

DOCKET NO. 458-02-4113

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
	§	OF
J. O. PRESTON PRIVATE CLUB, INC. D/B/A JOHNNY ORLEANS DALLAS COUNTY, TEXAS (TABC CASE NO. 598451)	§ § § §	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff; Commission) brought this action seeking cancellation of the Private Club Registration Permit, the Beverage Cartage Permit, and the Food and Beverage Certificate of J. O. Preston Private Club, Inc., d/b/a Johnny Orleans (Respondent) for non-payment of mixed beverage gross receipt taxes and failure to produce records. Staff alleged non-payment of the tax violated TEX. ALCO. BEV. CODE ANN. (the Code) §§ 11.61(b)(5) and/or 11.46(a)(5). Staff alleged failure to comply with a requirement of the Commission relating to the keeping of records and/or making reports violated TEX. ALCO. BEV. CODE ANN. §§ 5.32, 5.44, 11.61(b)(2), 32.13, and/or 32.17(a)(3). Following a hearing that Respondent failed to attend, the Administrative Law Judge (ALJ) recommends that the permits and certificate be canceled.

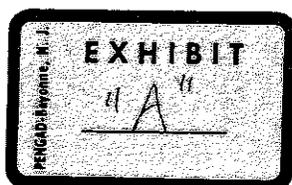
**I. PROCEDURAL HISTORY**

The hearing on the complaint convened before ALJ Brenda Coleman on October 24, 2002, in the State Office of Administrative Hearings, 6333 Forest Park Blvd., Suite 150 A, Dallas, Texas, and concluded the same day. Respondent did not appear and was not represented at the hearing. After presenting evidence supporting their allegations, Staff moved for default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) §155.55.

Following the hearing, the case was reassigned to ALJ Sharon Cloninger. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without discussing the evidence.

**II. FINDINGS OF FACT**

1. J. O. Preston Private Club, Inc., (Respondent) holds Private Club Registration Permit N-481992, Beverage Cartage Permit PE-481993, and Food and Beverage Certificate FB-481994, issued by the Commission on November 3, 2000, for the business known as Johnny Orleans, located at 11661 Preston Road, Suite 309, Dallas, Dallas County, Texas.



2. On February 27, 2002, the Commission sent Respondent notification that the agency had received a protest against the issuance of renewals for the above-mentioned permits.
3. On September 3, 2002, the Commission sent a notice to Respondent by certified mail at the address listed in the Commission's records, alleging that Respondent was indebted to the State for non-payment of mixed beverage gross receipt taxes, and that Respondent, on or about January 14, 2002, failed to comply with a requirement of the Commission relating to the keeping of records and/or making reports.
4. Notice of the hearing in this matter, dated September 3, 2002, was properly addressed and sent by certified mail to Respondent's Dallas, Texas, mailing address as listed in the Commission's records.
5. An amended notice of the hearing in this matter, dated September 11, 2002, was properly addressed and sent by certified mail to Respondent's current Dallas, Texas, mailing address: 2808 McKinney #140, Dallas, Dallas County, Texas.
6. Both notices 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.
7. The notices also contained language in 12-point type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
8. Respondent did not attend and was not represented at the hearing in this matter held October 24, 2002.
9. As of February 20, 2002, Respondent is indebted to the State of Texas for the payment of mixed beverage gross receipt taxes and failed to post a bond as required by the State Comptroller and/or Texas Tax Code.
10. On or about January 14, 2002, Respondent failed to comply with a requirement of the Commission relating to the keeping of records and/or making reports.

### **III. CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §11.61(b) of the TEX. ALCO. BEV. CODE ANN. (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 §§ 5.32 and 32.13 authorize the Commission to require the filing of reports and require that all books and records pertaining to the operation of any permittee club be made available to the Commission if necessary to accomplish the purpose of the Code.
5. Pursuant to the Code § 11.61(b), the Commission or administrator may cancel an original or renewal permit or license if it finds that the permittee is indebted to the State for taxes, fees, or payment of penalties imposed by the Code or by a rule of the Commission.
6. Pursuant to the Code §§ 11.61(b)(2) and (7), the Commission or administrator may cancel an original or renewal permit or license if it finds that the permittee violated a provision of the Code or that the manner in which the permittee conducts his business warrants the cancellation of the permit based on the general health, welfare, and safety of the people.
7. Based upon Finding of Fact No. 9, Respondent is in violation of the Code §§ 11.61(b)(5) and/or 11.46(a)(5).
8. Based upon Finding of Fact No. 10, Respondent is in violation of the Code §§ 5.32, 5.44, 11.61(b)(2), 32.13, and/or 32.17(a)(3).
9. Based on Findings of Fact Nos. 4-8 and Conclusion of Law No. 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
10. Based upon the foregoing, Respondent's Private Club Registration Permit N-481992, Beverage Cartage Permit PE-481993, and Food and Beverage Certificate FB-481994 should be canceled pursuant to the Code §§ 11.61(b)(2), 11.61(b)(5), and 11.61(b)(7).

**SIGNED this 17<sup>th</sup> day of December 2002.**

  
**SHARON CLONINGER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

DOCKET NO. 598451

IN RE J O PRESTON PRIVATE	§	BEFORE THE
CLUB INC.	§	
D/B/A JOHNNY ORLEANS	§	
PERMIT NOS. N-481992, PE481993,	§	TEXAS ALCOHOLIC
FB481994	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-4113)	§	BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 8th day of January 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sharon Cloninger. The hearing convened on October 24, 2002, and adjourned on October 24, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 17, 2002. 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.

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.

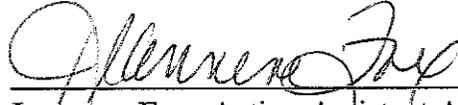
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. N-481992, PE481993, and Certificate No. FB481994 are hereby **CANCELED FOR CAUSE**.

**This Order will become final and enforceable on January 29, 2003**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

**SIGNED** this 8th day of January, 2003.

On Behalf of the Administrator,



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Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable Sharon Cloninger  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FAX (512) 475-4994**

J O PRESTON PRIVATE CLUB INC.  
D/B/A JOHNNY ORLEANS  
**RESPONDENT**  
2808 McKinney #140  
Dallas, TX 75204-8604  
**CERTIFIED MAIL/RRR NO. 7001 2510 0003 8688 7558**

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

Regulatory Division  
Dallas District Office