

DOCKET NO. 458-04-0051

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner**

BEFORE THE STATE OFFICE

VS.

OF

**POLKY'S SPORTS BAR & GRILL INC.
D/B/A POLKY'S SPORTS BAR & GRILL,
Respondent
TARRANT COUNTY, TEXAS
(TABC No. 606096)**

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ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this forfeiture action against Polky's Sports Bar & Grill Inc. d/b/a Polky's Sports Bar & Grill (Respondent). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging Respondent had three or more adjudicated violations of the Texas Alcoholic Beverage Code since September 1, 1995. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.11(b)(2) and 29.03 and 16 TEX. ADMIN. CODE § 33.24. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the 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 September 9, 2003, Petitioner issued its notice of hearing, directed to Polky's Sports Bar & Grill Inc. d/b/a Polky's Sports Bar & Grill. The notice of hearing was received by Respondent on or about September 15, 2003. The notice of hearing contained a statement of the time, place, and



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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 October 24, 2003, a hearing convened before SOAH ALJ Cindy T. Greenleaf at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant 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 October 24, 2003.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE § 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 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. Respondent, Polky's Sports Bar & Grill Inc. d/b/a Polky's Sports Bar & Grill, holds a Mixed Beverage Permit, MB-528184, and a Mixed Beverage Late Hours Permit, LB-528185, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 3701 S. Cooper No. 123, Arlington, Tarrant County, Texas.
2. On September 9, 2003, Petitioner issued its notice of hearing to Respondent. This notice of hearing was received by Respondent on or about September 15, 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.

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4. The notice of hearing 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 Cindy T. Greenleaf, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on October 24, 2003. Respondent did not appear and was not represented at the hearing. The record closed on October 24, 2003.
6. Respondent was finally adjudicated of three violations of the Texas Alcoholic Beverage Code since September 1, 1995.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.11(b)(2) and 29.03 and 16 TEX. ADMIN. CODE § 33.24.
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. 2-4, Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2-5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Proposed Finding of Fact No. 6, Respondent's conduct surety bond should be forfeited, as authorized by TEX. ALCO. BEV. CODE ANN. §§ 11.11(b)(2) and 29.03 and 16 TEX. ADMIN. CODE § 33.24.

SIGNED December 5, 2003.



CINDY T. GREENLEAF
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 606096

IN RE POLKY'S SPORTS BAR & GRILL INC. § BEFORE THE
D/B/A POLKY'S SPORTS BAR & GRILL §
PERMIT NOS. MB528184, LB528185 §
§ TEXAS ALCOHOLIC
§
TARRANT COUNTY, TEXAS §
(SOAH DOCKET NO. 458-04-0051) § BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th day of December 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Cindy T. Greenleaf. The hearing convened on October 24, 2003, and adjourned on October 24, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 5, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. 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.

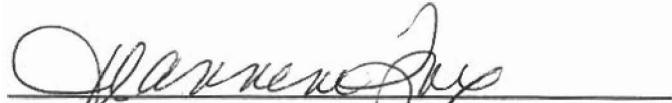
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on January 20, 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 or through the U.S. Mail, as indicated below.

SIGNED this 30th day of December, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Cindy T. Greenleaf
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

POLKY'S SPORTS BAR & GRILL INC.
D/B/A POLKY'S SPORTS BAR & GRILL
RESPONDENT
3701 S Cooper #123
Arlington, TX 76015-3414
CERTIFIED MAIL/RRR NO. 7001 2510 0007 0098 6332

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Fort Worth District Office