

DOCKET NO. 584396

IN RE COMPADRE'S BAR, LTD
D/B/A BABY COMPADRES
PERMIT NO. MB-169749

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

TRAVIS COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-1542)

ORDER

CAME ON FOR CONSIDERATION this 6th day of January, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John Beeler. The hearing convened on October 14, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 3, 1999. This Proposal For Decision 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 permit no. MB-169749 is hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on January 27, 2000, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 6th day of January, 2000.



On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/pah

The Honorable John Beeler
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Shanee Woodbridge, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Compadre's Bar, LTD
d/b/a Baby Compadres
RESPONDENT
1817 S. Lamar
Austin, Texas 78704
CERTIFIED MAIL/RRR NO. Z 473 039 236

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Austin District Office



**INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

January 5, 2000

TO: Gayle Gordon, Director of Legal

FROM: Randy Yarbrough, Assistant Administrator

SUBJECT: Docket No. 458-99-1542
TABC Case No. 584396
Compadres Bar, Ltd. D/b/a Baby Compadres
Mixes Beverage Permit (MB-169749)
Travis County, Texas

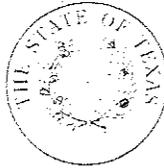
I have read the attached Proposal for Decision in the above styled case and find the recommendations of the Hearings Examiner should be adopted and that the permits should be **CANCELLED**.

Please prepare an **ORDER** adopting the Proposal for Decision, adopting all Findings of Fact and Conclusions of Law and show that the permit should be **CANCELLED**. Please make a copy of this decision and submit it along with the order to the respective parties.

A handwritten signature in cursive script, reading "Randy Yarbrough", written over a horizontal line.

RY

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 03, 1999

Mr. Doyne Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78711

HAND DELIVERY

**RE: Docket No. 458-99-1542; TABC vs. Compadre's Bar Ltd., d/b/a Baby Compadres;
TABC Case No. 584396; Travis County, Texas**

Dear Mr. Bailey:

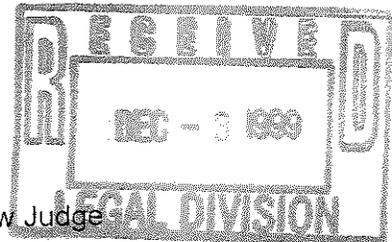
Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and to Compadre's Bar Ltd., Respondent. For reasons discussed in the Proposal for Decision, I have recommended that the Respondent's permit and license be canceled.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "John Beeler".

John Beeler
Administrative Law Judge



JB:es
Enclosure

cc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY
Compadre's Bar Ltd. d/b/a Baby Compadres, 1817 S. Lamar, Austin, TX 78704 - VIA CERTIFIED MAIL NO. Z 332 923
728, RETURN RECEIPT REQUESTED
Rommel Corro, Docket Clerk, State Office of Administrative Hearings - VIA HAND DELIVERY

William P. Clements Building
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

DOCKET NO. 458-99-1542

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
	§	
COMPADRE'S BAR LTD. D/B/A BABY COMPADRES TRAVIS COUNTY, TEXAS (TABC CASE NO. 584396)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff; Commission) brought this action seeking cancellation of the Mixed Beverage Permit of Compadre's Bar Ltd. d/b/a Baby Compadres (Respondent) for not paying a local license fee levied by the City of Austin, Texas, that was due on or before June 2, 1999. Petitioner alleged non-payment of the tax violated TEX. ALCOHOLIC BEV. CODE (the Code) §§ 11.38(b) and 61.36(b). Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the permit and license be canceled.

I. PROCEDURAL HISTORY

The hearing on the complaint convened on October 14, 1999, at the Stephen F. Austin Building, 1700 North Congress, 11th Floor, Suite 1100, Austin, Texas, and concluded the same day. Respondent did not appear and was not represented at the hearing. After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) §155.55. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the Administrative Law Judge has incorporated those allegations into the findings of fact without discussing the evidence.

