

DOCKET NO. 610305

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

ARVEL EDWARD JERNIGAN
D/B/A CLUB INDIGO
PERMIT/LICENSE NOS. MB532553 &
LB532554
DALLAS COUNTY, TEXAS
(SOAH Docket No. 458-05-0916)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER

CAME ON FOR CONSIDERATION this 29th day of July, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle Groves. The hearing convened on 22nd day of April, 2005 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on 21st day of June, 2005. The Proposal For Decision, attached 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. 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 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 permits and/or licenses are hereby **CANCELLED**.

This Order will become final and enforceable on August 19, 2005, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this the 29th day of July, 2005, at Austin, Texas.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG\bc

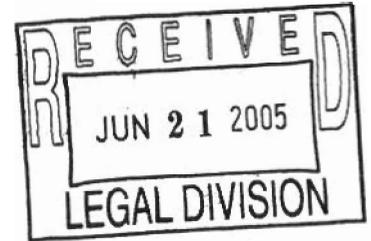
The Honorable Kyle Groves, ALJ
State Office of Administrative Hearings
Dallas, Texas
VIA FACSIMILE (214) 965-8611

ARVEL EDWARD JERNIGAN
RESPONDENT
d/b/a CLUB INDIGO
2702 MAIN ST
DALLAS, TX 75226
CERTIFIED MAIL NO. 7005 0390 0005 7550 2538

Timothy Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office



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DOCKET NO. 458-05-0916

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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BEFORE THE STATE OFFICE

V.

OF

ARVEL E. JERNIGAN
D/B/A CLUB INDIGO
PERMIT NOS. MB-532553 & LB-532554
DALLAS COUNTY TEXAS
(TABC NO. 610305)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Arvel E. Jernigan, d/b/a Club Indigo (Respondent) seeking cancellation of Respondent's Mixed Beverage Permit MB-532553 and Mixed Beverage Late Hours Permit LB-532554. TABC alleged Respondent, his agent, servant, or employee, knowingly possessed or permitted the possession of alcoholic beverages not covered by an invoice in violation of TEX. ALCO. BEV. CODE ANN. §§ 28.06 (c) and (d).

This Proposal for Decision finds the Respondent's Permits should be canceled.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter convened on April 22, 2005. Attorney Timothy Griffith represented TABC. The Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing was concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the



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PROPOSAL FOR DECISION

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Findings of Fact and Conclusions of Law without further discussion here.

II. EVIDENCE

TABC staff offered documentary evidence showing:

(a) On March 28, 2003, Respondent was issued Mixed Beverage Permit MB-532553 and Mixed Beverage Late Hours Permit LB-532554.

(b) On October 12, 2004, Petitioner sent a Notice of Hearing, by certified mail, return receipt requested, to Respondent asserting that the TABC was seeking to cancel Respondent's permits. Respondent signed the return receipt on October 14, 2004.

(c) The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."

III. STATUTORY AUTHORITY

TEX. ADMIN. CODE § 61.71 (a) (1) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period.

TEX. ADMIN. CODE §155.55 states:

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

IV. PROPOSED FINDINGS OF FACT

1. Arvel E. Jernigan d/b/a Club Indigo (Respondent) is the holder of Mixed Beverage Permit MB-532553 and Mixed Beverage Late Hours Permit LB-532554.
2. Respondent was notified of the factual allegations against Respondent in the Notice of Hearing issued by Petitioner on October 12, 2004. The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."
3. Respondent was notified of the date, time, and location of the scheduled hearing by the Notice of Hearing dated October 12, 2004.
4. On March 22, 2005, the hearing in this matter convened before ALJ Kyle J. Groves. Timothy Griffith appeared for Petitioner. Respondent failed to appear.
5. On or about February 20, 2004, Respondent, his agent, servant, or employee, knowingly possessed or permitted the possession of alcoholic beverages not covered by invoice in violation of TEX. ALCO. BEV. CODE ANN. §§ 28.06 (c) and (d).

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.11.
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 factual allegations in the notice of hearing are deemed admitted as true.
5. By knowingly possessing or permitting the possession of an alcoholic beverage not covered by an invoice, Respondent, his agent, servant, or employee violated TEX. ALCO. BEV. CODE ANN. §§28.06 (c) and (d).

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- 6 Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Mixed Beverage Permit MB-532553 and Mixed Beverage Late Hours Permit LB-532554 should be canceled.

SIGNED JUNE 21ST, 2005.



**KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE: TABC vs. Arvel Edward Jernigan D/B/A Club Indigo
DOCKET NUMBER: 458-05-0916
AGENCY CASE NO: 610305

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Arvel Edward Jernigan
D/B/A Club Indigo
2702 Main St.
Dallas, TX 75226

RESPONDENT
VIA REGULAR MAIL

as of June 21, 2005