

**DOCKET NO. 458-03-1732**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner**

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**BEFORE THE STATE OFFICE**

**v.**

**OF**

**REEL ENTERTAINMENT CORP.  
D/B/A LAKEWOOD THEATER, Respondent  
DALLAS COUNTY, TEXAS**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Reel Entertainment Corp. d/b/a Lakewood Theater (Respondent), alleging that Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code (the Code). Petitioner requested that Respondent's permits be suspended for 10 days, or in lieu of suspension, that Respondent pay a civil penalty of \$1,500. The Administrative Law Judge (ALJ) agrees with this recommendation.

**JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61(b)(2), 29.03, 61.71(a)(1), and 61.73(b). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On January 22, 2003, TABC Staff issued its notice of hearing, directed to Reel Entertainment Corp. d/b/a Lakewood Theater, P.O. Box 720147, Dallas, Texas 75372, via certified mail, return receipt requested. The notice was returned to TABC Staff on February 19, 2003, with its envelope unopened and the notation "unclaimed" stamped on the envelope by the U.S. Postal Service after several attempts to deliver the notice had been made, as were noted on the notice's envelope. On March 14, 2003, a hearing convened before SOAH ALJ Tanya Cooper at 6333 Forest Park Rd., Suite 150-A, Dallas, Texas. TABC Staff was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record closed on March 14, 2003.

**DISCUSSION**

Based on the failure of Respondent to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that TABC Staff



issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.<sup>1</sup> For purposes of providing due process notice to an interested party, a regulatory agency, such as TABC, is entitled to rely on the address information provided by that party. If the party fails to comply with a regulation requiring notification of a change of address to an agency, notice sent to the address on file with the agency is consistent with due process. See Morris v. State, 894 S.W.2d 22 (Tex. App. - Austin 1995, writ dismissed w.o.j.), citing Tankard-Smith, Inc., Gen. Contractors v. Thursby, 663 S.W.2d 473, 475-6 (Tex. App. - Houston [14<sup>th</sup> Dist.] writ refused n.r.e.).

All TABC permit applications are required to contain statements concerning the operations of any licensed premises. If false or misleading statements are provided in connection with an application, the TABC may cancel or suspend an original or renewal permit. TEX. ALCO. BEV. CODE ANN. § 11.612(b)(4). Applications for permits shall be made in such a manner as may be directed and on forms which are provided by TABC Staff. 16 TEX. ADMIN. CODE § 33.2(a). Each application shall include all information required by TABC Staff to insure compliance with all applicable statutes and rules and regulations of the agency. 16 TEX. ADMIN. CODE § 33.2(b). Information concerning the physical address for a licensed premises and the permittee's mailing address is required to be included in responses to questions listed on all TABC application forms and correct responses must be provided.

As a result, TABC Staff's notice of hearing, which was sent to Respondent's mailing address of record, as provided by Respondent and reflected on Respondent's permit, is sufficient to satisfy due process requirements for conducting this proceeding. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

#### PROPOSED FINDINGS OF FACT

1. Respondent, Reel Entertainment Corp. d/b/a Lakewood Theater, holds a Mixed Beverage Permit, MB 402744, and a Mixed Beverage Late Hours Permit, LB 402745, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 1825 Abrams Parkway, Dallas, Dallas County, Texas.
2. On January 22, 2003, TABC Staff issued its notice of hearing to Respondent at Respondent's mailing address of record listed on Respondent's permits described in Finding of Fact No. 1: P.O. Box 720147, Dallas, Texas 75372, for the hearing, which was scheduled to be held

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<sup>1</sup>The Texas Alcoholic Beverage Code provides as follows:

At least 10 days notice shall be given when a hearing is provided by this Code. A notice of hearing for the refusal, cancellation, or suspension of a license or permit may be served personally by a representative of the Commission or sent by registered or certified mail addressed to the licensee or permittee. TEX. ALCO. BEV. CODE ANN. § 11.63

on March 14, 2003. This notice of hearing was returned to TABC Staff on February 19, 2003, with a notation "unclaimed" after several attempts to deliver the notice had been made according to the return receipt from the U.S. Postal Service.

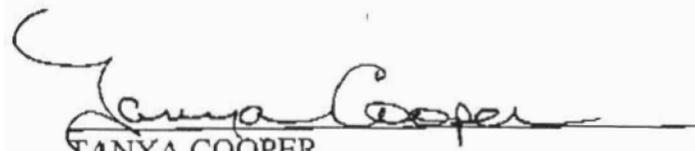
3. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The notice of hearing also contained the following language in at least twelve-point, bold-face type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. A hearing convened before Tanya Cooper, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on March 14, 2003. Respondent did not appear and was not represented at the hearing.
6. On or about August 15, 2002, Respondent issued a check or draft for the purchase of beer to Goody Goody Liquor, Inc., in the sum of \$562.63 which was dishonored when presented for payment.
7. Respondent's licensing history maintained by TABC Staff shows two previous violations of the same or similar nature as the violation set out in proposed Finding of Fact No. 6.

#### PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61(b)(2), 29.03, 61.71(a)(1), and 61.73(b).
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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 2-4, notice of hearing was issued to Respondent in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55; TEX. ALCO. BEV. CODE ANN. § 11.63; and See Morris v. State, 894 S.W.2d 22 (Tex. App. - Austin 1995, writ dismiss'd w.o.j.).
4. Based upon Proposed Findings of Fact Nos. 2-5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.

5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.73(b) and 102.31.
6. Based upon Proposed Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 102.31, Respondent's permit and license should be suspended for a period of 10 days.
7. Based upon Proposed Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$1,500 in lieu of suspension of the permit.

SIGNED this 9<sup>th</sup> day of April 2003.



TANYA COOPER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 601933**

IN RE REEL ENTERTAINMENT CORP.	§	BEFORE THE
D/B/A LAKEWOOD THEATRE	§	
PERMIT NOS. MB402744, LB402745	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1732)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 5th day of May 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on March 14, 2003, and adjourned on March 14, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 9, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. MB402744 and LB402745 will be **SUSPENDED**.

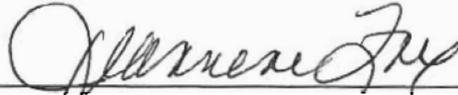
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **18th day of June, 2003**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **ten (10) days, beginning at 12:01 A.M. on the 25th day of June, 2003**.

**This Order will become final and enforceable on May 26, 2003**, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

**SIGNED** this 5th day of May, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable Tanya Cooper  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (817) 377-3706

REEL ENTERTAINMENT CORP.  
D/B/A LAKEWOOD THEATRE  
RESPONDENT  
PO Box 720147  
Dallas, TX 75372  
CERTIFIED MAIL NO. 7001 2510 0003 8687 0536

Timothy E. Griffith  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Regulatory Division

Dallas District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 601933**

**REGISTER NUMBER:**

**NAME: REEL ENTERTAINMENT CORP.**

**TRADENAME: LAKEWOOD THEATRE**

**ADDRESS: 1825 Abrams Parkway, Dallas, Texas 75214**

**DATE DUE: June 18, 2003**

**PERMITS OR LICENSES: MB402744, LB402745**

**AMOUNT OF PENALTY: \$1,500.00**

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Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 18TH DAY OF JUNE 2003, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

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

**WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.**

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

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

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

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

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