

**DOCKET NO. 596952**

IN RE PLAYERS SPORTS BAR & BILLIARDS	§	BEFORE THE
PERMIT NOS. N-428761, NL428762,	§	
PE428763	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-1734)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 24<sup>th</sup> day of June 2002, 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 and adjourned on April 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 30, 2002. 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-428761, NL428762 and PE428763 are hereby **SUSPENDED** for seven (7) days.

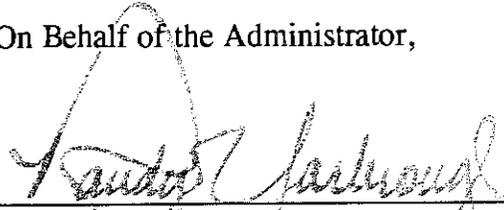
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$1,050.00 on or before the 28<sup>th</sup> day of August, 2002, all rights and privileges under the above described permits will be **SUSPENDED** for a period of seven (7) days, beginning at 12:01 A.M. on the 4<sup>th</sup> day of September, 2002.

**This Order will become final and enforceable on July 15, 2002, 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 24<sup>th</sup> day of June, 2002.**

On Behalf of the Administrator,



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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**

Players Sports Bar & Billiards  
**RESPONDENT**  
4444 W. Illinois Ave. #210  
Dallas, TX 75211-7749  
**CERTIFIED MAIL NO. 7001 2510 0000 7278 7933**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Dallas District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 596952**

**REGISTER NUMBER:**

**NAME: PLAYERS SPORTS BAR & BILLIARDS TRADENAME:**

**ADDRESS: 4444 W. Illinois Ave. #210, Dallas, TX 75211-7749**

**DATE DUE: August 28, 2002**

**PERMITS OR LICENSES: N-428761, NL428762 & PE428763**

**AMOUNT OF PENALTY: \$1,050.00**

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Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 28TH, DAY OF AUGUST, 2002, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711**

**WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.**

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
P.O. Box No.

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	
	§	
PLAYERS SPORTS BAR & BILLIARDS	§	OF
PERMIT NOS. N 428761, NL 428762 &	§	
PE 428763	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 596952)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission staff (Staff) brought this disciplinary action against Players Sports Bar & Billiards (Respondent), alleging that on or about October 10, 2001, permittee Stephen Lucas, Respondent's owner and president, was intoxicated on the licensed premises in violation of the Texas Alcoholic Beverage Code (Code). The Administrative Law Judge (ALJ) finds that the evidence supports Staff's allegations and recommends that Respondent's permits be suspended for seven days or that Respondent pay a civil penalty of \$1,050.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On April 11, 2002, a hearing was held before Jerry Van Hamme, ALJ, State Office of Administrative Hearings, at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Stephen Lucas appeared pro se on behalf of Respondent. The record was closed on that date.

**II. LEGAL STANDARDS AND APPLICABLE LAW**

The Texas Alcoholic Beverage Commission (Commission) may suspend Respondent's Private Club Registration Permit for not more than 60 days, or cancel the permit, if it is found that a permittee was intoxicated on the licensed premises. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(13). A "permittee" means a person who is the holder of a permit provided for in the Code, or an agent, servant, or employee of that person. TEX. ALCO. BEV. CODE ANN. § 104.(11). It is also defined as including each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. TEX. ALCO. BEV. CODE ANN. §

11.61(a).

The Commission may also suspend or cancel Respondent's Private Club Late Hours Permit on the same grounds and terms as set forth above, because all provisions of the Code which apply to a Private Club Registration Permit also apply to a Private Club Late Hours Permit. TEX. ALCO. BEV. CODE ANN. § 33.03. In addition, the suspension or cancellation of Respondent's Private Club Registration Permit works as a suspension or cancellation of Respondent's Beverage Cartage Permit, since, as a secondary permit, Respondent's Beverage Cartage Permit may only be issued to and used by Respondent in conjunction with Respondent's Private Club Registration Permit. TEX. ALCO. BEV. CODE ANN. §§ 44.01 and 44.03.

### III. EVIDENCE

#### 1. Staff's Evidence

Agent David Doggett, an agent for the Commission, conducted a routine inspection of Respondent's premises on October 10, 2001, at approximately 11:30 p.m., and observed an alleged Code violation related to food service. He spoke with the bartender concerning the alleged violation and was referred to Stephen Lucas, president of the Respondent private club, who was designated by the bartender as the club's owner. Mr. Lucas was present on the premises. While speaking with Mr. Lucas, Agent Doggett observed that Mr. Lucas had slurred thick-tongued speech, red bloodshot eyes, the odor of an alcoholic beverage on his breath, and that he leaned against a table to maintain his balance. Mr. Lucas also became argumentative with Agent Doggett, causing Agent Doggett to ask him to step outside the club so that field sobriety tests could be performed. On the horizontal gaze nystagmus field sobriety test (HGN), Mr. Lucas exhibited all six clues of nystagmus;<sup>1</sup> on the walk and turn test Mr. Lucas stepped off the line, used his arms for balance, and did not walk heel to toe as instructed; and on the one-leg stand test he used his arms for balance, swayed, and put his foot down before the test was finished.

