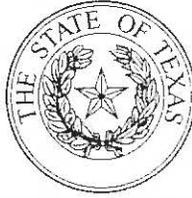


State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 13, 2016

RECEIVED

JAN 19 2016

HOUSTON
LEGAL

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

VIA REGULAR MAIL

RE: SOAH Docket No. 458-16-0119; Texas Alcoholic Beverage Commission v Vidette, Inc. D/B/A The Lounge Plaza

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.

Respectfully,

A handwritten signature in black ink, appearing to read "Whitney L. Stoenner".

Whitney L. Stoenner
Administrative Law Judge/Mediator

WS/sjp
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)
Clyde Burleson, Attorney at Law -1533 West Alabama, Suite 100, Houston, TX 77006 VIA REGULAR MAIL

SOAH DOCKET NO. 458-16-0119
(TABC CASE NO. 633834)

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
	§	
v.	§	
	§	
	§	OF
	§	
VIDETTE, INC.	§	
D/B/A THE LOUNGE PLAZA	§	
PERMIT/LICENSE NO(s):	§	
MB844693 LB & PE	§	
HARRIS COUNTY, TEXAS,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Vidette, Inc. d/b/a The Lounge Plaza (Respondent), alleging that Respondent's agent, servant, or employee engaged in or permitted the solicitation of a person for immoral or sexual purposes in violation of Texas Alcoholic Beverage Code (Code) §§ 11.61(b)(2) and 104.01(7). Staff recommended Respondent's permit be suspended for 14 days or, in lieu of a suspension, that Respondent be allowed to pay a civil penalty of \$300 per day for a total of \$4,200. The Administrative Law Judge (ALJ) agrees with Staff's recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing in this matter convened on December 4, 2015, before State Office of Administrative Hearings (SOAH) ALJ Whitney L. Stoebner. Ramona M. Perry, Staff Attorney, represented Staff at the hearing. Clyde W. Burleson, attorney, represented Respondent. The hearing concluded and the record closed the same day.¹

¹ On the day of the hearing, Respondent moved to continue the case due to a missing witness for Respondent. The ALJ found there was no good cause for a continuance, and Respondent's motion was denied.

There are no contested issues of notice or jurisdiction in this case. Therefore, notice and jurisdiction are addressed only in the findings of fact and conclusions of law.

II. ALLEGATION AND LEGAL STANDARDS

In its Notice of Hearing, Staff alleged that on or about January 30, 2015, Respondent or Respondent's agent, servant, or employee engaged in or permitted the solicitation of a person for immoral or sexual purposes in violation of Code §§ 11.61(b)(2) and 104.01(7). Staff has the burden of proof to show Respondent violated these sections of the Code by a preponderance of evidence.

The Code provides that a permit may be cancelled or suspended if it is found, after notice and a hearing, that the permittee, or his agent, servant, or employee, permitted solicitations of persons for immoral or sexual purposes.²

III. DISCUSSION

A. Background

Respondent's establishment is located at 12330 Gulf Freeway, Houston, Harris County, Texas 77034 and holds a Mixed Beverages Permit, MB844693 LB & PE, Mixed Beverage Late Hours Permit, and a Beverage Cartage Permit. The permit was issued on June 26, 2013.

B. Evidence

On January 30, 2015, TABC Enforcement Agents Christopher Rodriguez and Gerald Sherk entered Respondent's premises at approximately 12:02 a.m. in an undercover

² Code §§ 11.61(b)(2) and 104.01(7).

capacity. Respondent's establishment was on a list of locations with prior public safety violations.³ Six members of the open team were also present.

When Agents Rodriguez and Sherk arrived, the establishment was open for business. There were vehicles in the parking lot, the lights of the establishment were on, and Agent Rodriguez could hear music. The agents paid a cover charge of \$10 and entered the establishment. The establishment had a small entrance with a bar directly past the front door. Restrooms were located to the right of the bar, and there was a stage in the middle. The disc jockey (DJ) booth was located behind the stage. There were tables and chairs located around the bar. Agent Rodriguez testified the establishment was a sexually oriented business also referred to as a gentleman's club. Upon entering the establishment, Agent Rodriguez observed female dancers wearing bikini-type or lingerie-type clothing consisting of bikini tops and bikini bottoms. Some dancers were on stage and other dancers were talking to patrons and employees at the bar.

Agents Rodriguez and Sherk sat next to the bar near the center stage and ordered two beers. Agent Rodriguez observed dancers on the stage. He testified that the dancers and waitresses dressed differently; only the dancers wore bikini-type attire. The waitress returned with the agents' beers. The agents sat in the bar and a dancer approached their table. The dancer sat down and identified herself by her stage name, "Victoria." Victoria stated she had worked at the establishment for a week. Victoria was dressed in bikini-attire.

Victoria asked Agent Rodriguez if he wanted a lap dance. Agent Rodriguez asked how much the lap dance would cost, and Victoria stated the charge for the lap dance would be \$35. Agent Rodriguez asked what the lap dance included. Victoria asked Agent Rodriguez what he wanted, and Agent Rodriguez said he wanted more. Victoria stated that if Agent Rodriguez wanted more, it would cost more. She offered Agent Rodriguez oral sex or vaginal sex for \$125. She stated that if he wanted to leave the premise with her, it would cost an extra \$25. Agent Rodriguez asked Victoria the cost of anal sex, and she stated anal sex would cost \$500.

³ According to TABC Exhibit 1, on February 8, 2014, the establishment was cited for a violation for Sale/Delivery of Drugs By Licensee/Permittee and a violation for an Intoxicated Licensee/Permittee.

Agent Rodriguez went to the restroom and notified the open team. He provided the open team with a description of Victoria. The open team entered the establishment. At that time, the DJ instructed the dancers to go to the locker room. The open team reported to the locker room, took a photograph of Victoria, and sent the photograph to Agent Rodriguez. Agent Rodriguez confirmed Victoria was the dancer to whom he had spoken.

Agent Rodriguez stated he has worked undercover assignments in various gentlemen's clubs. In this establishment, the DJ calls the dancers to the stage. Agent Rodriguez testified that based on his knowledge of the location, the dancers signed a sign-in sheet if they wanted to work. The open team seized the establishment's employee sign-in sheet. Victoria's name appeared on the sign-in sheet, which was seized from the establishment. Agent Rodriguez formed the opinion that Victoria was an employee of the establishment and that she solicited sexual acts for an amount of money. As a result of this investigation, TABC issued an Administrative Notice.

IV. RECOMMENDATION

The evidence establishes that Respondent violated the Code by engaging in or permitting solicitations of persons for immoral or sexual purposes. Respondent argues that the dancer identified as Victoria was an independent contractor and not an agent, servant or employee of Respondent. After considering all of the evidence, the ALJ finds Victoria was an agent, servant, or employee of Respondent for purposes of the Code.

Agent Rodriguez testified he had conducted investigations of various gentlemen's clubs and categorized Respondent's establishment as a gentleman's club. According to Agent Rodriguez, the waitresses and dancers of the establishment were dressed differently. The dancers wore bikini-type clothing. Victoria was dressed like the other dancers in the establishment and was wearing bikini-type clothing. Victoria told the agents she had worked at the establishment for a week. Agent Rodriguez further testified that the DJ would call the dancers to the stage and that there was a locker room for the dancers. When the open team entered the establishment, the DJ instructed the dancers to report to the locker room. Victoria

reported to the locker room with the other dancers where she was identified by members of the open team. Agent Rodriguez confirmed that the dancer identified by the open team was the dancer who solicited him in the bar. In addition, Victoria signed the establishment's dancer sign-in sheet. For these reasons, the ALJ finds Victoria was an agent, servant, or employee of the Respondent for purposes of the Code.

The ALJ further finds Victoria solicited Agent Rodriguez. Victoria approached the agents' table. She offered Agent Rodriguez a lap dance for a set price. She informed Agent Rodriguez that if he wanted more, it would cost more and proceeded to offer a variety of sexual services for set prices.

Based on the totality of the evidence, the ALJ finds sufficient evidence to show that on January 30, 2015, Respondent's agent, servant, or employee engaged in or permitted the solicitation of a person for immoral or sexual purposes in violation of Texas Alcoholic Beverage Code (Code) §§ 11.61(b)(2) and 104.01(7). Staff requests Respondent's permit be suspended for 14 days or that Respondent be ordered to pay a civil penalty in the amount of \$300 per day for a total of \$4,200. The evidence demonstrates the establishment had committed two previous public safety violations within a year of the violation alleged in this case. The ALJ concludes the suspension period recommended by Staff is reasonable under these circumstances. Therefore, the ALJ recommends that Respondent's permit be suspended for 14 days or, in lieu of a suspension, Respondent be ordered to pay a civil penalty in the amount of \$300 per day for a total of \$4,200.

