

DOCKET NO. 593988

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
ASIAN NIGHTS CLUB, INC. D/B/A ASIAN NIGHTS, Respondent	§	ALCOHOLIC
	§	
PERMIT NOS. N616956	§	
	§	
TARRANT COUNTY, TEXAS (SOAH DOCKET NO. 458-10-6074)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 4th day of May, 2011, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Robert F. Jones Jr. presiding. The hearing convened on November 12, 2010 and the SOAH record closed the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on November 30, 2010. 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 Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, **adopts the Findings of Fact and adopts Conclusions of Law Nos. 1 - 5 & 7** 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.

Proposed Conclusion of Law No. 6 in the Proposal for Decision contains a technical error regarding the reference to the Commission's Rules. By this Order, **Conclusion of Law No. 6** should and does read:

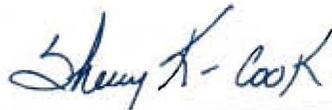
Based on the above Findings of Fact, Respondent is subject to disciplinary action under TEX. ALCO. BEV. CODE ANN. Chapter 32, §§11.05, 32.17 and 109.53, and 43 Tex. Admin. Code §41.52.

All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

**IT IS THEREFORE ORDERED** that the Private Club Registration Permit held by Asian Nights Club, Inc. d/b/a Asian Nights is hereby **CANCELLED**.

This Order will become final and enforceable on the 1st day of June, 2011, unless a Motion for Rehearing is filed **before** that date.

**SIGNED** this the 4th day of May, 2011, at Austin, Texas.

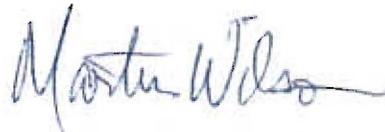


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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

### **CERTIFICATE OF SERVICE**

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 4th day of May, 2011.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Robert F. Jones Jr.  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
6777 Camp Bowie Blvd Suite 400  
Fort Worth, Texas 76116  
**VIA FACSIMILE: (512) 322-0473**

Asian Nights Club, Inc.

d/b/a Asian Nights

**RESPONDENT**

2905 North Beach

Fort Worth, Texas 76113

***VIA REGULAR MAIL***

Judith L. Kennison

**ATTORNEY FOR PETITIONER**

TABC Legal Division

TABC Licensing Division

Lt. Gene Anderson

TABC Arlington Enforcement District Office

**DOCKET NO. 458-10-6074**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner**

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§

**BEFORE THE STATE OFFICE**

**V.**

**OF**

**ASIAN NIGHTS CLUB, INC., D/B/A  
ASIAN NIGHTS, Respondent**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Asian Nights Club, Inc., d/b/a Asian Nights (Respondent) alleging that on November 19, 2009, Respondent or its agent, servant, or employee, violated TEX. ALCO. BEV. CODE ANN. Chapter 32, §§ 11.05, 32.17, and 109.53, and 43 Tex. Admin Code §41.52. Staff seeks cancellation of Respondent's permit. The Administrative Law Judge (ALJ) recommends that Respondent's permit be canceled.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened before ALJ Robert F. Jones Jr. on November 12, 2010, at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas, and concluded the same day. Staff attorney Judith L. Kennison appeared and represented TABC. Respondent did not appear and was not represented at the hearing.

After introducing evidence to establish proper notice and jurisdiction, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.501. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without discussing the evidence.

## II. FINDINGS OF FACT

1. Asian Nights Club, Inc., d/b/a Asian Nights (Respondent) holds Private Club Registration Permit, N-616956, which included Private Club Late Hours Permit and Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission (TABC) on January 3, 2009.
2. Respondent's premises are located at 2905 North Beach, Suite A, Fort Worth, Tarrant County, Texas, 76113-6255.
3. On October 22, 2010, TABC served a hearing notice by personal service on Chanthany Komyongsa, President of Respondent, who signed an agent's endorsement acknowledging service of the notice.
4. The hearing notice contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held.
5. The hearing notice also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the hearing notice might be granted by default.
6. The hearing on the merits was held November 12, 2010, before Robert F. Jones Jr. on November 12, 2010, at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff attorney Judith L. Kennison appeared in person. Respondent did not appear at the hearing.
7. The hearing proceeded on a default basis, and the allegations contained in the hearing notice were deemed admitted as true.
8. On November 19, 2009, Respondent or its agent, servant, or employee:
  - a. Failed to keep written minutes of membership committee meetings;
  - b. Failed to keep a keep a well bound membership book or machine bookkeeping system;
  - c. Failed to maintain preliminary membership applications in chronological order or had missing preliminary membership applications;
  - d. Failed to operate under the pool system by:
    - i. Failing to maintain source records indicating the percentage of beverage replacement;
    - ii. Depositing money other than the designate percentage of service charges into the replacement account; and,

- iii. Failing to maintain a monthly record of the total amount of alcoholic beverage service charges collected, the amount deposited in the replacement account, the amount used to purchase alcoholic beverages or repay a loan for the original purchase of alcoholic beverages, and the amount transferred to the club's general operating account; and
- e. Permitted, consented to, or allowed an unauthorized person to use or display its permit in the conduct of business.

### III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, subch. B.
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 proposed 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; 1 TEX. ADMIN. CODE (TAC) § 155.501; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under 1 TAC § 155.501.
5. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.
6. Based on the above Findings of Fact, Respondent is subject to disciplinary action under TEX. ALCO. BEV. CODE ANN. Chapter 32, §§ 11.05, 32.17, and 109.53, and 43 Tex. Admin Code §41.52.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the cancellation of Respondent's permit is warranted pursuant to TEX. ALCO BEV. CODE ANN. §§ 11.05, 32.17, and 109.53.

SOAH Docket No. 458-10-6074

Proposal for Decision

Page 4

Signed November 30, 2010.



ROBERT F. JONES JR.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS