

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

February 10, 1999

Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

HAND DELIVERY

RE: Docket No. 458-98-2037; In. Re: Application of Four Leaf, Inc. d/b/a O'Donnell's

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Andrew del Cueto, attorney for Texas Alcoholic Beverage Commission, Four Leaf, Inc, Respondent. For reasons discussed in the proposal, I recommend that the respondent's license be suspended for fourteen days or, in lieu of suspension, payment by respondent of a \$2,100.00 penalty.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Beeler", is written over a light-colored background.

John Beeler
Administrative Law Judge

JB:es

Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing - **HAND DELIVERY**
Andrew del Cueto, Staff Attorney, Texas Alcoholic Beverage Commission - **HAND DELIVERY**
Four Leaf, Inc. d/b/a O'Donnell's, 108 E. Edgebrook Drive, Houston, Texas 77034-1402 - **CERTIFIED MAIL**
NO. Z 567 739 239, RETURN RECEIPT REQUESTED

DOCKET NO. 458-98-2037

TEXAS ALCOHOLIC	§	BEFORE THE STATE OFFICE
BEVERAGE COMMISSION	§	
	§	
V.	§	
	§	OF
FOUR LEAF, INC.	§	
D/B/A O'DONNELL'S	§	
PERMIT NO. MB-241936, LB-241937	§	
& PE-241938	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 572350)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission brought this enforcement action against Four Leaf, Inc. d/b/a/ O'Donnell's (the Licensee) because the Licensee, its agent, employee, or servant, sold, with criminal negligence, an alcoholic beverage to a minor on the licensed premises. The Licensee did not attend the December 15, 1998, hearing. This Proposal for Decision finds the allegation proven and agrees with Staff's recommended sanction of a fourteen-day suspension of the license or, in lieu of suspension, payment of a \$2,100.00 penalty.

I. REASONS FOR PROPOSED DECISION

There were no contested issues of notice or jurisdiction in this proceeding. Because the Licensee did not appear for the hearing, Staff requested a default decision, pursuant to 1 TEX. ADMIN. CODE §155.55. The notice of hearing contained the warning required by that rule. Agreeing with Staff that such action is appropriate, the ALJ recommends the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Four Leaf, Inc. d/b/a/ O'Donnell's, Harris County, Texas, holds License Nos. MB-241936, LB-241937, and PE-241938, issued by the Texas Alcoholic Beverage Commission (the Commission).
2. On November 4, 1998, the Commission's Staff sent notice of the hearing to be held December 15, 1998, based on an alleged violation of the TEX. ALCO. BEV. CODE ANN. (Vernon 1995 and Vernon Supp. 1998) (Code) to the Licensee by certified mail, return receipt requested.
3. The notice was sent to the Licensee's address of record, 108 E. Edgebrook Drive, Houston, Texas, 77034-1402, and was returned to the Commission marked, "unclaimed".
4. The United States Postal Service notified the Licensee on November 6, November 11, and November 24, 1998, of the letter referred to in Finding of Fact Nos. 2 and 3.

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5. The hearing on the merits convened December 15, 1998, at the offices of the State Office of Administrative Hearings, Houston, Texas, 2020 North West Loop, Suite 111. The Commission's Staff was represented by attorney, Andrew del Cueto. The Licensee did not appear and was not represented at the hearing. The record closed on the same day.
6. On or about November 7, 1998, the Licensee, its agent, servant, or employee sold, on the licensed premises, an alcoholic beverage to a minor.
7. During the sale described in Finding of fact No. 6, the minor was not asked to give his age nor to provide any sort of identification.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code §§6.01, 61.71, and 61.73.
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 1998).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 1998).
4. Based upon Findings 6 and 7, the Licensee violated Code § § 106.03 and 106.13.
5. Based on the foregoing findings and conclusions, a fourteen-day suspension of License Nos. MB-241936, PE-241937, and PE-241938 is warranted.
6. Pursuant to Code §11.64, the Licensee should be allowed to pay a \$2100.00 civil penalty in lieu of suspension of its license.

SIGNED this 16th day of February, 1999.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS