

DOCKET NO. 592230

IN RE NANCY DEL CARMEN GARCIA	§	BEFORE THE
D/B/A LA GUIRA NIGHT CLUB	§	
PERMIT NOS. MB258623, LB258624,	§	
PE258625	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-3229)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 11th day of October 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened and adjourned on July 13, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 13, 2001. 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.

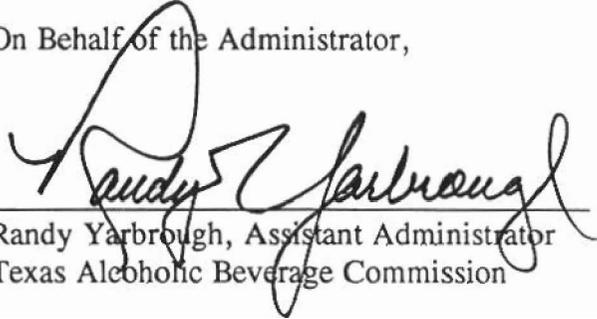
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. MB258623, LB258624, and PE258625 are hereby **CANCELED FOR CAUSE**, effective **immediately**.

This Order will become final and enforceable on November 1, 2001, 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 11th day of October, 2001.

On Behalf of the Administrator,

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

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

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

- Nancy Del Carmen Garcia
d/b/a La Guira Night Club
RESPONDENT
2712 Webbs Chapel Extension
Dallas, Texas 75220
CERTIFIED MAIL NO. 7000 1530 0003 1927 6570

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

II. Findings of Fact

1. Nancy Del Carmen d/b/a La Guira Night Club, 2712 Webbs Chapel Extension, Dallas, Dallas County, Texas holds Mixed Beverage Permit No. MB-258623 Mixed Beverage Late Hours Permit No. LB-258624, and Beverage Cartage Permit No. PE-258625, issued by the Commission on October 27, 1995, and continuously renewed thereafter.
2. On October 23, 2000, Respondent allowed or consented to an unauthorized person using or displaying the permit.
3. On October 23, 2000, Respondent made a false or misleading statement in connection with a renewal application.
4. On October 31, 2000, Respondent failed to timely provide source records to a Commission representative.
5. On March 13, 1996, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 567272 regarding a violation of the Texas Alcoholic Beverage Code (the Code). By signing the waiver agreement, Respondent declared that on January 13, 1996, Respondent permitted consumption of an alcoholic beverage during prohibited hours by an employee. Respondent acknowledged the violation of the Code had occurred and that Respondent's permits would be suspended by the Commission unless Respondent paid a civil penalty.
6. On April 5, 1996, the Commission Administrator entered an order finding Respondent had violated the Code consistent with Respondent's admissions in Findings of Fact No. 5.
7. Notice of the hearing in this matter, dated June 18, 2001, was properly addressed and sent by certified mail to Respondent at Respondent's Dallas, Texas, mailing address as listed in the Commission's records. The notice of hearing notified Respondent of the statutes and rules involved, the legal authorities under which the hearing was to be held, and the date, time and place of the hearing.
8. The notice also contained language in 10-point type informing Respondent that if Respondent failed to appear at the hearing, the Staff's factual allegations would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
9. The hearing on the merits convened July 13, 2001, at the offices of the State Office of Administrative Hearings (SOAH), Dallas, Texas, 6333 Forest Park Rd., Suite 150A. Staff was represented by attorney, Timothy E. Griffith. Respondent did not appear and was not represented at the hearing. The record closed on the same day.

III. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN §§ 6.01 and 61.71(a)(5).
2. SOAH has jurisdiction to conduct the 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. Based on Finding of Fact No. 7, proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55(d), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. Based on Findings of Fact Nos. 8 and 9, the hearing proceeded on a default basis, as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based on Finding of Fact Nos. 2 - 4, Respondent violated TEX. ALCO. BEV. CODE §§ 5.32, 11.61(b)(2), 11.61 (b)(4), 11.05, 109.53, and 16 TEX. ADMIN. CODE §§ 41.50(b) and (d).
6. Based on the foregoing findings and conclusions, cancellation of Mixed Beverage Permit No. MB-258623, Mixed Beverage Late Hours Permit No. LB-258624 and Beverage Cartage Permit No. 258625 for cause is warranted.

ISSUED this 13th day of September, 2001.


BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS