

SOAH DOCKET NO. 614177

GOWER CLUB INC.	§	BEFORE THE TEXAS
D/B/A GOWER CLUB INC.	§	
	§	
PERMIT NOS. N-527391, PE527392	§	
	§	
	§	ALCOHOLIC
	§	
COLLIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-4420)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of July, 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 April 6, 2005 and adjourned on April 6, 2005. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 17, 2005. The 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.

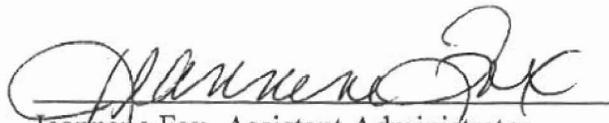
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on AUGUST 18, 2005, unless a Motion for Rehearing is filed before that date.

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

SIGNED this the 28th day of July, 2005, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

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

Gower Club Inc.
RESPONDENT
d/b/a Gower Club Inc.
100 N. Tennessee
McKinney, Tx. 75069
CERTIFIED MAIL RRR #7005 0390 0005 7550 2248

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 17, 2004

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

RE: TABC Vs. GOWER CLUB, INC.
SOAH Docket # 458-05-4420
TABC CASE NO. 614177

Dear Ms. Fox:

Please find enclosed a Proposal For Decision in this case. It contains my recommendation and underlying rationale.

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".

Administrative Law Judge
Brenda Coleman

BC/sr
Enclosure

cc: Gayle Gordon, Agency Council for Texas Alcoholic Beverage Commission, Via Fax;
Gower Club Inc., Respondent, Via Mail

SOAH DOCKET NO. 458-05-4420

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
GOWER CLUB INC. D/B/A GOWER CLUB INC., Respondent		

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission Staff (Staff) initiated this action seeking forfeiture of the conduct surety bond posted by Gower Club Inc. (Respondent). Staff recommended that the bond be forfeited because Respondent has committed three violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995. The Administrative Law Judge (ALJ) agrees with Staff's recommendation that Respondent's bond be forfeited.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.11 and 11.61. The State Office of Administrative Hearings (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.

SOAH scheduled this matter for hearing on April 6, 2005. On March 4, 2005, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known address, via certified mail, return receipt requested. The notice of hearing was received by Respondent on March 7, 2005. Receipt was evidenced by a signature on the return receipt. 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, 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 April 6, 2005, Respondent filed a written request for continuance. Petitioner did not oppose the request. The ALJ granted Respondent's request for continuance and reset the hearing for 10 a.m. on April 19, 2005. On April 8, 2005, SOAH notified Respondent of the reset date and time, via regular mail sent to Respondent at Respondent's last known address. SOAH has not received the mailing back from the U.S. Postal Service; therefore, the ALJ presumes that Respondent received notice of the hearing's date, time and location.¹

On April 19, 2005, a hearing convened before SOAH ALJ Brenda Coleman at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. The record was closed on that date. Staff was represented at the hearing by Gayle Gordon, Staff Attorney, who appeared by telephone. Respondent did not appear and was not represented at the hearing. The hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Accordingly, Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion.

II. LEGAL STANDARDS AND APPLICABLE LAW

An applicant for a permit or a holder of a permit must file with the Commission a surety bond conditioned on the applicant's or holder's conformance with alcoholic beverage law.² When a final adjudication has been made that the permittee has committed three violations of the Alcoholic

¹ 1 TEX. ADMIN. CODE § 155.25(d)(3) provides for a rebuttable presumption if a document was sent to a party to a proceeding by regular mail, certified mail, or registered mail. In that instance, the judge is to presume that the mailed document was received no later than three days after mailing.

² TEX. ALCO. BEV. CODE ANN. §§ 11.11(a)(1) & (2).

Beverage Code since September 1, 1995, the Commission must notify the permittee, in writing, of its intent to seek forfeiture of the bond.³

The permittee may request a hearing on whether the criteria for forfeiture of the bond have been satisfied. The hearing is conducted in accordance with the Administrative Procedure Act.⁴

If a party who does not have the burden of proof fails to appear on the day and time set for hearing, the judge may proceed in that party's absence on a default basis and issue a proposal for decision against the defaulting party. In the proposal for decision, the factual allegations against that party in the notice of hearing will be deemed admitted.⁵

III. ANALYSIS

Based on the deemed factual findings in this case, Respondent has had three violations which have been finally adjudicated since September 1, 1995. Respondent's conduct surety bond should be forfeited.

IV. FINDINGS OF FACT

1. Gower Club Inc. (Respondent) is the holder of Private Club Registration Permit N527391 and Beverage Cartage Permit PE527392 issued by Staff for the premises located at 100 N. Tennessee, McKinney, Collin County, Texas.
2. Respondent has posted Staff Conduct Surety Bond Number 806102, dated April 12, 2004, in the amount of \$5,000, payable to the state.
3. Respondent has been finally adjudicated of three violations of the Code since September 1, 1995.

3 16 TEX. ADMIN. CODE § 33.24(j)(1).

4 16 TAC § 33.24(j)(2).

5 1 TAC § 155.55(a).

4. By letter dated December 22, 2004, Staff sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond.
5. Respondent requested a hearing to determine whether the conduct surety bond should be forfeited.
6. On March 4, 2005, Staff 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 April 6, 2005.
7. The notice of hearing was successfully delivered to Respondent on March 7, 2005, as evidenced by the signature on the return receipt.
8. 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.
9. 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."
10. On April 6, 2005, Respondent filed a written request for continuance. Petitioner did not oppose the request.
11. The ALJ granted Respondent's request for continuance and reset the hearing for 10 a.m. on April 19, 2005.
12. On April 8, 2005, SOAH notified Respondent of the reset date and time, via regular mail sent to Respondent at Respondent's last known address.
13. On April 19, 2005, a hearing convened before SOAH ALJ Brenda Coleman at 6333 Forest Park Rd., Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by Staff Attorney Gayle Gordon, who appeared by telephone. Respondent did not appear and was not represented at the hearing. The record was closed on that date.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission Staff (Staff) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01, 11.11 and 11.61(b)(2).

2. The State Office of Administrative Hearings 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 § 155.55.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55
5. The conduct surety bond posted by Respondent should be forfeited. TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TAC § 33.24(j).

SIGNED June 17, 2005.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS