

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

February 29, 2016

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

VIA REGULAR MAIL

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.
DAWGS N HAWGS d/b/a DAWGS N HAWGS CLUB
SOAH DOCKET NO. 458-16-0916**

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,



Michelle Kallas
Administrative Law Judge

MK/sp
Enclosure

Xc: Edgar Korzeniowski, Staff Attorney, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL, 2225 E. Randoll Mill, Suite 200, Arlington, Texas 76011
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL, 5806 Mesa Drive, Austin Texas 78731
Dawgs N Hawgs d/b/a Dawgs N Hawgs Club, Respondent, VIA REGULAR MAIL, 310 E. Louisiana St., McKinney, Texas 75069

in two attached exhibits. Respondent did not file a response to Petitioner's motion. On December 17, 2015, the ALJ granted Petitioner's motion pursuant to 1 Texas Administrative Code (TAC) § 155.505(a).

The record closed on January 7, 2016, after Petitioner filed proposed findings of fact and conclusions of law. No objections were filed by any party to Petitioner's proposed findings and conclusions.

II. DISCUSSION

A. Applicable Law

TABC may suspend or cancel an original or renewal permit if the permittee violates a provision of the Alcoholic Beverage Code or a TABC rule. Tex. Alco. Bev. Code § 11.61(b)(2). Pursuant to 16 TAC § 41.48(e), the holder of a private club permit must, upon request, provide any information to TABC which will assist the administrator in determining if there has been a change in control of the permitted operation. Failure to provide the information may lead to cancellation of the permit. 16 TAC § 41.48(j).

B. Evidence¹

On May 11, 2010, TABC issued a Private Club Registration Permit N-747972, which included a Beverage Cartage Permit, for Respondent's premises located at 310 E. Louisiana Street, McKinney, Collin County, Texas. The permit was renewed on May 11, 2014.

According to Respondent's renewal application, Yvonne Sayers was listed as

¹ In support of its motion for summary disposition, Petitioner offered its business records which included Respondent's permit, permit history, and Respondent's application. The submitted documents are admitted into the record as exhibits in this case.

president/director and George Thurman was listed as secretary/director. Sometime during April 2015, Ms. Sayers contacted Terry Hing, TABC License and Permit Specialist, multiple times to discuss changes in Respondent's officers. Ms. Sayers attended a compliance interview on April 8, 2015, during which the rules and regulations for Respondent's permit were explained.

On July 14, 2015, Mr. Thurman notified TABC that he was no longer Respondent's secretary. As a result of Mr. Thurman's notification, Mary Aiello, employed in TABC's licensing office for the north Texas region, sent a letter to Respondent requesting that Respondent file the necessary paperwork to reflect this change in control of the operation. The letter further instructed Respondent to file the requested information no later than September 3, 2015. This letter was returned to TABC as undeliverable on August 31, 2015.

On September 3, 2015, Ms. Aiello made several unsuccessful attempts to reach Respondent's representatives. The main number for Respondent's premises was disconnected. When Ms. Aiello called the alternate number, the person answering the phone hung up on her. Ms. Aiello contacted Mr. Thurman who informed her that Respondent was no longer in business and provided her with a number for Donald Howell, Ms. Sayers's significant other who also worked for Respondent. However, when Ms. Aiello attempted to contact Mr. Howell, she discovered that his number had been disconnected as well. Additionally, on October 20, 2015, TABC received an affidavit from Respondent's landlord asserting that Respondent had abandoned the premises and was no longer in operation at that location.

C. Discussion and Recommendation

Pursuant to 1 TAC § 155.505(a), an ALJ may issue a proposal for decision on all or part of a contested case without an evidentiary hearing if the evidence shows there is no genuine issue as to any material fact and a party is entitled to a decision in its favor as a matter of law. Based on the uncontroverted evidence in the record, it is clear as a matter of law that Petitioner's request for cancellation of Respondent's permit should be granted.

Pursuant to 16 TAC § 41.48(e), Respondent, as a private club permit holder, was responsible for informing TABC of a change in control. The evidence is clear that Respondent failed to comply with this rule. On July 14, 2015, Mr. Thurman, Respondent's secretary/director, notified TABC that he no longer held a position at Respondent. TABC then contacted Respondent, in writing, and requested that Respondent file the necessary paperwork to update this change in control. When this request was returned to TABC, TABC attempted to contact Ms. Sayers, Respondent's president/director, by telephone. All of these attempts were unsuccessful. According to the evidence presented, Respondent never filed the requested form to update the information regarding control of the operation. As such, Respondent's permit should be canceled.

