

DOCKET NO. 584401

IN RE KATHRYN LEE KINSLOW	§	BEFORE THE
D/B/A PURGATORY LOUNGE	§	
PERMIT NO. BG-442913	§	
LICENSE NO. BF-442914	§	TEXAS ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1537)	§	BEVERAGE COMMISSION

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.

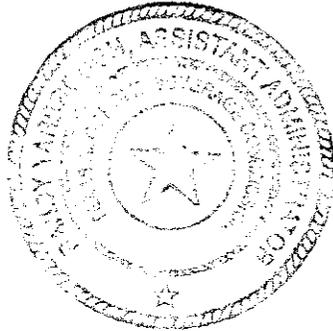
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and 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. BG-442913 and License No. BL-442914 are 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,

A handwritten signature in black ink, appearing to read 'Randy Yarbrough', written over a horizontal line.

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

Kathryn Lee Kinslow
d/b/a Purgatory Lounge
RESPONDENT
2001 E. 12th Street
Austin, Texas 78702
CERTIFIED MAIL/RRR NO. Z 473 039 237

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. 458-99-1537
TABC Case No. 584399
Kathryn Lee Kinslow d/b/a Purgatory
Wine and Beer Retailer's Permit (BG-442913) and Retail Dealer's Late Hours
License (BL-442914)
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. 458-99-1537; TABC vs. Kathryn Lee Kinslow, d/b/a Purgatory Lounge; TABC Case No. ~~584399~~; Travis County, Texas

584401

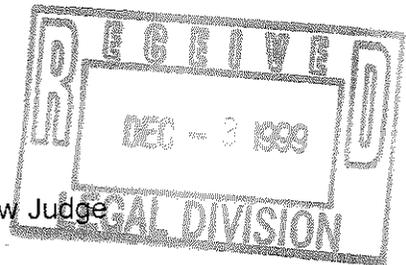
Dear Mr. Bailey:

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 Kathryn Lee Kinslow, 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,

John Beeler
Administrative Law Judge



JB:es

Enclosure

cc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY
Kathryn Lee Kinslow d/b/a Purgatory Lounge, 2001 E. 12th Street, Austin, TX 78702 - VIA CERTIFIED MAIL NO. Z 332
923 729, RETURN RECEIPT REQUESTED
Rommel Corro, Docket Clerk, State Office of Administrative Hearings - VIA HAND DELIVERY

DOCKET NO. 458-99-1537

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
KATHRYN LEE KINSLOW D/B/A PURGATORY LOUNGE TRAVIS COUNTY, TEXAS (TABC CASE NO. 584399)	§ § § §	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff; Commission) brought this action seeking cancellation of the Wine and Beer Retailer's Permit and the Retail Dealer's On-Premise Late Hours License of Kathryn Lee Kinslow d/b/a Purgatory Lounge (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. Kathryn Lee Kinslow (Respondent) holds Wine and Beer Retailer's Permit BG-442913 and Retail Dealer's On-Premise Late Hours License BL-442914, issued by the Commission on December 18, 1998, for the business known as Purgatory Lounge, located at 617 Red River, Austin, Travis County, Texas.
2. On June 2, 1999, the City of Austin sent Respondent a statement notifying her that she owed \$212.50 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 17, 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 \$212.50 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 3rd day of December 1999.



JOHN BEELER
Administrative Law Judge
State Office of Administrative Hearings