

TGT

**DOCKET NO. 615158**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	ALCOHOLIC
NEWPORT INVESTMENTS, INC.	§	
D/B/A NEWPORTS	§	
PERMIT/LICENSE NOS. MB158965,	§	
LB158966	§	
DALLAS COUNTY, TEXAS	§	
(SOAH Docket No. 458-05-7657)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 26th day of October, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened on August 11, 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 October 7, 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 in this cause.

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.

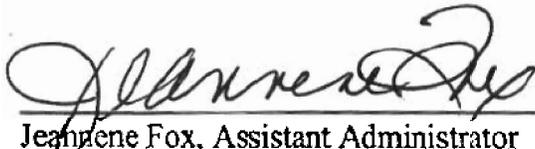
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the renewal of Respondent's permits and/or licenses are hereby **DENIED**.

**This Order will become final and enforceable on November 16, 2005**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all interested parties in this cause by facsimile and/or by mail as indicated below.

**SIGNED** this 26th day of October, 2005.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeanene Fox", written over a horizontal line.

Jeanene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Kyle J. Groves, ALJ  
State Office of Administrative Hearings  
**VIA FAX (817) 377-3706**

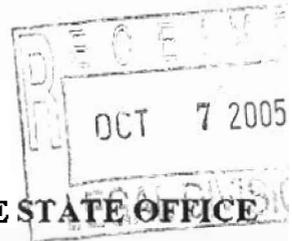
NEWPORTS INVESTMENTS INC.  
d/b/a NEWPORTS  
**RESPONDENT**  
703 McKinney, Ste. 102  
Dallas, TX 75202-1028  
**CERTIFIED MAIL NO. 7005 0390 0005 7550 4792**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
Texas Alcoholic Beverage Commission  
Legal Division

Licensing Division

Dallas District Office

DOCKET NO. 458-05-7657



TEXAS ALCOHOLIC BEVERAGE COMMISSION

BEFORE THE STATE OFFICE

V.

NEWPORT INVESTMENTS, INC. D/B/A NEWPORTS PERMIT NOS. MB-158965 AND LB-158966, DALLAS COUNTY TEXAS (TABC NO. 615158)

§ § § § § § § § § §

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Newport Investments, Inc. d/b/a Newports (Respondent) seeking a denial of Respondent's renewal application for Mixed Beverage Permit MB-158965 and Mixed Beverage Late Hours Permit LB-158966. TABC alleged that on or about January 20, 2005, Respondent incorrectly answered a question in a renewal application in violation of TEX. ALCO. BEV. CODE ANN. § 11.46 (a) (4).

This Proposal for Decision finds the Respondent's renewal application should be denied.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter convened on August 11, 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



SOAH DOCKET NO. 458-05-7657

PROPOSAL FOR DECISION

PAGE 2

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

## II. EVIDENCE

TABC staff offered documentary evidence showing:

(a) On January 27, 2005, Respondent was issued Mixed Beverage Permit MB-158965 and Mixed Beverage Late Hours Permit LB-158966.

(b) On July 12, 2005, 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.

(c) Respondent signed the return receipt on July 14, 2005.

(d) 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."

(e) The notice of hearing alleged Respondent incorrectly answered a question in a renewal application in violation of TEX. ALCO. BEV. CODE ANN. § 11.46 (a) (4). Specifically, it is alleged Respondent incorrectly answered item five on the renewal application, to wit: the identity of the owners of the corporation.

## 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.

TEX. ALCO. BEV. CODE ANN. § 11.46 (a) (4) states:

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists: the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application.

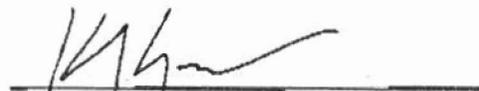
#### IV. PROPOSED FINDINGS OF FACT

1. Newport Investments, Inc. d/b/a Newports (Respondent) is the holder of Mixed Beverage Permit MB-158965 and Mixed Beverage Late Hours Permit LB-158966.
2. Respondent was notified of the factual allegations against Respondent in the notice of hearing issued by Petitioner on July 12, 2005. 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. As evidenced by Respondent's signature on the return receipt, Respondent was notified of the date, time, and location of the scheduled hearing by the notice of hearing dated July 12, 2005.
4. On August 11 2005, the hearing in this matter convened before ALJ Kyle J. Groves. Timothy Griffith appeared for Petitioner. Respondent failed to appear.

**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. Based upon Respondent's failure to appear, the factual allegations in the notice of hearing are deemed admitted as true.
5. On or about January 20, 2005, Respondent incorrectly answered a question in a renewal application in violation of TEX. ALCO. BEV. CODE ANN. § 11.46 (a) (4).
6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's renewal application for Mixed Beverage Permit MB-158965 and Mixed Beverage Late Hours Permit LB-158966 should be denied.

SIGNED OCTOBER 7<sup>TH</sup>, 2005.



KYLE J. GROVES

ADMINISTRATIVE LAW JUDGE

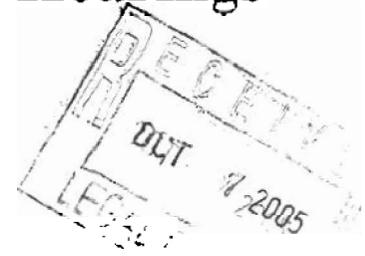
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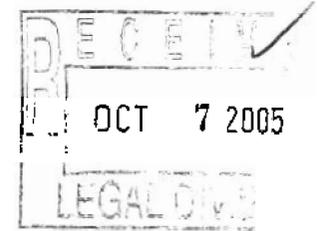
# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
Chief Administrative Law Judge



October 07, 2005



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

**RE: Docket # 458-05-7657**  
**TABC VS. NEPORT INVESTMENTS, INC.,**  
**D/B/A NEWPORTS**  
**TABC CASE NO. 615158**

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](http://www.soah.state.tx.us).

Sincerely,

Kyle J. Groves  
Administrative Law Judge

KJG/sr  
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, Via Fax;  
Newports Investments, Inc., Respondent, Via Mail,