III. FINDINGS OF FACT

1. Dawgs n Hawgs d/b/a Dawgs n Hawgs Club (Respondent) holds a Private Club Registration Permit N-747972, which included a Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 310 E. Louisiana Street, McKinney, Collin County, Texas. The permit was renewed on May 11, 2014.
2. On Respondent's renewal application, Yvonne Sayers was listed as president/director, and George Thurman was listed as secretary/director.
3. Sometime during April of 2015, Ms. Sayers was in contact with Terry Hing, an employee of TABC, on at least one occasion in regards to changed officers on her permit.
4. On July 14, 2015, Mr. Thurman notified TABC that he was no longer an officer for Respondent.
5. On August 20, 2015, Mary Aiello, a TABC employee, sent a letter to Respondent, at its address of record, requesting that Respondent file the necessary paperwork regarding the change in officers.
6. On August 31, 2015, Ms. Aiello's letter to Respondent was returned to TABC as undeliverable.
7. On September 3, 2015, Ms. Aiello made several attempts to reach out to Respondent regarding the change in officers:

- a. She called the main number for the business on file with TABC. She did not reach anyone as the number had been disconnected.
 - b. She called the alternate number for the business on file with TABC. The person who answered the phone hung up on her.
 - c. She called Mr. Thurman. He informed her that the business was no longer operating and provided her with a number for Donald Howell who had worked at the business and was Ms. Sayers's significant other.
 - d. She called Mr. Howell at the number provided by Mr. Thurman but discovered that the number had been disconnected.
8. On October 20, 2015, the landlord for the permit location provided an affidavit asserting that the premises had been abandoned and that Respondent no longer had an interest in the premises.
 9. On November 3, 2015, Staff (Petitioner) of the TABC sent a notice of hearing by certified and regular mail to Respondent's mailing address as listed in TABC's records, informing Respondent of the date, time, and place of the hearing, the statutes and rules involved, the matters asserted, and the legal authorities under which the hearing was to be held. The notice was also mailed to Ms. Sayers's residential address of record by certified and regular mail.
 10. On that same date, Petitioner mailed its Motion for Summary Disposition to Respondent's address of record and Ms. Sayers's residential address of record by certified and regular mail.
 11. Petitioner's Motion for Summary Disposition contained the matters asserted, evidence to be considered when ruling on the motion, the statutes and rules involved, and legal authorities under which the motion would be considered. The motion also contained a statement in at least 12-point, bold face type that the relief sought by Petitioner may be granted without a hearing if the Respondent failed to file a timely response to the motion.
 12. Respondent did not file a response to Petitioner's motion or offer any evidence on summary disposition.
 13. On December 17, 2015, the Administrative Law Judge granted Petitioner's Motion for Summary Disposition pursuant to 1 Texas Administrative Code (TAC) § 155.505(a).
 14. The record closed on January 7, 2016, after Petitioner filed proposed findings of fact and conclusions of law.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code ch. 5 and § 11.61(b)(2) and 16 TAC § 41.48(e) and (j).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to Texas Government Code ch. 2003.
3. Respondent received proper and timely notice of the hearing pursuant to the Administrative Procedure Act, Texas Government Code ch. 2001, and 1 TAC ch. 155.
4. Respondent received proper and timely notice of the motion for summary disposition pursuant to 1 TAC § 155.505(b).
5. There is no genuine issue as to any material fact. 1 TAC § 155.505(a).
6. Respondent, or its agent, servant, or employee, failed to notify TABC of a change in Respondent's officers thereby violating 16 TAC § 41.48(c).
7. Respondent's permit should be canceled. Tex. Alco. Bev. Code § 11.61(b)(2) and 16 TAC § 41.48(j).

SIGNED February 29, 2016.



Michelle Kallas
Administrative Law Judge
State Office of Administrative Hearings

DOCKET NO. 634026

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
DAWGS N HAWGS D/B/A DAWGS N HAWGS CLUB, Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT N747972, PE	§	
	§	
	§	
COLLIN COUNTY, TEXAS (SOAH DOCKET NO. 458-16-0916)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 24th day of June, 2016, 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 Michelle Kallas presiding. The Administrative Law Judge filed a Proposal for Decision on Summary Disposition containing Findings of Fact and Conclusions of Law on February 29, 2016.

SOAH's transmittal letter indicates that the Proposal for Decision on Summary Disposition was properly mailed to all parties. The Proposal for Decision on Summary Disposition was mailed to Respondent at the address of record with the Texas Alcoholic Beverage Commission (as shown in Exhibit 1), but SOAH's records indicate that it was returned. All parties 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 on Summary Disposition, 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.

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 Private Club Registration Permit N747972 and the associated Beverage Cartage Permit are hereby **CANCELLED**.

This Order will become final and enforceable on the 20th day of July, 2016, unless a Motion for Rehearing is filed by the 19th day of July, 2016.

SIGNED this the 24th day of June, 2016, 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 24th day of June, 2016.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Michelle Kallas
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
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Dallas, TX 75235
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Dawgs N Hawgs
d/b/a Dawgs N Hawgs Club
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