V. FINDINGS OF FACT

1. Vidette, Inc. d/b/a the Lounge Plaza (Respondent) holds a Mixed Beverages Permit, MB844693, for the premises located at 12330 Gulf Freeway, Houston, Harris County, Texas 77034. The permit was issued on June 26, 2013.
2. On January 30, 2015, TABC agents Christopher Rodriguez and Gerald Sherk entered Respondent's establishment in an undercover capacity.
3. The dancers in Respondent's establishment wore bikini-type clothing and dressed differently from the waitresses.

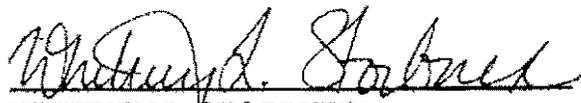
4. A dancer approached agents Rodriguez and Sherk and identified herself by her stage name, "Victoria." Victoria wore bikini-type clothing and stated she had worked at the establishment for a week.
5. Victoria solicited Agent Rodriguez and offered him a lap dance for a set price. In addition, Victoria offered Agent Rodriguez a variety of sexual services for set prices.
6. The open team entered Respondent's establishment and the disc jockey (DJ) instructed the dancers to report to the locker room. Victoria reported to the locker room with the other dancers where she was identified by members of the open team.
7. Agent Rodriguez confirmed that the dancer (Victoria) identified by the open team was the dancer who solicited him at the bar.
8. The open team seized the dancer sign-in sheet. Victoria's name was on the dancer sign-in sheet.
9. On January 30, 2015, Respondent's agent, servant, or employee solicited an undercover TABC agent and offered him various sexual services for set fees.
10. On January 30, 2015, Respondent was served an administrative notice for engaging in or permitting the solicitation of a person for immoral or sexual purposes.
11. On September 16, 2015, Staff of the Texas Alcoholic Beverage Commission (TABC) issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice 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 convened on December 4, 2015, before State Office of Administrative Hearings (SOAH) Administrative Law Judge Whitney L. Stoebner. Staff was represented by attorney Ramona M. Perry. Respondent was represented by attorney Clyde W. Burlison. The hearing concluded and the record closed the same day.

VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) chapter 5 and § 11.61.
2. SOAH has jurisdiction over all matters related 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 Texas Government Code Chapter 2003.

3. Notice of the hearing was provided as required by Texas Government Code §§ 2001.051-.052.
4. Respondent violated Code §§ 11.61(b)(2) and 104.01(7).
5. Based on the foregoing findings of fact and conclusions of law, Respondent's permit should be suspended for a period of 14 days. Code § 11.61.

SIGNED January 13, 2016.



WHITNEY L. STOBNER

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

lieu thereof Respondent should be allowed to pay a civil penalty in the amount of \$4,200.00.

The modification to Conclusion of Law No. 5 is made pursuant to Government Code §2001.058(e)(3) because it corrects a technical error. On page 1 of the Proposal for Decision, the Administrative Law Judge states: "Staff recommended Respondent's permit be suspended for 14 days or, in lieu of a suspension, that Respondent be allowed to pay a civil penalty of \$300 per day for a total of \$4,200. The Administrative Law Judge (ALJ) agrees with Staff's recommendation." Nothing in the Proposal for Decision reflects that the Administrative Law Judge intended to delete the option for Respondent to pay a civil penalty. The modification thus merely matches the conclusion of law to the Administrative Law judge's stated intent.

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 the privileges granted by the Commission and the activities authorized under the above permits by the Code will be **SUSPENDED beginning at 12:01 a.m. on November 23rd, 2016** and shall remain suspended for **FOURTEEN (14) CONSECUTIVE DAYS, UNLESS** a civil penalty in the amount of **\$4,200.00 is paid ON OR BEFORE November 15th, 2016.**

This Order will become final and enforceable on the 8th day of November, 2016, unless a Motion for Rehearing is filed by the 7th day of November, 2016.

SIGNED this the 13th day of October, 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 13th day of October, 2016.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Whitney L. Stoebner
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-2061

Clyde Burleson
ATTORNEY FOR RESPONDENT
1533 W. Alabama, Suite 100
Houston, TX 77006
VIA FIRST CLASS MAIL, CMRRR #70160600000046455806

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

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 633834

REGISTER NUMBER:

NAME: VIDETTE, INC.

TRADENAME: The Lounge Plaza

ADDRESS: 1533 W. Alabama, Suite 100, Houston, Texas

DUE DATE: November 15, 2016

PERMITS OR LICENSES: MB844693, LB, PE

AMOUNT OF PENALTY: \$4200.00

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.