

DOCKET NO. 622575

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
DARWIN CLYDE MACON, JR. D/B/A DARWIN'S PLACE, Respondent	§	ALCOHOLIC
	§	
	§	
PERMITS MB626818, LB	§	
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-14-3608)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 19th 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 27, 2014 and the SOAH record closed on that same date. Proper and timely notice was mailed to Respondent at the address of record with the Commission but was returned marked "Unclaimed" and "Unable to forward". 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 August 4, 2014. The Proposal for Decision was properly mailed to 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 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 provide clarity but do not change the substance of the Proposal for Decision.

Finding of Fact No. 7 is modified to read:

No. 7. On or about December 6, 2013, Respondent or Respondent's agent, servant or employee sold or delivered an alcoholic beverage to an intoxicated person.

Conclusion of Law No. 5 is modified to read:

No. 5. Based on Finding of Fact No. 7, Respondent violated Alcoholic Beverage Code §§11.61(b)(14) and 11.61(b)(2).

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 Mixed Beverage Permit MB626818, and the accompanying Mixed Beverage Late Hours Permit, 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 19th 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 19th 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, TX 77018
VIA FACSIMILE: (512) 322-2061

Darwin Clyde Macon, Jr.
d/b/a Darwin's Place
RESPONDENT
21802 Lindheimer
Hockley, TX 77447
VIA FIRST CLASS MAIL, CMRRR # 70120470000133006268

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

TIME RECEIVED
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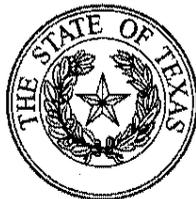
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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 4, 2014

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

VIA REGULAR MAIL

RE: SOAH Docket No. 458-14-3608; Texas Alcoholic Beverage Commission vs. Darwin Clyde Macon, Jr. d/b/a Darwin's Place

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.

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**
- Darwin Clyde Macon, Jr. d/b/a Darwin's Place, 21802 Lindheimer, Hockley, TX 77447 - **VIA REGULAR MAIL**

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 August 4, 2014.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS