

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 16, 2013

RECEIVED

JAN 18 2013

HOUSTON
LEGAL

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

VIA REGULAR MAIL

RE: SOAH Docket No. 458-12-7908; Texas Alcoholic Beverage Commission vs. Bollywood Bar & Grill, Inc. d/b/a Bollywood Bar & Grill

Dear Ms. Cook:

Please find enclosed a Nunc Pro Tunc 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 "Timothy Horan", written over a horizontal line.

Timothy Horan
Administrative Law Judge

TH/mr
Enclosure

xc Ramona 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)
Bollywood Bar & Grill, Inc. d/b/a Bollywood Bar & Grill, 6009 Beverly Hills, Houston, Texas 77056 - VIA REGULAR MAIL
Clement Aldridge, Jr., Attorney at Law, 7529 Olympia Drive, Houston, Texas 77063 - VIA REGULAR MAIL

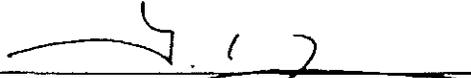
4. The hearing was held and the record closed on November 2, 2012.
5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.
6. The referring agency's staff moved for a default, which was granted.
7. The factual allegations set out in the Amended Notice of Hearing 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 and Respondent's Permits should be cancelled.

SIGNED December 14, 2012.

Nunc Pro Tunc signed January 16, 2013


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 611213 & 612857

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Petitioner	§	
	§	
VS.	§	
	§	
BOLLYWOOD BAR & GRILL INC.	§	
D/B/A BOLLYWOOD BAR & GRILL,	§	ALCOHOLIC
Respondent	§	
	§	
PERMITS MB575722, LB575723	§	
	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-12-7908)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of March, 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 November 2, 2012 and the SOAH record closed that same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on December 14, 2012. A Nunc Pro Tunc Proposal for Decision was issued by the Administrative Law Judge on January 16, 2013. The Nunc Pro Tunc 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. No exceptions were filed.

After review and due consideration of the Proposal for Decision, and except for Finding of Fact No. 7 and Conclusion of Law No. 5, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Nunc Pro Tunc 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.

Finding of Fact No. 7 is modified to read:

On or about February 24, 2012 and on or about August 4, 2012, Respondent or Respondent’s agent, servant or employee, consumed an

alcoholic beverage on the permitted premises or permitted one to be consumed on the permitted premises at a time when the consumption of alcoholic beverages is prohibited by the Alcoholic Beverage Code. On or about August 4, 2012, Respondent or Respondent's agent, servant or employee, possessed a narcotic on the permitted premises or permitted a person on the permitted premises to possess a narcotic.

Conclusion of Law No. 5 is modified to read:

By consuming an alcoholic beverage on the permitted premises or permitting one to be consumed on the permitted premises at a time when the consumption of alcoholic beverages is prohibited by the Alcoholic Beverage Code, Respondent violated Texas Alcoholic Beverage Code §§11.61(b)(2), 11.61(b)(22) and 105.06. By possessing a narcotic on the permitted premises or permitting a person on the permitted premises to possess a narcotic, Respondent violated Texas Alcoholic Beverage Code §§11.61(b)(2) and 104.01(9), and 16 Texas Administrative Code §35.41(b).

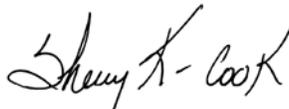
The modifications to Finding of Fact No. 7 and Conclusion of law No. 5 are non-substantive. They simply re-state the Administrative Law Judge's Finding and Conclusion by stating, instead of incorporating, the allegations in the Amended Notice of Hearing.

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 Respondent's Mixed Beverage Permit No. MB575722 and Mixed Beverage Late Hours Permit No. LB575723 are hereby **CANCELLED**.

This Order will become final and enforceable on the 15th day of April, 2013, unless a Motion for Rehearing is filed on or before the 14th day of April, 2013.

SIGNED this the 22nd day of March, 2013, at Austin, Texas.



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 22nd day of March, 2013.



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: 512.322.0474

Bollywood Bar & Grill, Inc.
d/b/a Bollywood Bar & Grill
RESPONDENT
6009 Beverly Hills
Houston, Texas 77056
VIA REGULAR MAIL
AND VIA CMRRR#70120470000133005728

Clement Aldridge, Jr., Attorney at Law
ATTORNEY FOR RESPONDENT
3258 Las Palmas
Houston, Texas 77027
VIA REGULAR MAIL
AND VIA CMRRR#70120470000133005735

Ramona Perry
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA EMAIL AT:
ramona.perry@tabc.state.tx.us