II. FINDINGS OF FACT

1. Compadre's Bar Ltd. (Respondent) holds Mixed Beverage Permit MB-169749, issued by the Commission on March 15, 1985, for the business known as Baby Compadres, located at 1817 S. Lamar, Austin, Travis County, Texas.
2. On June 2, 1999, the City of Austin sent Respondent a statement notifying her that she owed \$375.00 in past due licensing fees.
3. On June 18, 1999, the Commission sent a notice to Respondent by certified mail at her address as listed in the Commission's records, alleging that she had failed to pay a fee levied by the City of Austin.
4. Notice of the hearing in this matter, dated August 12, 1999, was properly addressed

and sent by certified mail to Respondent at her Austin, Texas, mailing address as listed in Commission records. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.

5. The notice also contained language in 10-point type informing Respondent that if she failed to appear at the hearing, the factual allegations against her would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
6. Respondent did not attend and was not represented at the hearing in this matter held October 14, 1999.
7. Respondent owes the City of Austin \$375.00 for its local license fee for 1999.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§11.38 and 61.36(b) of the TEX. ALCO. BEV. CODE (Vernon 1999) (the Code).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Code §§ 11.38(a) and 61.36(a) authorize the governing body of a city or town to levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town.
5. Pursuant to the Code §§ 11.38(b) and 61.36(b), the commission or administrator may cancel a permit or license if it finds that the permittee has not paid a fee levied under this section.
6. Based upon Finding of Fact No. 7, Respondent is in violation of the Code §§ 11.38(a) and 61.36(a).
7. Based on Findings of Fact Nos. 4-6 and Conclusion of Law No. 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.

8. Based upon the foregoing, Respondent's Wine and Beer Retailer's Permit BG-434224 and Retail Dealer's On-Premise Late Hours License BL-44291 should be canceled pursuant to the Code §§11.38(b) and 11.61(b)(2).

SIGNED this 7th day of December 1999.



JOHN BEELER
Administrative Law Judge
State Office of Administrative Hearings

DOCKET NO. 582876

IN RE LITTLE BILL'S
D/B/A LITTLE BILL'S
PERMIT NO. N-250451

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

JEFFERSON COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-1878)

ORDER

CAME ON FOR CONSIDERATION this 6th day of January, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on October 28, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 10, 1999. This Proposal For Decision 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 is hereby **FORFEITED**.

This Order will become final and enforceable on January 27, 2000, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 6th day of January, 2000.

On Behalf of the Administrator,



Randy Yarbrough

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/pah

The Honorable Don Smith
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

Shanee Woodbridge, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Little Bill's
RESPONDENT
6610 Gulfway Drive
Port Arthur, Texas 77642
CERTIFIED MAIL/RRR NO. Z 473 039 235

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division



**INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

January 5, 2000

TO: Gayle Gordon, Director of Legal
FROM: Randy Yarbrough, Assistant Administrator
SUBJECT: Docket No. 458-99-1878
TABC Case No. 582876
Little Bills
Private Club Registration Permit (N-250451)
Jefferson County, Texas

I have read the attached record of the above referenced case and find the following:

Based on the record, I concur with the finding of the Administrative Law Judge that the Conduct Surety Bond issued for this location should be forfeited. Please prepare an **ORDER** adopting the Proposal for Decision recommendation that the Conduct Surety Bond should be **FORFEITED**.

Please make a copy of this decision and submit it along with the order to the respective parties.

A handwritten signature in cursive script, reading "Randy Yarbrough", written over a horizontal line.

RY

State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

December 10, 1999



Mr. Doyne Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

CERTIFIED MAIL NO. Z 409 580 969
RETURN RECEIPT REQUESTED

RE: Docket No. 458-99-1878; TABC vs. Little Bill's, TABC Case No. 582876

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Little Bill's. For reasons discussed in the Proposal for Decision, I have recommended that Respondent's conduct surety bond be forfeited.

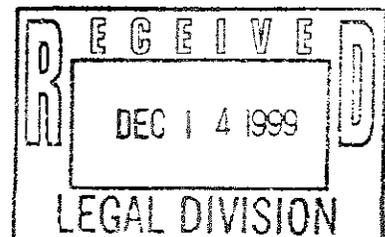
Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

Don Smith
Administrative Law Judge

DS/rfm
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - REGULAR MAIL
Little Bill's, 6610 Gulfway Drive, Port Authur, TX 77642 - VIA CERTIFIED MAIL NO. Z 409 580 968.
RETURN RECEIPT REQUESTED
Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings - VIA REGULAR MAIL



North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.S.

