

DOCKET NO. 599360

IN RE DENISE MORGAN COLLETTA  
D/B/A CLASSIC CITY ROCK CAFE  
PERMIT NO. MB458572

DALLAS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-3113)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 20th day of August 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened and adjourned on July 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 29, 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.

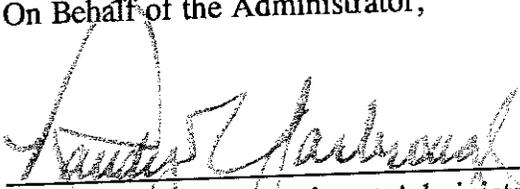
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on September 10, 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 or through the U.S. Mail, as indicated below.

SIGNED this 20th day of August, 2002.

On Behalf of the Administrator,

  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (817) 377-3706

DENISE MORGAN COLLETTA  
D/B/A CLASSIC CITY ROCK CAFE  
RESPONDENT  
1916 N. Westmoreland  
DeSoto, Texas 75115  
CERTIFIED MAIL NO. 7001 2510 0000 7277 6135

Timothy E. Griffith  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Licensing Division  
Dallas District Office

DOCKET NO. 458-02-3113

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner

v.

DENISE MORGAN COLLETTA  
D/B/A CLASSIC CITY ROCK CAFÉ, Respondent  
TARRANT COUNTY, TEXAS  
(TABC CASE NO. 599360)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) Staff brought this bond forfeiture action against Denise Morgan Colletta d/b/a Classic City Rock Café (Respondent). Petitioner seeks forfeiture of Respondent's conduct surety bond alleging that Respondent has been found to have committed three violations of the Texas Alcoholic Beverage Code or Texas Beverage Commission Rules since September 1, 1995. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends forfeiture of Respondent's bond.

**I. PROCEDURAL HISTORY**

On July 11, 2002, a hearing was conducted by ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. TABC Staff was represented by Timothy Griffith. Respondent was not present and was not represented by counsel. The hearing was concluded and the record closed on the same day.

**II. REASONS FOR PROPOSED DECISION**

TABC Staff presented several exhibits which were admitted into evidence. Because Respondent failed to appear at the hearing and TABC Staff proved that proper notice had been provided to Respondent, all matters relating to jurisdiction, notice, the violations and recommended punishment are addressed in the Proposed Findings of Facts and Conclusions of Law sections without discussion.

**III. PROPOSED FINDINGS OF FACT**

- Denise Morgan Colletta d/b/a Classic City Rock Café, Respondent, holds Mixed Beverage Permit, MB-458572, Mixed Beverage Late Hours Permit, LB-458573, and Beverage Cartage Permit, PE-458574, originally issued on October 4, 1999, by the Texas Alcoholic Beverage



- Commission (TABC). Respondent's permits expired on October 3, 2001.
2. Respondent's permits were issued for the premises at 2824 Main Street, Dallas, Dallas County, Texas.
  3. On June 6, 2002, the TABC Staff issued a Notice of Hearing which contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the statutes and rules involved; and a statement of the matters asserted.
    - a. The Notice of Hearing was sent to Respondent at her mailing address of record reflected on her permits and within other TABC records, 1916 Westmoreland, DeSoto, Texas 75115, by certified mail (7001 2510 0000 7278 7322), return receipt requested. The Notice of Hearing was returned to TABC Staff, with the notation "Unclaimed."
    - b. The Notice properly disclosed that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice would be deemed as true, and the relief sought could be granted by default.
  4. The hearing convened July 11, 2002, at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas, before Tanya Cooper, Administrative Law Judge (ALJ). TABC Staff was represented by Timothy E. Griffith, but Respondent failed to appear and was not represented.
  5. Respondent posted Texas Alcoholic Beverage Commission Surety Bond, XTL05182, dated April 19, 2001. The bond was executed by Denise Morgan Colletta d/b/a Classic City Rock Café, as Principal, and First Indemnity of America Insurance Company, 8150 Brookriver, Suite S-303, Dallas, Texas, as Surety. The bond is in the amount of \$5000 and is payable to the State of Texas.
  6. Respondent was found to have committed three violations of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage Commission Rules since September 1, 1995, as evidenced by an Order executed by TABC Assistant Administrator Randy Yarbrough on September 21, 2001.
  7. Mr. Yarbrough's Order, referenced in Finding of Fact 6, was based upon an Agreement and Waiver of Hearing, executed by Respondent and TABC Staff on September 18, 2001. This Agreement and Waiver of Hearing specifically provided that forfeiture of any related conduct surety bond might result from signing the Agreement and Waiver of Hearing.
  8. Respondent was notified by TABC Staff of its intention to forfeit Respondent's conduct surety bond via a letter dated December 5, 2001, mailed to Respondent at 1916 N. Westmoreland, Desoto, TX 75115. Respondent requested a hearing on this matter as evidenced by Denise M. Colletta signing this letter and returning it to TABC Staff.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.11, 11.61, 61.13 and 61.71 and 16 TEX. ADMIN. CODE § 33.24.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003.
3. As referenced in Proposed Findings of Fact Nos. 3 and 8, Respondent was provided with proper notice of the hearing.
4. Based upon the foregoing Proposed Findings of Fact and Conclusions of Law, and TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.11 and 61.13, and 16 TEX. ADMIN. CODE § 33.24, Texas Alcoholic Beverage Commission Surety Bond, XTL05182, dated April 19, 2001, in the amount of \$5000, should be forfeited.

SIGNED on this the 29<sup>th</sup> day of July 2002.

  
TANYA COOPER, Administrative Law Judge  
STATE OFFICE OF ADMINISTRATIVE HEARINGS