

DOCKET NO. 458-03-2639

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
TWISTED LEMMON COMPANY D/B/A TWISTED LEMMON CLUB PERMIT NOS. MB-417842 & LB-417843 BELL COUNTY, TEXAS (TABC CASE NO. 603015)	§	ADMINISTRATIVE HEARINGS
	§	
	§	

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) requested that the license of Twisted Lemmon Company d/b/a Twisted Lemmon Club (the Respondent) be canceled or suspended, alleging that on or about December 2, 2002, the Respondent's agent, servant, or employee was intoxicated on the licensed premises, in violation of TEX. ALCO. BEV. CODE ANN. (Code) §11.61(b)(13). Although duly notified of the hearing on the merits, the Respondent failed to appear. As a result, this Proposal for Decision finds that the allegations against the Respondent are true, and recommends that the Respondent's permits be canceled, which is the sanction proposed by the Commission.

I. Statement of the Case

The hearing on the merits was convened on July 28, 2003, at 801 Austin Avenue, Suite 750, Waco, Texas, before Administrative Law Judge (ALJ) Suzan Shinder. The Commission appeared by staff attorney Dewey Brackin. The Respondent did not appear and was not represented at the hearing. After the admission of evidence regarding jurisdiction and notice to the Respondent, the Commission moved for a default judgement pursuant to 1 TEX. ADMIN. CODE §155.55. At the conclusion of the hearing, the Commission requested that the Respondent's permits be canceled, and the record was closed.

Because the hearing proceeded on a default basis, the Commission's factual allegations are deemed admitted as true, and the Commission's allegations are incorporated into the Findings of Fact without further consideration or discussion. Specifics regarding jurisdiction and notice to the Respondent are also set out in the Findings of Fact and Conclusions of Law without further discussion.

Proposed Findings of Fact

1. A Mixed Beverage Permit, MB-417842, and Mixed Beverage Late Hours Permit, LB-417843, were issued to Doyle Sales & Service Company, doing business as Wild Side Saloon & Cabaret (currently Twisted Lemmon Company doing business as Twisted Lemmon Club), 601 East Veterans Memorial Boulevard, Harker Heights, Bell County, Texas, 76548, by the Texas Alcoholic beverage Commission, on August 12, 1997. These permits have been continuously renewed.¹
2. On or about December 2, 2002, the Respondent's agent, servant, or employee was intoxicated on the licensed premises.
3. On June 24, 2003, the Commission's First Amended Notice of Hearing was sent by certified mail to the Respondent's last known mailing address. This notice informed the Respondent that the hearing on the merits was set for July 28, 2003, at 2:00 p.m., at 801 Austin Avenue, Suite 750, Waco, Texas, and it contained: a statement of the 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; the allegations that on or about December 2, 2002, the Respondent's agent, servant, or employee was intoxicated on the licensed premises; and the relief sought by the Commission, which was the suspension or cancellation of the Respondent's permits.²
4. The Commission's First Amended Notice of Hearing also contained the statement, in 12-point, bold-face type, that if the Respondent failed to appear at the hearing, the factual allegations in the notice would be deemed admitted as true, and the relief sought in the notice could be granted by default.
5. The Commission's First Amended Notice of Hearing was returned "to sender," with the explanation "not deliverable as addressed, unable to forward."³
6. The hearing on the merits was convened on July 28, 2003, at 2:00 p.m., at 801 Austin Avenue, Suite 750, Waco, Texas, before Administrative Law Judge (ALJ) Suzan Shinder. The Commission appeared by staff attorney Dewey Brackin. The Respondent failed to appear and was not represented at the hearing. After the admission of evidence regarding jurisdiction and notice to the Respondent, the Commission moved for a default judgement. At the conclusion of the hearing, the Commission requested that the Respondent's permits be canceled, and the record was closed.

¹Commission's Exhibit No. 1, the permit and violation history of the Respondent.

²Official Notice was taken of the cover letter dated June 24, 2003, and the Commission's First Amended Notice of Hearing, file marked June 18, 2003.

³Official Notice was taken of the envelope, file marked July 2, 2003, with the green card still attached, containing the Commission's First Amended Notice of Hearing and its cover letter.

Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) Subchapter B of Chapter 5.
2. 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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based on Findings of Fact Nos.1 and 3-6, proper and timely notice of the hearing was provided by sending the notice, by certified mail, to the Respondent's last known address as shown by the Commission's records, as authorized under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052; Code §11.63; and 1 TEX. ADMIN. CODE §155.55.
4. Based on Finding of Fact No. 2, Respondent's agent, servant, or employee was intoxicated on the licensed premises in violation of Code §11.61(b)(13).
5. Based on the foregoing findings and conclusions, the Respondent's permits should be canceled.

Signed this 12th day of August, 2003.



SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 603015

IN RE TWISTED LEMMON COMPANY/	§	BEFORE THE
DOYLE SALES & SERVICE COMPANY	§	
D/B/A TWISTED LEMMON CLUB	§	
WILD SIDE SALOON & CABARET	§	
PERMIT NO. MB-417842 & LB-417843	§	TEXAS ALCOHOLIC
	§	
	§	
BELL COUNTY, TEXAS	§	
<i>(SOAH DOCKET NO. 458-03-2639)</i>	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 14th day of October, 2003 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on July 28, 2003, and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 12, 2003. This 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. 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 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.

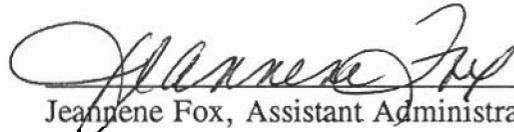
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Mixed Beverage Permit No. **MB-417842** and Mixed Beverage Late Hours Permit No. **LB-417843** are hereby **CANCELLED**.

This Order will become final and enforceable on November 4, 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 and by mail as indicated below.

SIGNED on this the 14th day of October, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Suzan Moon Shinder
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (254) 750-9380

Twisted Lemmon Company
d/b/a Twisted Lemmon Club
RESPONDENT
601 E. Veterans Memorial Blvd.
Harker Heights, Texas 76548
CERTIFIED MAIL NO. 7001 2510 0003 8687 1977
RETURN RECEIPT REQUESTED

Dewey A. Brackin
ATTORNEY FOR PETITIONER
Texas Alcoholic Beverage Commission
Legal Division

Waco District Office
Licensing Division