

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
January 18, 2012

RECEIVED
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FOUR
EIGHT

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

VIA REGULAR MAIL

RE: Docket No. 458-12-2201, Texas Alcoholic Beverage Commission vs. EE Entertainment Group LLC, d/b/a The Blue Door

Dear Mr. Steen:

Please find enclosed a Corrected 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.

Sincerely,

A handwritten signature in cursive script that reads "Lindy Hendricks".

LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

[LH/ell]
Enclosure

xc Ramona Perry, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, TX 77008 - **VIA REGULAR MAIL**
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
EE Entertainment Group LLC d/b/a The Blue Door c/o Tianna Pierre, 14022 Pawnee Trails Drive, Cypress, TX 77429-4669 - **VIA REGULAR MAIL**
EE Entertainment Group LLC d/b/a The Blue Door, Respondent, 11124 Westheimer Road, Houston, TX 77042 - **VIA REGULAR MAIL**

2020 North Loop West Suite 111 Houston, Texas 77018
713.957.0010 (Telephone) 713.812.1001 (Fax)
www.soah.state.tx.us

3. The amended notice of hearing contained a statement in at least 12-point, boldface type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the amended notice of hearing might be granted by default against a party that failed to appear at the hearing.
4. The hearing was held and the record closed on January 6, 2012.
5. Respondent did not appear at the scheduled hearing and was not represented at the hearing.
6. The referring agency's staff moved for a default, which was granted.
7. The factual allegations set out in the amended notice of hearing are deemed admitted and are incorporated by reference into this Finding of Fact.

CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
2. The referring agency has jurisdiction over this matter.
3. Proper and timely notice was provided to the Respondent in accordance with TEX. GOV'T CODE ch. 2001 and 1 TEX. ADMIN. CODE ch. 155.
4. The allegations in the amended notice of hearing were properly deemed admitted. 1 TEX. ADMIN. CODE § 155.501.
5. The referring agency staff has established the basis for sanction alleged in the amended notice of hearing, which is incorporated into this Conclusion of Law.
6. The referring agency is entitled to the relief requested in its amended notice of hearing and P Respondent's permit should be cancelled.

SIGNED January 13, 2012



LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TABC DOCKET NO. 605243

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
EE ENTERTAINMENT GROUP LLC D/B/A THE BLUE DOOR, Respondent	§	ALCOHOLIC
	§	
PERMITS NO. MB741954, LB, PE & CB	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-12-2201)	§	BEVERAGE COMMISSION

ORDER NUNC PRO TUNC

CAME ON FOR CONSIDERATION this 13th day of April, 2012, 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 Lindy Hensricks presiding. The hearing convened on January 6, 2012 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on January 6, 2012. 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. Exceptions were filed by Petitioner on January 12, 2012. On January 13, 2012, the Administrative Law Judge issued a Corrected Proposal for Decision.

After review and due consideration of the Corrected Proposal for Decision and the record in this proceeding, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, with the following exceptions:

Finding of Fact No. 7 in the Corrected Proposal for Decision is deleted, and the following Findings of Fact No. 7 - No. 14 are substituted in its stead:

Finding of Fact No. 7. On or about July 8, 2011, Respondent or its officer, agent or employee knowingly possessed or permitted to be possessed on the premises for which the permits are issued an alcoholic beverage not covered by invoice from the supplier from whom the alcoholic beverage was purchased.

Finding of Fact No. 8. Respondent is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and use Tax Act (Chapter 321, Tax Code).

Finding of Fact No. 9. Respondent is indebted to the state for taxes, fees or payment of penalties imposed by the Alcoholic Beverage Code, by rule of the Texas Alcoholic Beverage Commission, or by Chapter 183 of the Tax Code.

Finding of Fact No. 10. On or about March 28, 2011, Respondent or its agent, servant or employee used a permit or exercised a privilege granted by the permit at 4610 FM 1960, Houston, Texas, which is a place, address, premises or location other than the place, address or location for which the permit was issued.

