

DOCKET NO. 600807

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
COWBOY JIM'S STEAKHOUSE & CLUB, D/B/A COWBOY JIM'S STEAKHOUSE & CLUB, Respondent	§	ALCOHOLIC
	§	
PERMITS NO. N688724, PE	§	
	§	
CAMP COUNTY, TEXAS (SOAH DOCKET NO. 458-11-6498)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of June, 2012, the above-styled and numbered cause.

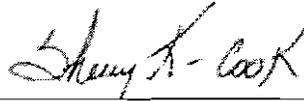
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Brenda Coleman presiding. The hearing convened on July 20, 2011, and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 15, 2011. 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.

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 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 Conduct Surety Bond No. 5014260, posted by Respondent pursuant to Alcoholic Beverage Code §11.11, be **FORFEITED** to the State of Texas.

This Order will become final and enforceable on the 17th day of July, 2012, unless a Motion for Rehearing is filed on or before the 16th day of July, 2012.

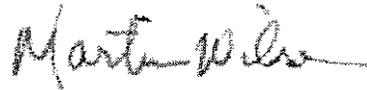
SIGNED this the 22nd day of June, 2012, at Austin, Texas.



Sherry K-Cook, Interim 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 22nd day of June, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Hon. Brenda Coleman
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150A
Dallas, TX 75235
VIA FACSIMILE: 512-322-0471

Cowboy Jim's Steakhouse & Club
d/b/a Cowboy Jim's Steakhouse & Club
RESPONDENT
5311 FM 44E
Simms, TX 75574
VIA REGULAR MAIL

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Division

SOAH DOCKET NO. 458-11-6498

**TEXAS ALCOHOLIC
BEVERAGE COMMISSION,
Petitioner**

V.

**COWBOY JIM'S STEAKHOUSE
& CLUB D/B/A COWBOY JIM'S
STEAKHOUSE & CLUB,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Petitioner/Commission) brought this action against Cowboy Jim's Steakhouse & Club d/b/a Cowboy Jim's Steakhouse & Club (Respondent). Petitioner seeks forfeiture of Respondent's conduct surety bond, alleging that Respondent had had three or more violations of the Texas Alcoholic Beverage Code (Code) or Commission's rules (the Rules) since September 1, 1995. Respondent failed to appear at the hearing and the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On July 20, 2011, a hearing convened before State Office of Administrative Hearings (SOAH) ALJ Brenda Coleman. Judith Kennison, Staff Attorney, represented the Petitioner. Respondent did not appear and was not represented at the hearing. The record closed on that same date. Based on Respondent's failure to appear, Petitioner moved for a default under 1 TEX. ADMIN. CODE (TAC) § 155.501. Petitioner presented evidence that proved proper notice and jurisdiction. Since the hearing proceeded on a default basis, the factual allegations contained in the Notice of Hearing are deemed admitted as true and are incorporated into the findings of fact without further discussion of the evidence. The admitted facts support revocation of Respondent's conduct surety bond.

II. FINDINGS OF FACT

1. Cowboy Jim's Steakhouse & Club d/b/a Cowboy Jim's Steakhouse & Club (Respondent), located at 4904 Highway 11 West, Pittsburg, Camp County, Texas, is the holder of a Private Club Registration Permit and Beverage Cartage Permit issued by the Texas Alcoholic Beverage Commission (Commission).
2. On June 14, 2011, the Commission's Staff (Petitioner) the Commission issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known mailing address of 5311 FM 44E, Simms, Texas, 75574, setting the hearing on the merits for July 20, 2011. The notice was returned marked "return to sender unclaimed unable to forward."
3. The notice 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 the matters asserted.
4. The 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 notice might be granted by default.
5. The hearing convened on July 20, 2011. Respondent did not appear and was not represented at the hearing. The record closed on the same day.
6. The hearing proceeded on a default basis, and the allegations contained in the notice were deemed admitted as true.
7. Respondent has committed three or more violations of the Code since September 1, 1995.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. 5 and § 11.11.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of 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 as required by 1 TAC §§ 155.401 and 155.501; and CODE § 11.63 and 16 TAC § 33.33.
4. Based on the above Findings of Fact, Respondent violated CODE §11.11 and Commission Rule § 33.24(j).
5. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default

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PROPOSAL FOR DECISION

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judgment against Respondent pursuant to 1 TAC § 155.501.

6. Based on the foregoing Findings of Fact and Conclusions of Law, the forfeiture of Respondent's conduct surety bond is warranted.

SIGNED September 15, 2011.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS