

DOCKET NO. 622171

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
YOLANDA R. NOWLIN D/B/A CLUB NICE, Respondent	§	ALCOHOLIC
	§	
	§	
	§	
PERMIT/LICENSE BG755537, BL	§	
	§	
	§	
BRAZOS COUNTY, TEXAS (SOAH DOCKET NO. 458-14-3607)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 18th day of December, 2014, 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 June 6, 2014 and the SOAH record closed on that same date. Although proper and timely notice was provided to Respondent, Respondent did not appear and was not represented at the hearing. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on June 19, 2014. 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, and with the following modifications to Finding of Fact No. 7 and to Conclusion of Law No. 5, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained therein and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. The modifications to Finding of Fact No. 7 and Conclusion of Law No. 5 are made to clarify the language, and not to change the substance, of the Administrative Law Judge's finding and conclusion.

Finding of Fact No. 7 is modified to read as follows:

No. 7. On or about September 4, 2013, Respondent was finally convicted of a felony while holding an original or renewal license.

Conclusion of Law No. 5 is modified to read as follows:

No. 5. Based on Finding of Fact No. 7, Respondent violated Texas Alcoholic Beverage Code §§25.04(b), 61.71(a)(1), and 61.71(a)(3).

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 Respondent's Wine and Beer Retailer's On Premise Permit BG755537, and the associated Retailer's On-Premise Late Hours License, are hereby **CANCELLED**.

This Order will become final and enforceable on the 13th day of January, 2015, unless a Motion for Rehearing is filed by the 12th day of January, 2015.

SIGNED this the 18th day of December, 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 18th day of December, 2014.



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

Yolanda R. Nowlin
d/b/a Club Nice
RESPONDENT
P.O. Box 932
Bryan, TX 77806
VIA FIRST CLASS MAIL, CMRRR # 70050390000575497193

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: ramona.perry@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 19, 2014

RECEIVED
JUN 23 2014
TABCHOUSTON
LEGAL

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

VIA REGULAR MAIL

RE: SOAH Docket No. 458-14-3607; Texas Alcoholic Beverage Commission vs. Yolanda R. Nowlin d/b/a Club Nice (TABC Docket No. 622171)

Dear Ms. Cook:

Please find enclosed a Proposal for Decision in this case. It contains my recommendations 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", with a long horizontal flourish extending to the right.

Timothy Horan
Administrative Law Judge

TH/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)
Yolanda R. Nowlin d/b/a Club Nice; P. O. Box 932; Bryan, TX 77806 - VIA REGULAR MAIL

SOAH DOCKET NO. 458-14-3607

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
Petitioner	§	
	§	
V.	§	OF
	§	
YOLANDA R. NOWLIN	§	
D/B/A CLUB NICE	§	
PERMIT NO(s). BG-755537, BL	§	
BRAZOS COUNTY, TEXAS	§	
(TABC CASE NO. 622171)	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

This matter was scheduled for hearing at the request of the Texas Alcoholic Beverage Commission. Despite being sent proper notice, the Respondent did not appear and was not represented at the hearing. For the reasons set out in the Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the relief requested by the referring agency should be granted on a default basis.

FINDINGS OF FACT

1. Notice of the hearing was mailed to the Respondent at the Respondent's address of record at least ten days prior to the scheduled hearing.
2. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted.
3. The notice of hearing contained a statement in at least 12-point, boldface type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against a party that failed to appear at the hearing.

4. The hearing was held and the record closed on June 6, 2014.
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 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 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 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 June 19, 2014.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS