

DOCKET NO. 585248

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
THE OWL'S NEST DANCE CLUB INC. D/B/A THE TRAP ROOM-OWLS NEST DANCE CLUB INC. PERMIT/LICENSE NO(s). N51183, NL055241 & PE072164	§	ALCOHOLIC
	§	
	§	
DALLAS COUNTY, TEXAS (SOAH DOCKET NO. 458-09-5557)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROSAL FOR DECISION**

CAME ON FOR CONSIDERATION on this 7<sup>th</sup> day of December 2009, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Brenda Coleman, presiding. The hearing convened on August 31, 2009 and the record was closed on same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on October 30, 2009. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

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.

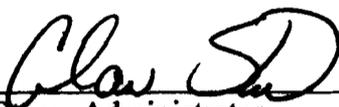
**It is further Ordered** that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

**IT IS THEREFORE ORDERED** that Respondent shall pay a civil penalty in the amount of **\$2,100.00** on or before **January 26, 2010**. If the civil penalty is not paid when due, the privileges granted by the Commission and activities authorized under the above license or permit by the Code will be **SUSPENDED** beginning at 12:01 A.M. on **February 3, 2010** and shall remain suspended for **seven (7) days**.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on January 4<sup>th</sup>, 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 7<sup>th</sup> day of December 2009 at Austin, Texas.

  
\_\_\_\_\_  
Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

Administrative Law Judge  
State Office of Administrative Hearings  
6333 Forest Park Road, Suite 150-A  
Dallas, Texas 75235  
**VIA FACSIMILE: (214) 956-8611**

The Owl's Nest Dance Club Inc.  
D/B/A The Trap Room-Owls Nest Dance Club Inc.  
**RESPONDENT**  
14023 Coit Road  
Dallas, Texas 75240  
**VIA U.S. REGULAR MAIL**

Sheila Lindsey  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Dallas Enforcement Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 585248

REGISTER NUMBER:

NAME: THE OWL'S NEST DANCE CLUB INC.

TRADENAME: THE TRAP ROOM-OWLS NEST DANCE CLUB INC.

ADDRESS: 14023 COIT ROAD, DALLAS, TEXAS 75240

DUE DATE: JANUARY 26, 2010

PERMITS OR LICENSES: N051183, NL055241 & PE072164

AMOUNT OF PENALTY: \$2,100.00

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.

**SOAH DOCKET NO. 458-09-5557**

**TEXAS ALCOHOLIC BEVERAGE,  
COMMISSION,  
Petitioner**

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§

**BEFORE THE STATE OFFICE**

**V.**

**OF**

**THE OWL'S NEST DANCE CLUB  
INC. D/B/A THE TRAP ROOM-OWLS  
NEST DANCE CLUB INC.,  
Respondent**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

Staff of the Texas Alcoholic Beverage Commission (Commission or Petitioner) brought this enforcement action against The Owl's Nest Dance Club Inc. d/b/a The Trap Room-Owl's Nest Dance Club Inc. (Respondent). Petitioner alleged that Respondent has engaged in conduct prohibited by the Texas Alcoholic Beverage Code and requested a 7-day suspension of Respondent's permits, or a \$2,100 civil penalty in lieu of the suspension. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) recommends that Petitioner's request be granted.

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

The Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.61. 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 August 6, 2009, the Commission issued its notice of hearing setting the matter for hearing on August 31, 2009. 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

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PROPOSAL FOR DECISION

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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 US Postal Service attempted to deliver the certified mail on August 7, 2009, and left a notice. The certified mail was unclaimed by Respondent.

On August 31, 2009, a hearing convened before SOAH ALJ Brenda Coleman. The Commission was represented at the hearing by Shelia Lindsey, Staff Attorney. Respondent did not appear and was not represented at the hearing. 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 permits should be suspended, or Respondent should be permitted to a pay civil penalty in lieu of the suspension.

## III. FINDINGS OF FACT

1. The Owl's Nest Dance Club Inc. d/b/a The Trap Room-Owl's Nest Dance Club Inc. (Respondent) holds a Private Club Registration Permit, Private Club Late Hours Permit and Beverage Cartage Permit issued by the Texas Alcoholic Beverage Commission (Commission), for the premises located at 14023 Coit Road, Dallas, Dallas County, Texas.
2. On November 3, 2008, Respondent or its agent, servant, or employee, sold, offered to sell,

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PROPOSAL FOR DECISION

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purchased, or held title to an alcoholic beverage so as to constitute an open saloon.

3. On August 6, 2009, 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 August 31, 2009.
4. The US Postal Service attempted to deliver the certified mail on August 7, 2009. The certified mail was marked "undeliverable as addressed" and returned to Petitioner on August 17, 2009.
5. The regular mail was marked "return to sender, attempted, not known, unable to forward" and returned to Petitioner on August 17, 2009.
6. 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.
7. 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."
8. A hearing convened before SOAH ALJ Brenda Coleman on August 31, 2009. The Commission appeared through its Staff Attorney, Shelia Lindsey. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
9. Respondent received written warnings for numerous violations of the Texas Alcoholic Beverage Code between July 22, 1991 and February 20, 2009.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Texas Alco. Bev. Code Ann. ch. 5 and § 11.61.
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 provided to Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.501 and 16 TAC § 37.3.

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PROPOSAL FOR DECISION

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4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.501.
5. As set out in Finding of Fact No. 2, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 32.01(a)(2), 32.17(a)(1) and (b).
6. Respondent's permits should be suspended for 7 days, or Respondent should be allowed to pay \$2,100 in lieu of suspension.

**SIGNED October 30, 2009.**

  
\_\_\_\_\_  
**BRENDA COLEMAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

October 30, 2009

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

**VIA FACSIMILE 512/206-3203**

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.  
THE OWL'S NEST DANCE CLUB INC. D/B/A THE TRAP ROOM-OWLS  
NEST DANCE CLUB INC.  
SOAH DOCKET NO. 458-09-5557**

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

Sincerely,

A handwritten signature in cursive script that reads "Brenda Coleman".

Brenda Coleman  
Administrative Law Judge

BC/slp  
Enclosure

Xc: Shelia A. Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**  
The Owls Nest Dance Club Inc. d/b/a The Trap Room-Owls Nest Dance Club, Respondent, **VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**

6333 Forest Park Road, Suite 150A ♦ Dallas, Texas 75235  
(214) 956-8616 Fax (214) 956-8611  
<http://www.soah.state.tx.us>