

DOCKET NO. 573249

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
TRI EAGLE CORPORATION	§	
D/B/A LA POTRANQUITA NIGHT CLUB	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB613217, LB	§	
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-08-2835)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 11th day of August 2008, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Michelle Kallas. The hearing convened on May 29, 2008 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 7, 2008. The 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.

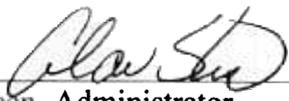
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision and incorporates those Findings of Fact and 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 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 shall be **FORFEITED**.

This Order will become final and enforceable on September 4, 2008 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below

SIGNED this the 11th day of August, 2008
at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Tri Eagle Corporation
D/B/A La Potranquita Night Club
RESPONDENT
1802 Novel Dr.
Garland, TX 75040
VIA FIRST CLASS MAIL

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

RMP/aa

STATE OFFICE OF ADMINISTRATIVE HEARINGS**DALLAS OFFICE****6333 Forest Park Road Suite 150a****Dallas, Texas 75235****Phone: (214) 956-8616****Fax: (214) 956-8611**

DATE:

07/08/2008

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

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REGARDING:

PROPOSAL FOR DECISION

DOCKET NUMBER:

458-08-2835JUDGE MICHELLE KALLAS**FAX TO:****FAX TO:**RAMONA PERRY (TEXAS ALCOHOLIC BEVERAGE
COMMISSION)

(713) 426-7965

Tri Eagle Corporation d/b/a La Potranquita Night Club

VIA REGULAR MAIL

Lou Bright Director of Legal Services (Alcoholic Beverage
Commission, Texas)**NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT LEIGH NOLAN(lda) (214) 956-8616**

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State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

July 7, 2008

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA FACSIMILE 512/206-3203

RE: Docket No. 458-08-2835 Texas Alcoholic Beverage Commission V. Tri Eagle Corporation d/b/a La Potranquita Night Club

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Michelle Kallas".

Michelle Kallas
Administrative Law Judge

MK/lan
Enclosure

xc Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**
Tri Eagle Corporation d/b/a La Potranquita Night Club, **VIA REGULAR MAIL**

SOAH DOCKET NO. 458-08-2835

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner

§ § § § § § § § §

BEFORE THE STATE OFFICE

V.

OF

TRI EAGLE CORPORATION d/b/a LA POTRANQUITA NIGHT CLUB, Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action seeking forfeiture of the conduct surety bond posted by Tri Eagle Corporation (Respondent). Petitioner recommended that the bond be forfeited because Respondent has committed at least three violations of the Texas Alcoholic Beverage Code (Code) or Texas Alcoholic Beverage Commission Rules (Rules) since September 1, 1995. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 6.01, 11.11 and 16 TEX. ADMIN. CODE § 33.24. 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, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On May 6, 2008, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known designated mailing address, 1802 Novel Dr., Garland, Texas, 75040, via certified mail, return receipt requested.¹ The notice of hearing contained a statement of the time,

¹ Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the permittee's last known address as reflected in the commission's records. A certificate of service to such address shall be prima facie evidence of adequate service on the permittee. 16 TEX. ADMIN. CODE § 37.3.

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pl. and nature of the hearing; statement of the legal authority and jurisdiction under which the hearing is to be held; reference to the particular sections of the statutes and rules involved; and short plain statement of the matters asserted required by TEX. GOV. CODE ANN. § 200.001. The hearing also contained the following language in point larger boldface type: "If party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true and the relief sought in the notice of hearing may be granted by default."

On May 20, 2008, [redacted] issued a amended notice of hearing. This notice, which contained the same allegations and notices as the original notice of hearing mailed to the Respondent at address of record and the club address. Both notices set the hearing for May 20, 2008 at [redacted].

On May 20, 2008, hearing convened before SOAH ALJ Michelle Kallas at Forest Park Road, Suite 50-A, Dallas, Dallas County, Texas. Petitioner represented the hearing, telephonically, by Ramona Perry, TABC Staff Attorney. Respondent did not appear and was not represented. The hearing petitioner presented evidence regarding notice and jurisdiction. The record closed May 20, 2008.

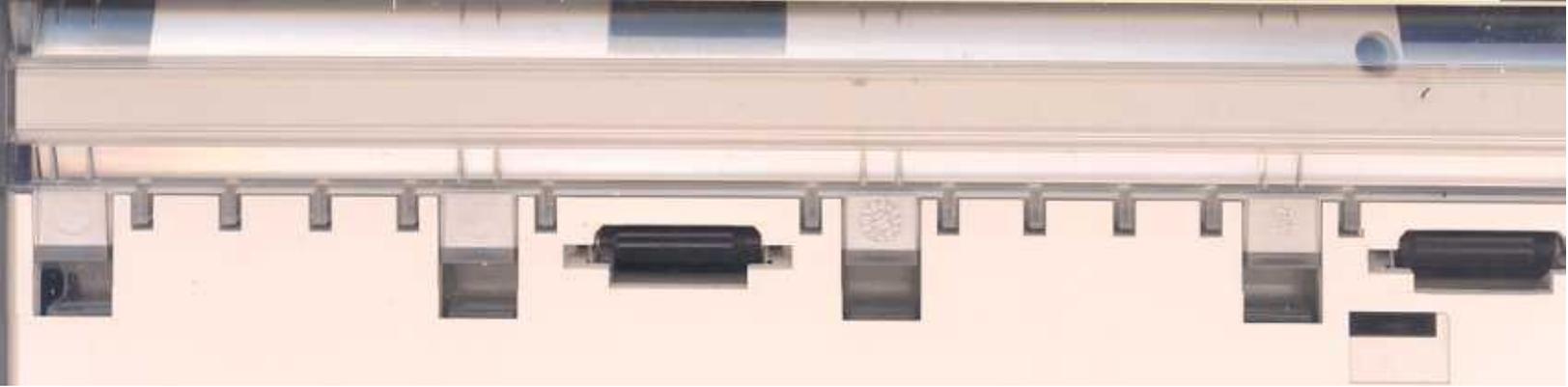
DISCUSSION

Based on the failure of Respondent to appear at the hearing, petitioner requested that the default provisions of Title 41, ADMIN. CODE (TAC) §§ 101.001 and 101.002 be invoked. Petitioner's Notice of Hearing complies with TAC §§ 101.001 and 101.002 and TEX. ALCO. BEV. CODE ANN. § 101.001. Pursuant to TAC § 101.001, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. Based on the deemed factual findings in this case, the ALJ recommends that Respondent's conduct surety bond be forfeited.

III. FINDINGS OF FACT

Tri Eagle Corporation (Respondent) holds a Mixed Beverage Permit, MB-613217, which includes a Mixed Beverages Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 8410 Harry Hines Boulevard, Dallas, Dallas County, Texas.

2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is 1802 Novel Dr., Garland, Texas, 75040.
3. Respondent has posted Conduct Surety Bond Number FS8018837, dated January 16, 2007, in the amount of \$5,000.00, payable to the state.
4. Respondent committed at least three violations of the Code or Rules since September 1, 1995.
5. By letter dated December 18, 2007, Petitioner sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond.
6. Respondent requested a hearing to determine whether the conduct surety bond should be forfeited.
7. On May 6, 2008, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for May 29, 2008.
8. On May 13, 2008, Petitioner mailed its amended notice of hearing to the Respondent's address of record and the address of the permitted premises.
9. The notice of hearing and amended notice of hearing 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 particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
10. The notice of hearing and amended notice of hearing also contained the following language in 12-point or larger boldface type: "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
11. A hearing convened before Michelle Kallas, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on May 29, 2008, Petitioner appeared, via telephone, through its Staff Attorney, Ramona Perry. Respondent did not appear and was not



SOAH DOCKET NO. 458-08-2835

PROPOSAL FOR DECISION

PAGE 4

represented at the hearing. The record closed on that same date.

IV. CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11 and 16 TEX. ADMIN. CODE (TAC) § 33.24.

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. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TAC § 155.55 and 16 TAC § 37.3.
4. A default decision should be entered against Respondent pursuant to 1 TAC § 155.55.
5. The conduct surety bond posted by Respondent should be forfeited. TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TAC § 33.24 (j).

SIGNED July 7, 2008.



MICHELLE KALLAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS