

DOCKET NO. 586671

IN RE KALINOBA CLUB	§	BEFORE THE
PERMIT NOS. N-425721, NL-425722, .	§	
PE-425723	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0021)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 2nd day of May 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on February 8, 2000 and adjourned February 8, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 5, 2000. 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 Nos. N-425721, NL425722, and pe425723 are herein **CANCELED FOR CAUSE**.

This Order will become final and enforceable on May 24, 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 2nd day of May, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Jerry Van Hamme
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

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

Kalinoba Club
RESPONDENT
508 N. Gilpin
Dallas, Texas 75211-3120
CERTIFIED MAIL/RRR NO. Z 473 040 081

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

DOCKET NO. 458-00-0021

TEXAS ALCOHOLIC
BEVERAGE COMMISSION

v.

KALINOBA CLUB
PERMIT NOS. N-425721, NL-425722
& PE 425723
DALLAS COUNTY, TEXAS
(TABC CASE NO. 586671)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Staff) brought this enforcement action against Kalinoba Club (Respondent) alleging Respondent, its agent, employee, or servant, sold, served or delivered, with criminal negligence, an alcoholic beverage to a minor on Respondent's premises on two separate occasions; and that Respondent, its agent, employee, or servant, sold liquor to a non-member on Respondent's premises on two separate occasions, thereby constituting an open saloon. Staff requested that Respondent's permits be canceled. Respondent did not appear at the hearing in this matter and was not represented by counsel. The Administrative Law Judge (ALJ) recommends that Staff's request be granted and that Respondent's permits be canceled.

I. Jurisdiction, Notice, and Procedural History

On February 8, 2000, a public hearing was held before ALJ Jerry Van Hamme at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, attorney for the Texas Alcoholic Beverage Commission (Commission). 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. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings (SOAH) have jurisdiction over this matter as reflected in the conclusions of law. The notice of the hearing and of the intention to institute enforcement action met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. Findings of Fact

1. Kalinoba Club, 508 N. Gilpin, Dallas, Dallas County, Texas, 75211 holds Private Club Registration Permit No. N-425721, Private Club Late Hours Permit No. NL-

425722, and Beverage Cartage Permit No. PE-425723, issued by the Commission on February 9, 1998.

2. On November 22, 1999, the Commission sent Respondent notice of its intention to institute enforcement action. The notice was sent by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records.
3. On January 7, 2000, the Commission sent Respondent notice of the hearing in this matter. The notice was sent by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records. The notice of hearing notified Respondent of the statutes and rules involved, the legal authorities under which the hearing is to be held, and the date, time, and place of the hearing.
4. The notice of hearing also contained language in 10-point type informing Respondent that if Respondent failed to appear at the hearing, the Staff's factual allegations would be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. The hearing on the merits convened February 8, 2000, at the offices of the State Office of Administrative Hearings, Dallas, Texas, 6300 Forest Park Rd., Suite B-230. Staff was represented by attorney, Timothy E. Griffith. Respondent did not appear and was not represented at the hearing. The record closed on the same day.
6. On or about May 28, 1999, Respondent's agent, employee, or servant, Guadalupe Sanchez, sold, served, or delivered, with criminal negligence, an alcoholic beverage to a minor on Respondent's premises.
7. On or about May 28, 1999, Respondent's agent, employee, or servant, Maria Valenzuela, sold, served, or delivered, with criminal negligence, an alcoholic beverage to a minor on Respondent's premises.
8. On or about May 28, 1999, Respondent's agent, employee, or servant, Guadalupe Sanchez, sold, served, or delivered liquor to a non-member on Respondent's premises so as to constitute an open saloon.
9. On or about May 28, 1999, Respondent's agent, employee, or servant, Maria Valenzuela, sold, served, or delivered liquor to a non-member on Respondent's premises so as to constitute an open saloon.

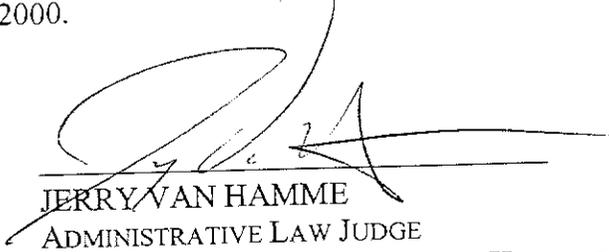
III. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN Subchapter B of Chapter 5, §§ 6.01; 11.61(b)(2); and 32.01 (Vernon 1995 & Supp. 2000).
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 (Vernon 2000).

3. Based on Findings of Fact Nos. 3 & 4, proper and timely notice of the hearing was effected on Respondent pursuant to Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000), and 1 TEX. ADMIN. CODE (TAC) §155.55(d) (1999), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. Based on Findings of Fact No. 5, the hearing proceeded on a default basis. The ALJ may enter a default judgment against Respondent pursuant to 1 TAC § 155.55 (1999).
5. Based on Findings of Fact No. 6 & 7, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 106.03, 106.13, & 11.61(b)(2) (Vernon 1995).
6. Based on Findings of Fact No. 8 & 9, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 32.17(a)(1), 32.17(b), & 11.61(b)(2) (Vernon 1995).
7. Based on the foregoing findings and conclusions, cancellation of Respondent's Private Club Registration Permit No. N-425721, Private Club Late Hours Permit No. NL-425722, and Beverage Cartage Permit No. PE-425723 is warranted.

SIGNED this 5 day of April, 2000.


JERRY VAN HAMME
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS