

**DOCKET NO. 583054**

IN RE ABU NASAR	§	BEFORE THE
D/B/A JAY JAY'S LOUNGE	§	
PERMIT NO. MB-249580 & LB-249581	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1889)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 28th day of July 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Ed Shipper. The hearing convened on October 28, 1999 and adjourned October 28, 1999. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 6, 2000. 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 Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

**This Order will become final and enforceable on August 18, 2000**, 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.

**WITNESS MY HAND AND SEAL OF OFFICE** on this the 28th day of July, 2000.

On Behalf of the Administrator,

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

**Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission**

KGG/vr

**The Honorable Ed Shipper  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (713) 812-1001**

**Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
VIA FACSIMILE (512) 475-4994**

**Abu Nasar  
RESPONDENT  
d/b/a Jay Jays Lounge  
8533 Beechnut  
Houston, Texas 77036  
VIA CERTIFIED MAIL Z 473 041 950**

**Gayle Gordon  
ATTORNEY FOR PETITIONER  
TABC Legal Section**

**Licensing Division  
San Antonio District Office**

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

July 6, 2000

Mr. Doyme Bailey, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

**CERTIFIED MAIL NO. P 332 127 604**  
**RETURN RECEIPT REQUESTED**

**RE: Docket No. 458-99-1839; TABC vs. Abu Naser d/b/a Jay Jay's Lounge**  
**Permit Nos. MB-249580 and LB-249581 (TABC Case No. 583054)**

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Abu Maser, d/b/a Jay Jay's Lounge. For reasons discussed in the Proposal for Decision, I have recommended forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited, to certificates of deposit and letters of credit), is warranted.

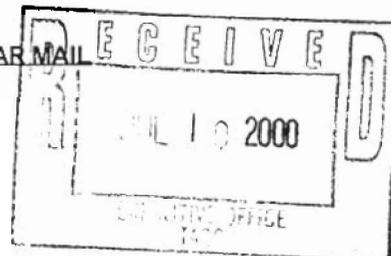
Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

Ed Shipper  
Administrative Law Judge

ES/rfm  
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - **REGULAR MAIL**  
Abu Naser, 8533 Beechnut, Houston, TX 77036 -  
**VIA CERTIFIED MAIL NO. P 332 127 605, RETURN RECEIPT REQUESTED**  
Holly Wise, Docket Clerk, State Office of Administrative Hearings - **VIA REGULAR MAIL**



North Loop Office Park  
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018  
(713) 957-0010 Fax (713) 812-1001

SOAH DOCKET NO. 458-99-1889

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

vs.

ABU NASER  
D/B/A JAY JAY'S LOUNGE  
PERMIT NOS. MB-249580 AND  
LB-249581  
HARRIS COUNTY, TEXAS  
(TABC CASE NO. 583054)

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BEFORE THE STATE OFFICE

ADMINISTRATIVE HEARING

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Abu Naser d/b/a Jay Jay's Lounge (the Permittee) for forfeiture of the full amount of its conduct surety bond pursuant to TEX. ALCO. BEV. CODE ANN. Section 1.01, et seq. and Texas Alcoholic Beverage Commission Rules, 16 TAC §31.1, et seq. TABC alleged that Permittee committed three or more violations of the Alcoholic Beverage Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission Rules 16 TAC §33.24. Two violations of the TEX. ALCO. BEV. CODE ANN occurred on or about December 2, 1997. One violation of TEX. ALCO. BEV. CODE ANN occurred on or about November 22, 1997. One violation of TEX. ALCO. BEV. CODE ANN. occurred on or about June 19, 1997. Finally, one violation of TEX. ALCO. BEV. CODE ANN. occurred on or about November 25, 1997.

The Permittee did not make an appearance at the hearing on October 28, 1999. This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of TABC that the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), should be forfeited.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on October 28, 1999, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Respondent was not represented, and Respondent did not appear. Ed Shipper, Administrative Law Judge (ALJ), presided. Because the hearing proceeded on a default basis, and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

## **II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS**

Texas Alcoholic Beverage Commission Rules 16 TAC §33.24 authorizes TABC to notify a permittee or licensee of its intent to seek forfeiture of the bond when a licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995. As described in the Findings of Fact, the Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24 by committing five violations of the Alcoholic Beverage Code between June 19, 1997 and December 2, 1997.

The TABC's attorney introduced the following three exhibits into evidence:

Commission 1 is the request for hearing filed by Permittee, Abu Naser. Commission 2 is the Notice of Hearing sent by Gayle Gordon, Attorney for the TABC, on or about September 17, 1999. Commission 3 is the Second Notice of Hearing sent by Gayle Gordon, Attorney for TABC, on or about September 29, 1999. Commission 4 is the file of Permittee, with Permit Numbers MB-249580 and LB-2495581, which includes an Agreement and Waive Order signed by Permittee on or about December 10, 1998.

The ALJ took judicial notice of the Court's file which shows the hearing was scheduled on October 28, 1999. A Second Notice of Hearing was sent via certified mail on September 29, 1999. The Notice of Hearing was served on Respondent.

## **III. RECOMMENDATION**

Because the Permittee committed five violations of the Alcoholic Beverage Code between June 19, 1997, and December 2, 1997, in violation of Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to certificates of deposit and letters of credit), should be forfeited.

## **V. FINDINGS OF FACT**

1. Texas Alcoholic Beverage Commission (TABC) issued Permit Nos. MB-249580 and LB-249581 to Abu Naser d/b/a Jay's Lounge. The mailing address of Abu Naser d/b/a Jay's Lounge is 8533 Beechnut, Houston, TX 77036.
2. TABC forwarded a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to Abu Naser, d/b/a Jay's Lounge (the Permittee) on or about September 17, 1999. TABC issued a Second Notice of Hearing to Abu Naser d/b/a Jay's Lounge (the Permittee) on or about September 29, 1999.

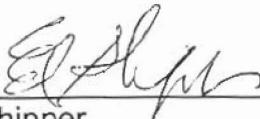
3. The hearing on the merits was held on October 28, 1999, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Respondent did not appear, and Respondent was not represented at the hearing. Ed Shipper, Administrative Law Judge (ALJ) presided.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee committed violations of TEX. ALCO. BEV. CODE ANN §1.01, et seq. on or about June 19, 1997, November 22, 1997, November 25, 1997 and December 2, 1997.

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. The Notice of Hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE §155.55.
5. Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, by committing five violations of the Alcoholic Beverage Code between June 19, 1997 and December 2, 1997.
6. Based on the foregoing Findings of Fact and Conclusions of Law, forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), is warranted.

SIGNED this 6<sup>th</sup> day of July, 2000.

  
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Ed Shipper  
Administrative Law Judge  
State Office of Administrative Hearings