

IT IS THEREFORE ORDERED that Respondent's Mixed Beverage Permit No. MB769019, and the associated Mixed Beverage Late Hours Permit, are hereby **CANCELLED**.

This Order will become final and enforceable on the 23rd day of May, 2014, unless a Motion for Rehearing is filed by the 22nd day of May, 2014.

SIGNED this the 29th day of April, 2014, at Austin, Texas.



Sherry K-Cook, Executive Director
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 29th day of April, 2014.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Bennie Brown
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West Suite 111
Houston, Texas 77018
VIA FACSIMILE: (512) 322-2061

Tunari Entertainment LLC
d/b/a Carnival Night Club

RESPONDENT

7633 Dashwood Drive

Houston, Texas 77036

VIA FIRST CLASS MAIL, CMRRR # 70120470000133008286

Robert Valles, Jr.

ATTORNEY FOR RESPONDENT

3700 North Main

Houston, Texas 77009

VIA FIRST CLASS MAIL, CMRRR # 70120470000133008293

AND

VIA FACSIMILE: (281) 971-6201

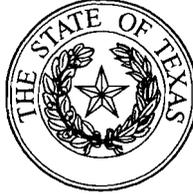
Ramona M. Perry

ATTORNEY FOR PETITIONER

TABC Legal Division

VIA E-MAIL: ramona.perry@tabc.state.tx.us

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 6, 2014

RECEIVED

FEB 10 2014

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: SOAH Docket No. 458-14-0621; Texas Alcoholic Beverage Commission vs. Tunari Entertainment LLC d/b/a Carnival Night Club (TABC Case No. 616890, 620236)

Dear Ms. Cook:

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.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Brown".

Bennie Brown
Administrative Law Judge

BB/cj

Enclosure

xc Ramona M. Perry, Texas Alcoholic Beverage Commission, 427 W. 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
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL (with Certified Evidentiary Record and 1 Hearing CD/s)
Robert Valles, Jr.; Attorney at Law; 3700 North Main; Houston, Texas 77009 - 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

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
v.	§	
	§	
	§	OF
TUNARI ENTERTAINMENT LLC	§	
D/B/A CARNAVAL NIGHT CLUB	§	
PERMIT/LICENSE NO(s):	§	
MB769019, LB	§	
Respondent	§	
	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 616890, 620236)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Tunari Entertainment LLC d/b/a Carnival Night Club (Respondent), alleging that Respondent engaged in conduct prohibited by or in violation of the Texas Alcoholic Beverage Code (Code). Respondent did not appear and was not represented at the hearing. Staff’s motion for default was granted. For the reasons set out in the Findings of Fact and Conclusions of Law, the Administrative Law Judge (ALJ) finds that the relief requested by Staff of the TABC should be granted on a default basis.

I. FINDINGS OF FACT

1. Tunari Entertainment LLC d/b/a Carnival Night Club (Respondent) holds a Mixed Beverage Permit and a Mixed Late Hours Permit issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 7633 Dashwood Drive, Houston, Harris County, Texas 77036 and whose mailing address is the same.

2. On October 28, 2013, Staff of the TABC issued a notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known mailing address setting the hearing on the merits for January 10, 2014. The notice was returned and marked "return to sender unclaimed unable to forward."
3. On October 28, 2013, Staff faxed a copy of the notice of hearing to Respondent's attorney, Robert Valles, Jr., at fax number (281) 971-6201. Staff received confirmation that the transmission was successful.
4. The notice of hearing informed Respondent of the time, date, and location 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 included a short, plain statement of the matters asserted.
5. The notice of hearing 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 notice might be granted by default.
6. The hearing convened on January 10, 2014, before Administrative Law Judge Bennie Brown at the State Office of Administrative Hearings (SOAH) office in Houston, Texas. TABC was represented by Staff Attorney, Ramona M. Perry. Respondent did not appear and was not represented at the hearing.
7. Staff moved for a default, which was granted, and the record closed at the conclusion of the hearing.
8. The allegations contained in the notice are deemed admitted as true.
9. On or about February 2, 2013, Respondent or Respondent's agent, servant, or employee sold, served, or delivered an alcoholic beverage on the permitted premises at a time when the sale of alcoholic beverages was prohibited in violation of the Texas Alcoholic Beverage Code.
10. On or about February 2, 2013, Respondent or Respondent's agent, servant, or employee permitted the consumption of an alcoholic beverage on the permitted premises at a time when the consumption of alcoholic beverages was prohibited in violation of the Texas Alcoholic Beverage Code.
11. On or about July 11, 2013, Respondent or Respondent's agent, servant, or employee sold, served, or delivered an alcoholic beverage on the permitted premises at a time when the sale of alcoholic beverages was prohibited in violation of the Texas Alcoholic Beverage Code.

II. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) Chapter 5 and §11.61.
2. SOAH 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 Texas Government Code Chapter 2003.
3. Proper and timely notice of the hearing was provided as required by Texas Government Code §§ 2001.051 and 2001.052.
4. Respondent violated Code §§ 11.61, 105.03, and 105.06.
5. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permits should be cancelled, pursuant to Code § 11.61.

SIGNED on February 6, 2014.



**BENNIE BROWN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**