

**DOCKET NO. 613609**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
	§	
<b>THIRTEEN ENTERTAINMENT L.L.C. D/B/A THIRTEEN, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
	§	
<b>PERMIT MB774838, LB, PE</b>	§	
	§	
	§	
<b>HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-13-1710)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 28th day of August, 2013, 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 Timothy Horan presiding. The hearing convened on February 8, 2013 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 March 27, 2013. 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 April 3, 2013. The Administrative Law Judge filed a Response to Petitioner’s Exceptions on May 2, 2013.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

All motions, requests for entry of Proposed Findings of Fact 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 privileges granted by the Commission and activities authorized under the above permit and license by the Code will be **SUSPENDED** beginning at 12:01 A.M. on October 2nd, 2013 and shall remain suspended for **TEN (10)** consecutive days, **UNLESS** Respondent pays a civil penalty in the amount of **\$3,000.00 ON OR BEFORE** September 24th, 2013.

**If this Order is appealed and judgment is issued affirming the Order**, the privileges granted by the Commission and activities authorized under the above permit and license by the Code will be **SUSPENDED** beginning at 12:01 A.M. on the **eighteenth (18<sup>th</sup>)** day following the date the judgment is signed and shall remain suspended for **TEN (10)** consecutive days, unless Respondent pays the civil penalty in the amount of **\$3,000.00** on or before the **tenth (10<sup>th</sup>)** day following the date the judgment is signed.

This Order will become **final and enforceable** on the 18th day of September, 2013, **unless a Motion for Rehearing is filed by the 17th day of September, 2013.**

**SIGNED** this the 28th day of August, 2013, at Austin, Texas.



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Sherry K-Cook, 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 28th day of August, 2013.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

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

Thirteen Entertainment L.L.C.  
d/b/a Thirteen  
**RESPONDENT**  
P.O. Box 540237  
Houston, Texas 77254  
**VIA FIRST CLASS MAIL, CMRRR # 70120470000133006787**

Clyde W. Burleson  
**ATTORNEY FOR RESPONDENT**  
1533 W. Alabama, Suite 100  
Houston, Texas 77006  
**VIA FIRST CLASS MAIL, CMRRR # 70120470000133006794**  
**AND**  
**VIA FACSIMILE: (713) 526-3787**

Ramona M. Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
**VIA E-MAIL: [ramona.perry@tabc.state.tx.us](mailto:ramona.perry@tabc.state.tx.us)**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

March 27, 2013

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

**VIA REGULAR MAIL**

**RE: SOAH Docket No. 458-13-1710; Texas Alcoholic Beverage Commission vs. Thirteen Entertainment LLC d/b/ Thirteen**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan  
Administrative Law Judge

TH/mr  
Enclosure

xc Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> 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)  
Cylde Burleson, Attorney At Law, 1533 W. Alabama, Suite 100, Houston, Texas 77006-**VIA REGULAR MAIL**

**RECEIVED**

**MAR 28 2013**

**ABC HOUSTON  
LEGAL**

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



There are no contested issues of notice or jurisdiction in this case. Therefore, notice and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion.

## II. APPLICABLE LAW

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including but not limited to, any of the following acts: possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so. Code §104.01(9). Further, the Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that the permittee violated a provision of the Code or a rule of the Commission. Code § 11.61(b) (2).

## III. DISCUSSION

On May 13, 2011, TABC issued a Mixed Beverage Permit MB-774838, which included the Mixed Beverage Late Hours Permit and the Beverage Cartage Permit, for Respondent's premises located at 1537 N. Shepherd, Houston, Harris County, Texas.

The parties stipulated that on or about August 10, 2012, Respondent's agent, servant, or employee possessed a narcotic on the permitted premises in violation of the Code. The following is a synopsis of the facts.

On August 10, 2012, Agent Peter Gonzales and Sgt. Daniel Reyna, enforcement agents for TABC, conducted an inspection of the Thirteen Club, located at 1537 N. Shepherd, Houston, Texas. They saw bartender John Robert Bulot walking to the employees' room at the club. Agents entered the room and found a white powdery substance, a straw, and a card on a mirror that was sitting on a shelf. Sgt. Reyna found a small baggy that contained a white powder in Mr. Bulot's pocket. Mr. Bulot admitted to the agents that the substance was cocaine and that it

belonged to him. The TABC agents arrested him for possession of a controlled substance. The parties further stipulated that Mr. Bulot was employed as a bartender by Respondent. No other violations were found by the agents during the remainder of the inspection of the premise.

At the hearing, Martin DeVries, owner of Thirteen, testified that Mr. Bulot had been a part-time bartender at Thirteen but was fired after the incident. Mr. DeVries stated that he was not present at the club when the incident occurred and that he had a "no drug policy" for all employees. He further stated that, after the incident, he posted signs in the club that drugs are not allowed on the premises and he has met with the staff at least once a month to discuss TABC regulations. Mr. DeVries further testified that agents from TABC have performed an inspection of Respondent's premises after August 10, 2012, and found no subsequent Code violations. Finally, he said all of Respondent's employees are seller server trained by TABC before they are hired. Based on these factors, Respondent seeks mitigation in the penalty to be assessed.

#### **IV. RECOMMENDATION.**

The stipulation of evidence clearly establishes that Respondent's bartender possessed a narcotic on the premises in violation of the Code. Respondent has taken affirmative action since the Code violation by firing the employee found with the narcotic, posting "no drugs" signs in the club, and meeting with staff on a monthly basis to discuss TABC regulations. This is Respondent's first Code violation and during a subsequent TABC inspection of the premises no Code violations were found. Based on these reasons, the ALJ recommends Respondent's permits be suspended for 10 days, or in lieu of a suspension, the Respondent pay a civil penalty in the amount of \$3,000.

#### **V. FINDINGS OF FACT**

1. Thirteen Entertainment L.L.C. d/b/a Thirteen (Respondent) holds a Mixed Beverage Permit, MB-774838, with accompanying Mixed Beverage Late Hours Permit and Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 1537 N. Shepherd, Houston, Harris County, Texas.
2. The permit was originally issued on May 13, 2011.

3. On August 10, 2012, Respondent's agent, servant, or employee, possessed a narcotic on the permitted premises of Respondent.
4. Respondent has posted "No Drugs" signs on the premises after the violation of August 10, 2012, and meets with his staff on a monthly basis to discuss TABC regulations. No Code violations were found during a subsequent TABC inspection of the premises.
5. On January 2, 2013, Staff issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice to the parties contained the time, place, and nature of the hearing; stated the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
6. The hearing in this matter convened on February 8, 2013, before State Office of Administrative Hearings (SOAH) ALJ Timothy Horan. Ramona M. Perry, staff attorney, represented TABC at the hearing. Clyde Burleson, attorney, represented Respondent. The hearing concluded and the record closed the same day.

#### VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Texas Alcoholic Beverage Code (Code) ch. 5 and §§ 11.61 (b) (2) and 104.01 (9).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating 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 Tex. Gov't Code ch. 2003.
3. Respondent received notice of the proceedings and hearing, pursuant to Tex. Gov't Code §§ 2001.051 and 2001.052 and 1 Tex. Admin. Code ch. 155.
4. Respondent violated § 104.01(9).
5. Based on the findings of fact and conclusions of law, Respondent's permit should be suspended for a period of 10 days, or in lieu of any suspension, Respondent should be ordered to pay a civil penalty in the amount of \$3,000. Code § 11.61 (b) (2).

**SIGNED March 27, 2013.**

  
TIMOTHY HORAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS