

DOCKET NO. 613051

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|---------------------------------|---|---------------------|
| IN RE POPPIE'S PRIVATE CLUB | § | BEFORE THE |
| ORIGINAL APPLICATION N, PE & FB | § | |
| | § | TEXAS ALCOHOLIC |
| | § | |
| COLLIN COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-05-3022) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 21st day of March, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on January 4, 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 March 2, 2005. 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. 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.

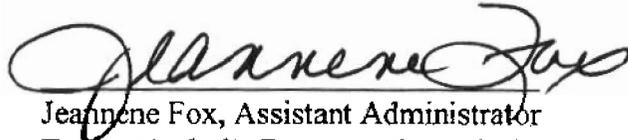
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application of Poppie's Private Club, be **DENIED**.

This Order will become final and enforceable on April 11, 2005 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.

SIGNED this 21st day of March, 2005

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeannene Fox", written in a cursive style.

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

Poppie's Private Club
RESPONDENT
1410 Avenue K, Suite 1109 A
Plano, Texas 75074-6227
CMRRR#7000 1530 0003 1930 1531

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

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4. Petitioner protested the application asserting (1) issuance of the requested permits would be detrimental to the general welfare, health, peace, morals, and safety of the people, and (2) Respondent is not of good moral character.
5. On December 16, 2004, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for January 4, 2005.
6. The notice of hearing was received by Respondent on December 18, 2004. The return receipt appears to have been signed by Besnik Lusha, Respondent's President/Director.
7. 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.
8. 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."
9. A hearing convened before Brenda Coleman, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on January 4, 2005. Petitioner appeared through its Staff Attorney, Timothy Griffith. Respondent did not appear and was not represented at the hearing. The record closed on that same date.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 6.01, 11.46 and 61.01.
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. 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 (TAC) § 155.55.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.
5. Respondent, without an alcoholic beverage permit or license, sold an alcoholic beverage, in violation § 61.01 of the Code.

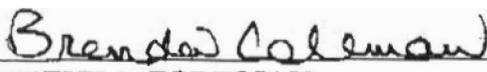
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6. The place or manner in which Applicant may conduct business warrants the refusal of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, in violation of § 11.46(a)(8) of the Code.
7. Respondent is not of good moral character, in violation of § 11.46(a) (6) of the Code.
8. Respondent's requested permits should be denied pursuant to § 11.46 of the Code.

SIGNED March 2, 2005.


BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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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 January 4, 2005, a hearing convened before SOAH ALJ Brenda Coleman at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas 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 January 4, 2005.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 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. Based on the deemed factual findings in this case, Respondent's permits should be denied.

III. FINDINGS OF FACT

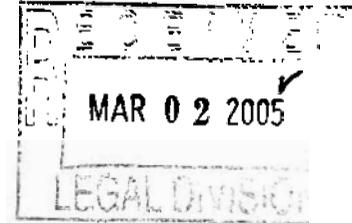
1. On or about July 28, 2004, Poppie's Private Club (Respondent) filed an original application with the Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) for a Private Club Registration Permit, a food and beverage certificate and a Beverage Cartage Permit (the permits).
2. Respondent's proposed premises are located at 1410 Avenue K, Suite 1109A, Plano, Collin County, Texas.
3. On or about July 30, 2004, Respondent, without an alcoholic beverage permit or license, sold an alcoholic beverage to TABC Agent Clint Powell.

State Office of Administrative Hearings

3-17



Shelia Bailey Taylor
Chief Administrative Law Judge



March 2, 2005

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: TABC vs Poppies Private Club
SOAH Docket No. 458-05-3022
TABC Case No. 613051

Dear Mrs. Fox:

Enclosed please find the Proposal for Decision in the above reference cause for the consideration of the Texas Alcoholic Beverage Commission.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE 155.59 (c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Coleman".

Brenda Coleman
Administrative Law Judge

BC/sc

Enclosure

cc: Timothy Griffith, Staff Attorney for Texas Alcoholic Beverage Commission, Via Fax;
Poppies Private Club, Respondent, Via Regular Mail