LITTLE BILL'S
PERMIT NO. N-250451
JEFFERSON COUNTY, TEXAS
(TABC CASE NO. 582876)

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BEFORE THE STATE

OFFICE OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission initiated this action seeking forfeiture of the conduct surety bond posted by Little Bill's (the Permittee) because Permittee's permit or license was canceled, or the Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The cancellation or violations have been finally adjudicated. The Permittee made no appearance. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Because the hearing proceeded on a default basis, procedural history, notice, and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion in the text of this proposal.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §11.11 and/or 61.71 provides that the amount of the surety bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of this code.

The staff attorney introduced the affidavit of Brian L. Guenther, Licensing Department Director, into evidence, (Exhibit TABC 4) that the Private Club Registration Permit, N-250451, and Private Club Late Hours Permit, NL-250452 were issued to an unincorporated association of persons, doing business as Little Bill's, 6610 Gulfway Drive, Port Arthur, Jefferson County, Texas, by the Texas Alcoholic Beverage Commission, on the 23rd day of November, 1994, and were voluntarily canceled on the 25th day of November, 1998. The Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The mailing address of the Permittee is 6610 Gulfway Drive, Port Arthur, Texas 77642.

The staff attorney introduced the Notice of Hearing (Exhibit TABC 2) and Second Notice of Hearing (TABC 3) to the Permittee, showing that the notice was sent to the Permittee's last known address, as shown on the referring agency's record, 6610 Gulfway Drive, Port Arthur, Texas 77642, with no showing of actual receipt.

III. RECOMMENDATION

Because the the Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995, the Permittee has forfeited the full amount of their conduct surety bond.

IV. FINDINGS OF FACT

1. An unincorporated association of persons, doing business as Little Bill's, 6610 Gulfway Drive, Port Arthur, Jefferson County, Texas, was issued a Private Club Registration Permit, N-250451, and Private Club Late Hours Permit, NL-250452 by the Texas Alcoholic Beverage Commission.
2. On September 17, 1999 and September 29, 1999, the staff of the Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing on the forfeiture of the conduct surety bond to the Permittee at 6610 Gulfway Drive, Port Arthur, Texas 77642, its address of record, by certified mail, return receipt requested.
3. Notice of hearing to the Permittee was shown by proof that the notice was sent to the Permittee's last known address as shown on the referring agency's record with no showing of actual receipt.
4. The Texas Alcoholic Beverage Commission Rules, 16 Texas Admin. Code § 37.7 authorizes service of the notice of hearing by sending it to the Permittee's last known address as shown by the agency's records.
5. There was credible evidence by way of the Notice of Hearing (Exhibit TABC 2) and Second Notice of Hearing (Exhibit TABC 3) that the notice of hearing was sent by certified mail, return receipt requested, to the Permittee's last known address on the agency's records.
6. The hearing on the merits was held on October 28, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon. The Permittee did not appear and was not represented at the hearing.
7. Private Club Registration Permit, N-250451, and Private Club Late Hours Permit, NL-250452 were issued to Little Bill's, 6610 Gulfway Drive, Port Arthur, Jefferson County, Texas, by the Texas Alcoholic Beverage Commission, on the 23rd day of November, 1994, and were voluntary canceled on the 25th day of November, 1998.
8. Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The violations were Open Saloon on 1-9-1998, Breach-Aggravated on 11- 21-1997, Open Saloon on 11-21-1997, Breach Failure to Report on 11-21-1997, and Sale to Intoxicated Person on 11-21-1997.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§11.11 and 61.13.
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. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. TEX. ALCO. BEV. CODE ANN. Section 11.11 and/or 61.71 provides that the amount of the surety bond shall be paid to the state if Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the conduct surety bond executed by Permittee should be forfeited to the State.

SIGNED this 10 th day of December, 1999.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DS:rfm/99-1878