

TEXAS ALCOHOLIC  
BEVERAGE COMMISSION  
Petitioner

v.

THE CHEAP SEATS SPORTS GRILL  
& CLUB, INC.  
DENTON COUNTY, TEXAS  
(TABC CASE NO. 599152)  
Respondent

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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 The Cheap Seats Sports Grill & Club, Inc. (Respondent) alleging Respondent failed to post a required Conduct Surety Bond. Staff requested that Respondent's permits and certificate be canceled and its renewal application be denied. Respondent did not appear at the hearing and was not represented by counsel. The Administrative Law Judge (ALJ) recommends that Staff's request be granted and that Respondent's permits and certificate be canceled and its renewal application be denied.

**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 December 20, 2002, a public hearing was held before Jerry Van Hamme, ALJ, at the State Office of Administrative Hearings (SOAH), 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 § 155.55. Accordingly, 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 record was closed on that date.

**II. Findings of Fact**

1. The Cheap Seats Sports Grill & Club, Inc., 1158 W. Main Street, Lewisville, Denton County, Texas, holds Private Club Registration Permit, N-467964; Beverage Cartage Permit, PE-467965; and Food and Beverage Certificate, FB-467966, issued by the Commission on December 20, 2000.

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2. Respondent failed to post a Conduct Surety Bond on or before March 3, 2002, as required by the Commission.
3. By letter dated March 14, 2002, Staff informed Respondent that Respondent's renewal application had been denied due to Respondent's failure to submit a Conduct Surety Bond. The letter further stated that Respondent could request a hearing pertaining to the requirement of the Conduct Surety Bond.
4. On November 26, 2002, Staff sent Respondent a Notice of Hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records informing Respondent of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and a statement of the matters asserted.
5. The Notice of Hearing also contained language in at least 12-point, bold-face type, stating that if Respondent failed to appear at the hearing Staff's factual allegations could be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
6. The hearing on the merits convened on December 20, 2002, at the State Office of Administrative Hearings, 6333 Forest Park Rd., Suite 150-A, Dallas, Texas, 75235. 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.

### **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 and 11.61(b)(2).
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.
3. Staff is authorized pursuant to TEX. ALCO. BEV. CODE ANN. § 11.63 to provide service of the notice of hearing to Respondent's last known address as shown in the Commission's records.
4. Based on Finding of Fact Nos. 4 and 5 and Conclusion of Law No. 3, proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
5. Based on Finding of Fact No. 6, a default judgment should be entered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.
6. Based on Finding of Fact No. 2, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TEX. ADMIN. CODE § 33.24(i).

7. Based on the foregoing findings and conclusions, the Commission is warranted in canceling Respondent's permits and certificate and denying Respondent's renewal application.

SIGNED this 23 day of January, 2003



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JERRY VAN HAMME  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 599152

|                                 |   |                     |
|---------------------------------|---|---------------------|
| IN RE CHEAP SEATS SPORTS        | § | BEFORE THE          |
| GRILL & CLUB INC., THE          | § |                     |
| PERMIT NOS. N-467964, PE467965, | § |                     |
| FB467966                        | § | TEXAS ALCOHOLIC     |
|                                 | § |                     |
| DENTON COUNTY, TEXAS            | § |                     |
| (SOAH DOCKET NO. 458-03-1215)   | § | BEVERAGE COMMISSION |

O R D E R

**CAME ON FOR CONSIDERATION** this 14th day of February 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge The Honorable Jerry Van Hamme. The hearing convened on December 20, 2002, and adjourned on December 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 23, 2003. 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-467964, PE467965 and FB467966 are hereby **CANCELED FOR CAUSE**.

**This Order will become final and enforceable on March 7, 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 14th day of February, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

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

CHEAP SEATS SPORTS GRILL & CLUB INC., THE  
**RESPONDENT**  
1158 W Main St.  
Lewisville, TX 75067-3470  
**CERTIFIED MAIL NO. 7001 2510 0003 8688 6285**

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

Regulatory Division

Dallas District Office