Finding of Fact No. 11. On or about March 28, 2011, Respondent or its agent, servant or employee stored liquor as defined by Alcoholic Beverage Code §1.04(5) in a wet area at 4610 FM 1960, Houston, Texas without first having procured a permit required for storage of liquor off the Respondent's permitted premises.

Finding of Fact No. 12. On or about March 29, 2011, Respondent or its agent, servant or employee used a permit or exercised a privilege granted by the permit at 2533 Southmore Blvd., Houston, Texas, which is a place, address, or location other than the place, address or location for which the permit was issued.

Finding of Fact No. 13. On or about March 29, 2011, Respondent or its agent, servant or employee stored liquor as defined by Alcoholic Beverage Code §1.04(5) in a wet area at 2533 Southmore Blvd., Houston, Texas without first having procured a permit required for storage of liquor off the Respondent's permitted premises.

Finding of Fact No. 14. On or about March 8, 2011, Respondent or its agent, servant or employee consented to or allowed the use or display of its permit by a person other than the person to whom the permit was issued.

The following Conclusions of Law No. 7 – No. 12 are added:

Conclusion of Law No. 7. Knowingly possessing or permitting to be possessed on the premises for which the permits are issued an alcoholic beverage not covered by invoice from the supplier from whom the alcoholic beverage was purchased is a violation of Alcoholic Beverage Code §§28.06(c) & (d) and 28.01(c)(1), and 16 Texas Administrative Code §41.50(h)(2).

Conclusion of Law No. 8. Being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or being shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (Chapter 321, Tax Code) is a violation of Alcoholic Beverage Code §11.61(c)(2).

Conclusion of Law No. 9. Being indebted to the state for taxes, fees or payment of penalties imposed by the Alcoholic Beverage Code, by rule of the Texas Alcoholic Beverage Commission, or by Chapter 183 of the Tax Code is a violation of Alcoholic Beverage Code §§11.61(b)(5).

Conclusion of Law No. 10. Using a permit or exercising a privilege granted by the permit at a place, address, or location other than the place, address or location for which the permit was issued is a violation of Alcoholic Beverage Code §§11.06 and 11.61(b)(2).

Conclusion of Law No. 11. Storing liquor as defined by Alcoholic Beverage Code §1.04(5) in a wet area without first having procured a permit required for storage of liquor off the Respondent's permitted premises is a violation of Alcoholic Beverage Code §§11.01 and 11.61(b)(2).

Conclusion of Law No. 12. Consenting to or allowing the use or display of its permit by a person other than the person to whom the permit was issued is a violation of Alcoholic Beverage Code §§11.05 and 11.61(b)(2).

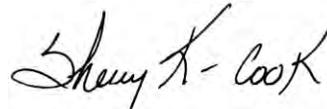
These changes to proposed Findings of Fact and Conclusions of Law are made pursuant to Government Code §2001.058.

The Findings of Fact and Conclusions of Law set forth in the Corrected Proposal for Decision, as modified by this Order, are incorporated into this Order, as if such were fully set out and separately stated herein. 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 Mixed Beverage Permit No. MB741954, and the associated Mixed Beverage Late Hours Permit, Beverage Cartage Permit and Caterer's Permit held by EE Entertainment Group LLC d/b/a The Blue Door are hereby **CANCELLED**.

Unless a Motion for Rehearing is filed by the 8th of May, 2012, this Order will become final and enforceable on the 9th day of May, 2012.

SIGNED this the 13th day of April, 2012, at Austin, Texas.



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 13th day of April, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Hon. Lindy Hendricks
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 N. Loop W. Ste. 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-0474

EE Entertainment Group, LLC
d/b/a The Blue Door

RESPONDENT

11124 Westheimer Rd
Houston, TX 77042

VIA REGULAR & CERTIFIED MAIL: 7006 2760 0004 7904 2251

Ramona M. Perry

ATTORNEY FOR PETITIONER

TABC Legal Division

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Lieutenant Marc Decatur

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LICENSING

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