

DOCKET NO. 613479,614938, 614936

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Petitioner	§	
	§	
VS.	§	
	§	
CLUB 1 HOUSTON L.L.C.	§	
D/B/A CLUB 1, Respondent	§	ALCOHOLIC
	§	
PERMITS MB738137, LB	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-13-1709)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** on this the 8th day of November, 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 (ALJ) Timothy Horan presiding. The hearing convened on May 24, 2013 and the SOAH record closed on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on July 16, 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. No exceptions were filed.

After review and due consideration of the Proposal for Decision, Respondent's Exceptions, Petitioner's Reply and the ALJ's Response, 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 modification to Conclusion of Law No. 1 only, and incorporate those Findings of Fact and Conclusions of Law as modified into this Order, as if such were fully set out and separately stated herein.

**Conclusion of Law No. 1 is modified to read:**

TABC has jurisdiction over this matter under Texas Alcoholic Beverage Code (Code) ch. 5 and §11.61(b)(2).

This modification to Conclusion of Law No. 1 is made pursuant to Government Code §2001.058(e) to correct a technical error and/or because it does not properly apply applicable

law. The Proposal for Decision reference in Conclusion of Law No. 1 to Alcoholic Beverage Code §104.01(9) is incorrect and is therefore deleted.

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.

**THEREFORE, IT IS ORDERED** that the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on **December 18, 2013**, and shall remain suspended for **SIXTY (60)** consecutive days **UNLESS** Respondent pays a civil penalty in the amount of **\$18,000.00 ON OR BEFORE December 10, 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 permits 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 **SIXTY (60)** consecutive days, **UNLESS** Respondent pays the civil penalty in the amount of **\$18,000.00** 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 3rd day of December, 2013, unless a Motion for Rehearing is filed on or before the 2nd day of December, 2013.**

**SIGNED** this the 8th day of November, 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 8th day of November, 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, TX 77018  
**VIA FACSIMILE: (512) 322-2061**

Club 1 Houston LLC  
d/b/a Club 1  
**RESPONDENT**  
13522 Holly Park Dr.  
Houston, TX 77015  
**VIA 1<sup>st</sup> CLASS MAIL, CMRRR #70120470000133007005**

Clyde Burleson  
**ATTORNEY FOR RESPONDENT**  
1533 W. Alabama, Suite 100  
Houston, TX 77006  
**VIA 1<sup>st</sup> CLASS MAIL, CMRRR #70120470000133006992**  
**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)**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBERS: 613479, 614938, & 614936**

**REGISTER NUMBER:**

**NAME: Club 1 Houston LLC**

**TRADENAME: Club 1**

**ADDRESS: 13522 Holly Park Drive, Houston, Texas 77015**

**DUE DATE: December 10, 2013**

**PERMITS OR LICENSES: MB738137, LB**

**AMOUNT OF PENALTY: \$18,000.00**

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_  
You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

**YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.**

**Mail this form with your payment to:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711**

**Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

**You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.**

**Attach this form and please make certain to include the Docket # on your payment.**

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address                      P.O. Box No.

\_\_\_\_\_  
City                      State                      Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

July 16, 2013

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

**VIA REGULAR MAIL**

**RE: SOAH Docket No. 458-13-1709; Texas Alcoholic Beverage Commission vs. Club 1 Houston LLC d/b/a Club 1**

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,

RECEIVED

JUL 17 2013

ABC HOUSTON  
LEGAL

  
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)  
Clyde Burleson, Attorney at Law, 1533 W. Alabama, Suite 100, Houston, Texas 77006 - **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](http://www.soah.state.tx.us)

**SOAH DOCKET NO. 458-13-1709**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>VS.</b>	§	
	§	
	§	<b>OF</b>
<b>CLUB 1 HOUSTON L.L.C. D/B/A CLUB 1 PERMIT NO(s). MB-738137, LB HARRIS COUNTY, TEXAS (TABC DOCKET NO(s). 613479, 614938, 614936), Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Club 1 Houston LLC d/b/a Club 1 (Respondent), alleging five violations of the Texas Alcoholic Beverage Code (Code). At the hearing, Respondent stipulated to all the violations as alleged by TABC. Staff recommended Respondent's permits be cancelled. Respondent seeks mitigation in the penalty to be assessed. The Administrative Law Judge (ALJ) recommends that Respondent's permits be suspended for 60 days, or in lieu of a suspension, Respondent pay a civil penalty in the amount of \$18,000.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened on May 24, 2013, before State Office of Administrative Hearings (SOAH) ALJ Timothy Horan. Ramona M. Perry, staff attorney, represented Staff at the hearing. Clyde W. Burlison, attorney, represented Respondent. The hearing concluded and the record closed the same day.

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. ALLEGATIONS AND LEGAL STANDARDS

In its Notice of Hearing, Staff alleged:

1. On or about July 14, 2012, Respondent or Respondent's agent, servant, or employee, sold, served or delivered an alcoholic beverage at a time when its sale was prohibited in violation of Code §§ 11.61 (b)(2), 11.61(b)(23), and 105.03.
2. On or about October 20, 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 was prohibited in violation of Code §§ 11.61 (b)(2), 11.61(b)(22), and 105.06.
3. On or about October 20, 2012, Respondent or Respondent's agent, servant, or employee sold, served, or delivered an alcoholic beverage at a time when its sale was prohibited in violation of Code §§ 11.61 (b)(2), 11.61(b)(23), 105.05, and 105.06.
4. On or about November 10, 2012, Respondent or Respondent's agent, servant, or employee sold, served, or delivered an alcoholic beverage at a time when its sale was prohibited in violation of Code §§ 11.61 (b)(2), 11.61(b)(23), 105.05, and 105.06.
5. On or about November 10, 2012, Respondent or Respondent's agent, servant, or employee, with criminal negligence, permitted a minor to possess or consume an alcoholic beverage on the permitted premises in violation of Code §§ 106.13, 106.04, and 106.05.

## III. DISCUSSION

On December 7, 2009, TABC issued a Mixed Beverage Permit MB-738137, which included the Mixed Beverage Late Hours Permit, for Respondent's premises located at 6262 Wilcrest Drive, Houston, Harris County, Texas. On May 22, 2011, Respondent permitted consumption of alcohol during prohibited hours. This violation resulted in the entry of a suspension of the Permits/Licenses and/or civil penalties.<sup>1</sup>

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<sup>1</sup> TABC Ex. 2.

On the day of the hearing, the Respondent agreed and stipulated to the violations alleged by TABC in the Notice of Hearing. The following is a brief synopsis of the facts for each violation.

On July 14, 2012, Houston Police Department conducted an undercover investigation at Club 1. Officers observed Respondent's bartender, later identified as Anh Nguyen, serve an alcoholic beverage at 2:37 a.m. to an undercover officer.

On October 20, 2012, TABC Agent Peter Gonzales participated in an undercover investigation at Club 1. Agent Gonzales ordered a beer from the bartender, identified as Anh Nguyen, at 1:50 a.m. The bartender put the beer in a plastic red cup and gave the cup to the agent. Agent Gonzales had the beer after 2:20 a.m. and no one attempted to take the alcoholic beverage from him. Officer then ordered a mixed drink at 2:20 a.m. from the same bartender, who put the alcoholic beverage in another plastic cup and gave it to the agent.

On November 10, 2012, TABC Agent Peter Gonzales participated in an undercover investigation at Club 1. Agent Gonzales was approached by a young looking female, later identified as 19-year-old Anais Martin, and observed her drinking an alcoholic beverage. TABC agents returned to the Club 1 at 3:10 am and observed a customer consuming an alcohol beverage.

On the day of the hearing, TABC Agent Peter Gonzales testified that all violations incurred by Respondent were considered public safety violations and as such the Respondent's club was put on a priority list. According to Agent Gonzales, an establishment is put on a priority list when a public safety violation is cited by TABC. By being on the priority list, the premises are randomly inspected at least every fourteen days. If no violations have incurred after three random inspections, the establishment is then randomly inspected once a month for six months. After that, the establishment is subjected to fewer random inspections. Respondent's establishment was on the priority list because of the violations.

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Agent Gonzales stated that Respondent did not receive any TABC citations during the months of December 2009 to May 2011, and from May 22, 2011 thru July 14, 2012. He further testified that Respondent had not received any TABC violations since November 10, 2012. He stated that the club has had numerous random inspections since it was placed on the priority list but could not be certain of the actual number. Agent Gonzales testified that the bartender involved in each TABC violation was Anh Nguyen.

Daisy Nguyen, owner of Club 1, testified that she was not present during the violations and confirmed that Anh Nguyen (no relation) was a bartender at the club. Ms. Nguyen stated that she had warned the bartender previously to follow all TABC rules and regulations. Ms. Nguyen said she fired Anh Nguyen after the final violation of November 10, 2012. Ms. Nguyen further stated that since the last violation, she has required all employees to attend the TABC seller-server training and has hired a new manager. She emphasized the fact that the permittee has not had any violations since November 2012.

TABC argues that all violations are considered public safety violations, and as a result, a TABC had to expend a great amount of time to randomly inspect the permitted premises.

Respondent argues that Respondent has undergone numerous TABC inspections since November 10, 2012, and has had no further Code violations. Respondent argues that each Code violation involved the bartender, Anh Nguyen, who has since been fired. Finally, Respondent argues all employees are now required to attend the TABC seller-server training. Based on these factors, Respondent seeks mitigation in the penalty to be assessed.

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

The Respondent's stipulation to the allegations clearly establishes that Respondent violated the Code. Respondent has taken affirmative action since the last Code violation of November 10, 2012; by firing the bartender, hiring a new manager, and requiring that each employee take the TABC seller-server training. Respondent has not incurred any Code violations for the past six months, even while being placed on the TABC priority list, which calls

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for numerous random TABC inspections each month. It should be noted that Respondent did not incur any violations from December 7, 2009 to May 22, 2011, and also from May 22, 2011 thru July 14, 2012.

TABC is seeking cancellation of Respondent's permits. The Administrative Law Judge (ALJ) concludes that cancellation is not the appropriate penalty, but that a penalty should never the less still be assessed to impress upon the permittee the seriousness of each violation and the responsibility associated with holding a permit. Based on Respondent readily acknowledging fault, together with Respondent's remedial efforts, the ALJ recommends that Respondent's permits be suspended for 60 days, or in lieu of a suspension, Respondent pay a civil penalty in the amount of \$18,000.

#### V. FINDINGS OF FACT

1. Club 1 Houston LLC d/b/a Club 1 (Respondent) holds a Mixed Beverage Permit, MB-738137, with accompanying Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 6262 Wilcrest Drive, Houston, Harris County, Texas.
2. The permit was originally issued on December 7, 2009.
3. On July 14, 2012, Respondent's agent, servant, or employee, sold, served or delivered an alcoholic beverage at a time when its sale was prohibited.
4. On October 20, 2012, 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 was prohibited.
5. On October 20, 2012, Respondent's agent, servant, or employee sold, served, or delivered an alcoholic beverage at a time when its sale was prohibited.
6. On November 10, 2012, Respondent's agent, servant, or employee sold, served, or delivered an alcoholic beverage at a time when its sale was prohibited.
7. On November 10, 2012, Respondent's agent, servant, or employee, with criminal negligence, permitted a minor to possess or consume an alcoholic beverage on the permitted premises.
8. All violations occurred when Anh Nguyen was the bartender at Club 1.

9. Respondent fired bartender Anh Nguyen, has hired a new bar manager, and requires all employees to be TABC seller-server certified.
10. From November 10, 2012, no Code violations were found during subsequent TABC inspections of the premises.
11. On January 28, 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.
12. The hearing in this matter convened on May 24, 2013, before State Office of Administrative Hearings (SOAH) ALJ Timothy Horan. Ramona M. Perry, staff attorney, represented TABC at the hearing. Clyde Bureson, 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 Code §§ 11.61 (b)(2), 11.61 (b)(22), 11.61 (b)(23), 105.03, 105.05, 105.06, and 106.13.
5. Based on the findings of fact and conclusions of law, Respondent's permit should be suspended for a period of 60 days, or in lieu of any suspension, Respondent should be ordered to pay a civil penalty in the amount of \$18,000. Code §§ 11.61(b)(2) and 106.13.

**SIGNED JULY 16, 2013.**

  
TIMOTHY HORAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS