

DOCKET NO. 584636

IN RE BOBBY JOE DARNELL	§	BEFORE THE
D/B/A BOBBY'S PLACE	§	
LICENSE NO. BE409000	§	
	§	TEXAS ALCOHOLIC
	§	
ROBERTSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0595)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 17th day of August, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Ruth Casarez. The hearing convened on May 11, 2000, and a request for continuance was granted. The hearing was reconvened on July 14, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 7, 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. 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.

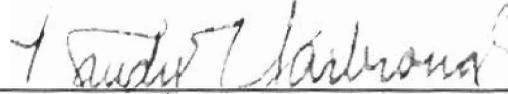
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that License No. BE409000 is herein **SUSPENDED for a period of twenty (20) days, beginning at 12:01 A.M. on the 24th day of November, 2000**, unless the Respondent pays a civil penalty in the amount of **\$3,000.00** on or before the **17th** day of **November, 2000**.

This Order will become final and enforceable on September 6, 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 17th day of August, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Ruth Casarez
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

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

Bobby Joe Darnell
d/b/a Bobby's Place
RESPONDENT
P.O. Box 1145
Franklin, Texas 77856
CERTIFIED MAIL NO. Z 473 042 896

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Bryan District Office

State Office of Administrative Hearings



AUG - 8 10

Shelia Bailey Taylor
Chief Administrative Law Judge

August 7, 2000

Mr. Doyne Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78711

HAND DELIVERY

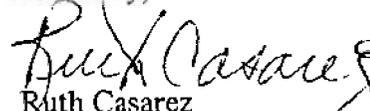
RE: Docket No. 458-00-0595; TABC vs. BOBBY JOE DARNELL D/B/A BOBBY'S PLACE PERMIT NO. BE-409000, ROBERTSON COUNTY, TEXAS

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 Christopher Burnett, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Bobby Joe Darnell d/b/a Bobby's Place (Respondent). For reasons discussed in the Proposal for Decision, I recommend that a suspension period of 20 days be entered.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), 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 reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,


Ruth Casarez
Administrative Law Judge

RC/dms
Enclosure

xc: Christopher Burnett, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY
Bobby Joe Darnell d/b/a Bobby's Place, P.O.Box 1145, Franklin, Texas 77856 -VIA REGULAR U.S. MAIL
Rommel Corro, Docket Clerk, State Office of Administrative Hearings- VIA HAND DELIVERY

William P. Clements Building
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

DOCKET NO. 458-00-0595

**TEXAS ALCOHOLIC
BEVERAGE COMMISSION**

V.

**BOBBY JOE DARNELL
D/B/A BOBBY'S PLACE
LICENSE NO. BE-409000
ROBERTSON COUNTY, TEXAS
(TABC CASE NO. 584636)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Alcoholic Beverage Commission (Commission) brought this enforcement action against Bobby Joe Darnell d/b/a Bobby's Place (Licensee) for refusing inspection of the licensed premises. The Licensee did not appear at the hearing. Staff recommended that the license be suspended for 25 days or that Licensee pay a fine of \$3,750.00 in lieu of suspension. The Administrative Law Judge (ALJ) recommends a suspension period of 20 days.

I. Procedural History, Notice, and Jurisdiction

On March 14, 2000, Staff sent a notice of hearing to P.O. Box 1145, Franklin, Texas 77856, Licensee's mailing address of record with the Commission. On May 10, 2000, one day before the scheduled hearing, Licensee's wife sent a letter requesting a continuance. On May 11, 2000, the ALJ convened the hearing as scheduled. Mr. Christopher Burnett, attorney with the Commission, appeared at the hearing on behalf of the Staff; he indicated he had no opposition to the request for continuance. The ALJ granted the continuance, and by Order dated May 15, 2000, reset the hearing to 9:00 a.m. on July 14, 2000. The Order was sent to Licensee's mailing address of record.

The hearing reconvened on July 14, 2000, before ALJ Ruth Casarez, at the offices of the State Office of Administrative Hearings (SOAH) in the Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100, Austin, Texas. Staff was represented by Mr. Burnett. Licensee did not appear at the hearing. Because Staff's notice complied with the provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55, Staff requested the hearing proceed on a default basis. The ALJ agreed with the request; thus, the factual allegations set out in the notice of hearing are deemed true, and are incorporated into the Findings of Fact without further discussion here.

The Commission and SOAH have jurisdiction over this matter as stated in the Conclusions of Law. The notice of intent to institute enforcement action and notice of hearing met the requirements imposed by statute and by rule as set forth in the Findings of Fact and Conclusions of Law.

II. The Allegations and Applicable Statutory Provisions

The sole allegation in this proceeding is that Licensee refused inspection of its licensed premises by an authorized representative of the Commission. Section 101.04 of the TEX. ALCO. BEV. CODE ANN. (the Code) provides that:

[B]y accepting a license or permit, the holder consents that the commission, an authorized representative of the commission, or a peace officer may enter the licensed premises at any time to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by this code.

Section 61.71(a)(14) of the Code provides that if a licensee or permittee refuses to allow an inspection, the Commission or administrator may, after notice and hearing, suspend an original or renewal retail dealer's on-or off-premises license for not more than 60 days or may cancel the license. The Commission has adopted rules that implement the provisions of the Code. Commission Rule, found at 16 TAC § 37.60, provides guidance, in the form of a penalty chart, for the length of suspension that may be imposed, depending on the type of violation and on a permittee's history of violations. The chart classifies refusing to allow an inspection of or interfering with an inspection of a licensed premises as a "major regulatory violation," and suggests a suspension period for a first violation of ten days, if the violation was committed by an employee and twenty days if committed by the permittee. In this case, Staff recommended a suspension of twenty five days, but gave no reason, other than that the case proceeded to hearing, supporting the twenty five day suspension. The ALJ believes the appropriate suspension period should be twenty days.

Section 11.64(a) of the Code provides that the Licensee must be offered the opportunity to pay a civil penalty in lieu of a suspension. The penalty may not be less than \$150.00 nor more than \$25,000.00 for each day of the suspension. Staff recommended the minimum rate be used to determine the civil penalty. The ALJ agrees with Staff's recommendation.

III. Findings of Fact

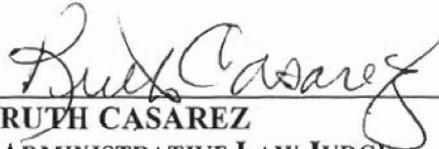
1. Bobby Joe Darnell d/b/a Bobby's Place (Licensee), located at 210 N. Alamo, Hearne, Robertson County, Texas 77859, holds License No. BE-409000 from the Texas Alcoholic Beverage Commission (the Commission); Licensee's mailing address of record with the Commission is P.O. Box 1145, Franklin, Texas 77856.
2. The staff of the Commission (Staff) sent a notice of hearing, dated March 14, 2000, to Licensee at his mailing address of record.
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 also contained the following language in 10-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. On May 10, 2000, Pamela Darnell, sent a letter stating that Licensee was out of the country and would not be able to attend the hearing set for May 11, 2000.
6. On May 11, 2000, the Administrative Law Judge (ALJ) convened the scheduled hearing. Mr. Christopher Burnett, representing the Staff, indicated he had no opposition to the requested continuance.
7. By Order dated May 15, 2000, the ALJ granted the continuance and reset the hearing to 9:00 a.m. on July 14, 2000. The order was sent to Licensee at his mailing address of record.
8. The hearing was reconvened on July 14, 2000, at 9:00 a.m. at the State Office of Administrative Hearings in the Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100, Austin, Texas. Staff was represented by Mr. Burnett. Licensee did not appear at the hearing.

9. On April 16, 1999, Licensee refused inspection of the licensed premises by an authorized representative of the Commission.
10. Licensee has not previously refused inspection of the licensed premises and no aggravating facts were presented related to Licensee's refusing inspection on April 16, 1999.

IV. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§ 6.01, 61.71 and 101.04 (Vernon 1995 & Supp. 2000).
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 § 5.43 of the Code, and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Based on Findings of Fact Nos. 2 - 4, proper and timely notice of the hearing was effected on Licensee pursuant to Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000), and 1 TEX. ADMIN. CODE (TAC) § 155.55(d) (1999).
4. Based on Finding of Fact No. 1, Bobby Joe Darnell d/b/a Bobby's Place is a licensee as defined in §1.01(16) of the Code. Pursuant to § 101.04 of the Code, a license holder consents that the commission, an authorized representative of the commission, or a peace officer may enter the licensed premises at any time to conduct an investigation or inspect the premises for the purposes of performing any duty imposed by the Code.
5. Based on Finding of Fact No. 9, and Conclusion of Law No. 4, Licensee violated a provision of the Code, and pursuant to § 61.71(a)(14) of the Code, the Commission may suspend for not more than 60 days or cancel Licensee's license.
6. Pursuant to 16 TAC § 37.60(a) (1999), if a permittee refused to allow an inspection of the licensed premises, the permittee's license may be suspended for 20 days, if it is the first violation.
7. Pursuant to 16 TAC § 37.60(g), a decision maker may deviate from the penalties indicated in the standard penalty chart, if the facts presented in an administrative hearing warrant deviation.
8. Based on Findings of Fact Nos. 9 and 10 and Conclusions of Law Nos. 5,6, and 7, Licensee's license should be suspended for 20 days.
9. Pursuant to § 11.64(a) of the Code, Licensee should be allowed to pay a \$3,000.00 civil penalty in lieu of suspension of its license.

SIGNED this 7th day of August 2000.



RUTH CASAREZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS