

SOAH DOCKET NO. 458-04-1649

TEXAS ALCOHOLIC BEVERAGE, COMMISSION, Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V. LUNA Y SOL PRIVATE CLUB, Respondent		

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Luna Y Sol Private Club (Respondent). Petitioner sought denial of Respondent's pending renewal application, alleging (1) that on or before December 26, 2002, Respondent failed to timely provide reports or other data to Staff; and (2) that Respondent failed to post security required by the State Comptroller and failed to pay mixed beverage gross receipts taxes. For the reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends denial of Respondent's pending renewal application.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, § 11.61 and 16 TEX. ADMIN. CODE (TAC) § 31.1. 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 December 16, 2003, Petitioner issued its Notice of Hearing, directed to Luna Y Sol Private Club. The notice of hearing was received by Respondent on or about December 18, 2003. 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, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice of hearing also contained the following language in 12-point or larger boldface 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."

On February 13, 2004, a hearing convened before SOAH ALJ Brenda Coleman at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on February 13, 2004.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TAC § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 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.

III. PROPOSED FINDINGS OF FACT

1. Luna Y Sol (Respondent), holds a Private Club Registration Permit, N-502906, a Beverage Cartage Permit, PE-502907, and a Food and Beverage Certificate, FB-502908, issued by the Texas Alcoholic Beverage Commission (Petitioner), for the premises located at 1615 Hampton Road, Suite 100, DeSoto, Dallas County, Texas.
2. On December 16, 2003, Petitioner issued its notice of hearing to Respondent. The notice of hearing was received by Respondent on December 18, 2003.

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 12-point or larger boldface 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 Brenda Coleman, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on February 13, 2004. Petitioner appeared through its Staff Attorney, Tim Griffith. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
6. On or before December 26, 2002, Respondent failed to timely provide reports or other data to Staff.
7. Respondent has failed to post the security required by the State Comptroller, and is indebted to the state for failing to pay mixed beverage gross receipts taxes.

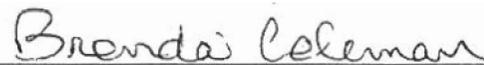
IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.61.
2. 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.
3. Based upon Proposed Findings of Fact Nos. 2 through 4, Petitioner issued its notice of hearing in compliance with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2 through 5, the hearing proceeded on a default basis as authorized by 1 TAC § 155.55:
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN.

§§ 5.44(a)(6), 5.32 and 11.61(b)(2).

6. Based upon Proposed Finding of Fact No. 7, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61(b)(5).
7. Based upon Proposed Conclusions of Law Nos. 5 and 6, Respondent's renewal application should be denied.

SIGNED April 7, 2004.



**BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

DOCKET NO. 603950

IN RE LUNA Y SOL PRIVATE CLUB	§	BEFORE THE
D/B/A LUNA Y SOL PRIVATE CLUB	§	
PERMIT NOS. N-502906, PE502907,	§	
FB502908	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-1649)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of May, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on February 13, 2004, and adjourned on February 13, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 7, 2004. 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, 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.

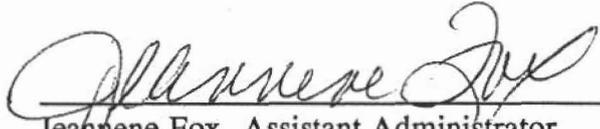
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the pending renewal applications for Permit Nos. N-502906, PE502907, and FB502908, are hereby **DENIED**.

This Order will become final and enforceable on May 26, 2004, 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 5th day of May, 2004.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeannene Fox", is written over a horizontal line.

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

– Luna Y Sol Private Club
RESPONDENT
325 Wentwod Ln.
Cedar Hill, TX 75104-2943
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1903 4163

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office