

DOCKET NO. 589410

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
NORTH BY EAST ENTERTAINMENT LTD. D/B/A PLATINUM I I ADULT CABARET PERMIT/LICENSE NO(s). MB566183, LB DALLAS COUNTY, TEXAS (SOAH DOCKET NO. 458-10-2953)	§ § § § § §	ALCOHOLIC BEVERAGE COMMISSION

ORDER

The above-styled and numbered cause is before the Assistant Administrator, Texas Alcoholic Beverage Commission for consideration and entry of the agency order.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on the 15th day of March, 2010 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 13th day of May, 2010. The Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies. No exceptions were filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge.

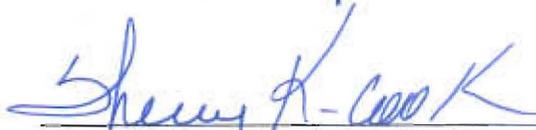
IT IS THEREFORE ORDERED, that pursuant to rules adopted by the commission found in Title 16, Texas Administrative Code §33.24, your conduct surety bond is **FORFEITED**

IT IS FURTHER ORDERED, that service of this Order shall be made to the surety company, bank or savings institution holding the bond, certificate of deposit or letter of credit securing performance of the holder of the permit on the date it becomes final, and the amount of the bond payable to the state be remitted to the commission, not later than 10 days from the date the final order is served.

This Order will become **final and enforceable** on the 26th day of July, 2010, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

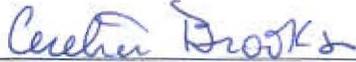
SIGNED this the 2nd day of July, 2010, at Austin, Texas.



Sherry K- Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on the 2nd day of July, 2010.



Cecelia Brooks, Paralegal
Texas Alcoholic Beverage Commission
Legal Division

Honorable Judge Brenda Coleman
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
Dallas, Texas
VIA FACSIMILE: (214) 956-8611

Wells Fargo Bank
SURETY, BANK OR SAVINGS INSTITUTION
14999 Preston Rd., Ste. 100
Dallas, Texas 75254
VIA REGULAR MAIL

North By East Entertainment, Ltd.
d/b/a Platinum I I Adult Cabaret
RESPONDENT
10557 Wire Way
Dallas, TX 75220
VIA REGULAR MAIL

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

SOAH DOCKET NO. 458-10-2953

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
v.	§	
	§	
NORTH BY EAST ENTERTAINMENT LTD. D/B/A PLATINUM II ADULT CABARET, Respondent	§	OF
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission or Petitioner) brought this forfeiture action against North By East Entertainment LTD. d/b/a Platinum II Adult Cabaret (Respondent). The Commission sought forfeiture of Respondent's conduct surety bond, alleging that Respondent was found to have committed three violations of the Texas Alcoholic Beverage Code (the Code) or Commission's rules (the Rules) since September 1, 1995. Petitioner also alleged that the violations have been finally adjudicated. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (CODE) ch. 5 and § 11.38. 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 March 1, 2010, the Commission issued its notice of hearing setting the matter for hearing on March 15, 2010. 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 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 certified mail was delivered on March 3, 2010, as evidenced by the green card signed by Respondent's agent, Michael S. Davis.

On March 15, 2010, a hearing convened before SOAH ALJ Brenda Coleman. The Commission was represented at the hearing by Judith Kennison, Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. 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 Proposed Findings of Fact below. Based on the deemed factual findings in this case, Respondent's conduct surety bond should be forfeited.

III. FINDINGS OF FACT

1. North By East Entertainment LTD. d/b/a Platinum II Adult Cabaret (Respondent) held Mixed

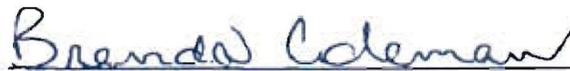
Beverage Permit MB 566183, which included the Mixed Beverage Late Hours Permit issued by the Commission, for the premises located at 10557 Wire Way Drive, Dallas, Dallas County, Texas.

2. Respondent, acting through John Thomas Auletta, executed a conduct surety bond on October 11, 2004, as evidenced by the Assignment (For Conduct Surety Purposes Only), and by the Certificate of Deposit, numbered 7198123486, in the Wells Fargo Bank.
3. The bond is in the amount of \$5,000 and is payable to the State of Texas.
4. Respondent's permit was issued on November 12, 2004, and was continuously renewed until expiration on November 11, 2008.
5. On September 17, 2009, the Commission notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond. Respondent requested a hearing on the matter.
6. On March 1, 2010, 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 March 15, 2010.
7. The certified mail was delivered on March 3, 2010, as evidenced by the green card signed by Respondent's agent, Michael S. Davis.
8. The notice of hearing alleged on or about September 17, 2009, Respondent had three or more adjudicated violations of the Code since September 1, 1995, and it 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 March 15, 2010. The Commission appeared through its Staff Attorney, Judith Kennison. 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 § 11.11, as well as 16 TAC § 33.24.
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 TAC § 155.501 and 16 TAC § 37.3.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.501.
5. Based on the foregoing findings and conclusions, Respondent's conduct surety bond should be forfeited. Code § 11.11 and 16 TAC § 33.24 (j).

SIGNED May 13, 2010.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS