ANN. § 104.01(2) prohibits a permit holder or his agent, servant, or employee from engaging in or permitting the exposure of a person.

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7), TABC may suspend for not more than 60 days or cancel a permit if the permit holder conducts his business in a manner that is detrimental to the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Further, 16 TEX. ADMIN. CODE § 35.31(c)(16) states that a permit holder violates TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7) if he violates any law, regulation, or ordinance of the federal government or of the county or municipality in which the licensed premises is located, violation of which is detrimental to the general welfare, health, peace and safety of the people.

B. Evidence

TABC staff offered documentary evidence showing: (a) On November 28, 2005, Respondent was issued Mixed Beverage Permit MB614835 and Mixed Beverage Late Hours Permit. (b) On December 7, 2009, Petitioner sent an amended notice of hearing to Respondent asserting that the TABC was seeking to cancel or suspend Respondent's permits.

In addition to the documentary evidence, TABC staff presented the testimony of TABC agent Robert Pelton.

1. Engaging in or Permitting the Exposure of a Person

On May 1, 2009, TABC Agent Robert Pelton conducted an inspection at Respondent's licensed premises. During this inspection, Agent Pelton observed a female employee, Kimberly Hamilton, and a male customer engaging in oral sex in an upstairs VIP area. Ms. Hamilton was seated on a couch with her breasts exposed. Additionally, Ms. Hamilton had moved her panties aside, spread her legs, and exposed the area of her vagina. Ms. Hamilton identified herself as an employee of Respondent. Jose Vasquez, the manager on duty, provided a copy of Ms. Hamilton's personnel file which included a copy of her driver's license and Dancer Information Sheet.

2. Violation of a Regulation

TABC presented a Memorandum Opinion and Temporary Injunction, dated September 14, 2009, in support of its allegation that Respondent violated a county regulation by operating a sexually-oriented business without a SOB permit.

3. Respondent's Case

Respondent did not appear and did not present evidence.

C. Analysis and Conclusion

The evidence shows that Ms. Hamilton moved her panties to the side, spread her legs, and exposed her vaginal area to a customer. Ms. Hamilton permitted a customer to perform oral sex on her. This was done on the licensed premises in the VIP room. Agent Pelton made a positive identification of Ms. Hamilton through her personnel file maintained by Respondent. By exposing her person in such a manner, Ms. Hamilton's actions were lewd, immoral, and offensive to the public.

The Memorandum Opinion and Temporary Injunction is not under seal or certified as a public record. Therefore, the ALJ gives little weight to the document. No witnesses appeared to testify to the manner in which Respondent conducted his business.

Based on the evidence, the ALJ finds Respondent engaged in or permitted the exposure of a person but finds the evidence insufficient on the violation of a law by operating a sexually-oriented business without a SOB permit. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) and the request of Petitioner, the ALJ recommends cancellation of Respondent's permits.

III. FINDINGS OF FACT

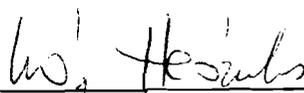
1. Webworld Marketing Group, L.L.C., d/b/a D.B. Coopers Mansion (Respondent), is the holder of Mixed Beverage Permit MB682452 and Mixed Beverage Late Hours Permit issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 22565 IH 45 North, Spring, Harris County, Texas.
2. On December 7, 2009, TABC staff issued an amended notice of hearing, directed to Respondent at his address of record and faxed to his attorney of record.
3. The notice included the time, date, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. On December 18, 2009, a hearing convened in Houston, Harris County, Texas before ALJ Lindy Hendricks with the State Office of Administrative Hearings field office, located at 2020 North Loop West, Suite 111, Houston, Texas 77018.
5. Petitioner appeared and was represented by Ramona Perry, attorney. Respondent did not appear. The hearing concluded and the record closed that same day.
6. On May 1, 2009, Agent Pelton conducted an inspection at Respondent's licensed premises.
7. Kimberly Hamilton was an employee of Respondent.
8. Ms. Hamilton exposed her breasts and vaginal area, and permitted a customer to perform oral sex on her.
9. The exposure and oral sex took place on the licensed premises in the VIP room.

10. Ms. Hamilton's actions were lewd, immoral, and offensive to the public.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Chapters 1 and 5 and §§ 6.01 and 11.11.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with 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 provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. On May 1, 2009, Respondent engaged in or permitted the exposure of a person which was lewd, immoral, and offensive to the public sense of decency, in violation of TEX. ALCO. BEV. CODE ANN §§ 11.61(b)(2) and 104.01(2).
5. Based on the foregoing findings of facts and conclusions of law, Respondent's permits should be cancelled.

SIGNED February 10, 2010



**LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**