Agent Doggett, who has been an agent with the Commission for a little over a year, was previously a peace officer with the Tarrant County Constable's Office for five and one-half years. He has been certified to administer the HGN test since 1999; has been trained in field sobriety testing; and has given, by his own estimation, "a couple hundred" field sobriety tests during his career. Based on his experience and observations, Agent Doggett was of the opinion that Mr. Lucas was intoxicated and that he represented a threat to himself or others by virtue of his intoxication. Agent Doggett therefore arrested Mr. Lucas for public intoxication.

#### 2. Respondent's Evidence

Mr. Lucas testified that he had been drinking beer on October 10, 2001, starting at

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<sup>1</sup>In *Emerson v. State*, 880 S.W.2d 759, 768 (Tex.Crim.App. 1994), *cert denied* 513 U.S. 931 (1994), the Court of Criminal Appeals took judicial notice that both the theory underlying the HGN test and the technique used in applying it were sufficient to make it a reliable indicator of intoxication.

approximately 11:00 a.m. He admitted that, in his opinion, he was under the influence of alcoholic beverages when he spoke with Agent Doggett, but he did not believe he was intoxicated. He further testified that when Agent Doggett approached him about the alleged food service violation the conversation with Agent Doggett became heated, because Agent Doggett, in Mr. Lucas' opinion, misunderstood the law and was mistaken concerning the alleged violation. In addition, Mr. Lucas testified that he was unable to perform the one-leg stand field sobriety test because of physical problems with his leg.

#### IV. ANALYSIS

The Commission's un rebutted evidence shows that Mr. Lucas is the owner and president of Respondent; that Mr. Lucas was on Respondent's premises on October 10, 2001; and that while on the premises he exhibited classic signs of intoxication,<sup>2</sup> which were observed by a Commission agent trained and experienced in recognizing intoxication. Based on the evidence in the record, Staff has proven by a preponderance of the evidence that Mr. Lucas was intoxicated while on Respondent's licensed premises.

#### V. RECOMMENDATION

Staff requested that Respondent's permits be suspended for seven days or that Respondent pay a civil penalty of \$1,050. The ALJ recommends that Staff's request be granted, and that Respondent's permits be suspended for seven days or that Respondent pay a civil penalty of \$1,050.

#### FINDINGS OF FACT

1. All parties received notice of the hearing, all parties appeared at the hearing, and no objection was made to jurisdiction, venue, or notice.
2. Respondent, Players Sports Bar & Billiards, 4444 West Illinois Avenue, Suite 210, Dallas, Dallas County, Texas, holds Private Club Registration Permit, N-428761; Private Club Late Hours Permit, NL-428762; and Beverage Cartage Permit, PE-428763; issued by the Texas Alcoholic Beverage Commission (Commission) on March 27, 1998.

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<sup>2</sup>In Texas v. Rodney Dee Ross, 32 S.W.3d 853 (Tex. Crim. App. 2000), a Commission agent observed a bar patron who "held on to things for balance and support, spoke with a thick tongue, had bloodshot eyes, and his breath smelled of alcohol." Id. 854. The agent arrested the patron for public intoxication. The Court of Criminal Appeals stated that these indicia of intoxication "added up to reasonable suspicion for the initial stop and probable cause for the eventual arrest." Id. 857. These same indicia exist here, in addition to Mr. Lucas' poor performance on the field sobriety tests and his argumentative behavior.

3. On October 10, 2001, Stephen Lucas was the owner and president of Respondent.
4. On that date, Mr. Lucas was present on Respondent's licensed premises when Agent David Doggett, an agent for the Commission, conducted a routine inspection of Respondent at approximately 11:30 p.m.
5. Agent Doggett spoke with Mr. Lucas and observed that Mr. Lucas had slurred thick-tongued speech, red bloodshot eyes, the odor of an alcoholic beverage on his breath, that he was argumentative, and that he leaned against a table to maintain his balance. When asked to perform field sobriety tests Mr. Lucas exhibited six clues of intoxication on the HGN test; on the walk and turn test he stepped off the line, used his arms for balance, and did not walk heel to toe as instructed; and on the one-leg stand test he used his arms for balance, swayed, and put his foot down. Agent Doggett believed that Mr. Lucas was intoxicated and represented a threat to himself or others because of his intoxication, and therefore arrested him for public intoxication.
6. Prior to becoming an agent for the Commission, Agent Doggett was a peace officer with the Tarrant County Constable's Office for five and one-half years. He has been certified to administer the HGN field sobriety test since 1999, has been trained in field sobriety testing, and has administered approximately two hundred field sobriety tests in his professional career.
7. Staff instituted disciplinary action against Respondent alleging that Mr. Lucas, as a permittee, was intoxicated on Respondent's licensed premises in violation of TEX. ALCO. BEV. CODE ANN. § 11.61(b)(13).
8. A hearing was held on April 11, 2001, at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Mr. Lucas appeared pro se on behalf of Respondent.

#### CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of ch. 5, §§ 6.01 and 11.61. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. §2003.021.
2. On October 10, 2001, Stephen Lucas, as Respondent's owner and president, was a permittee as defined in TEX. ALCO. BEV. CODE ANN. §§ 1.04 (11) and 11.61(a).
3. On that date, Mr. Lucas was intoxicated while on Respondent's licensed premises in violation of TEX. ALCO. BEV. CODE ANN. § 11.61(b)(13).

4. Based on the foregoing Findings and Conclusions, Respondent's permits should be suspended for seven days, or in lieu of suspension, Respondent should be permitted to pay a civil penalty of \$1,050.

Signed this 30 day of May, 2002



JERRY VAN HAMME  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS