

DOCKET NO. 580047

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE TEXAS

VS.

HOGG ENTERTAINMENT INC.
D/B/A FROGGY BOTTOM'S BEACH CLUB
PERMIT/LICENSE NO(s). MB630948, LB

ALCOHOLIC

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-09-1596)

BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 8th day of June, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica Garza. The hearing convened on March 13, 2009 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on May 8, 2009. 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 permits and licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on July 2, 2009, 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 8th day of June, 2009,
at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6777 Camp Bowie Blvd., Suite 400
Ft. Worth, Texas 76116
VIA FACSIMILE (817) 377-3706

Hogg Entertainment Inc.
d/b/a Froggy Bottom's Beach Club
RESPONDENT
4400 White Settlement Road
Fort Worth, TX 76114
VIA REGULAR MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Forth Worth Enforcement Division

SKP/aa

STATE OFFICE OF ADMINISTRATIVE HEARINGS

FT. WORTH OFFICE

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Fort Worth, Texas 76116

Phone: (817) 731-1733

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DATE:

05/08/2009

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

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REGARDING:

LETTER

DOCKET NUMBER:

458-09-1596

JUDGE MONICA GARZA

FAX TO:

FAX TO:

HOGG ENTERTAINMENT, INC.

VIA REGULAR MAIL

SANDRA K. PATTON (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

LOU BRIGHT GENERAL COUNSEL (Alcoholic Beverage Commission, Texas)

(512) 206-3498

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT DIANA DUPRE(dsc) (817) 731-1733

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 8, 2009

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

**Re: Docket No. 458-09-1596; Texas Alcoholic Beverage Commission,
v, Hogg Entertainment, Inc. d/b/a Froggy Bottom's Beach Club
(TABC 580047)**

Dear Mr. Steen:

Enclosed please find the Proposal for Decision in the above-referenced case. It contains my recommendation and underlying rationale.

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, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica Garza".

Monica Garza
Administrative Law Judge

MG/dd

attachments

**SOAH DOCKET NO. 458-09-1596
TABC DOCKET NO. 580047**

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**HOGG ENTERTAINMENT, INC.
D/B/A FROGGY BOTTOM'S BEACH CLUB,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Hogg Entertainment, Inc. d/b/a Froggy Bottom's Beach Club (Respondent), alleging that Respondent possessed alcoholic beverages on the licensed premises which were not covered by invoice. Petitioner requested cancellation of Respondent's permit. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) finds Petitioner proved its allegations. The ALJ recommends cancellation of Respondent's permit.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction in this case under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61 and 28.06. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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 January 27, 2009, Petitioner issued its notice of hearing, directed to Respondent at his address of record. The notice 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, as required by TEX. GOV'T CODE ANN. § 2001.052.

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Proposal for Decision

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On March 13, 2009, a hearing convened before SOAH ALJ Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Sandra K. Patton, TABC Staff Attorney. Mark R. Walden, Respondent's officer and authorized representative, appeared for Respondent. Following presentation of evidence, the record closed on March 13, 2009.

II. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2), TABC may suspend for not more than 60 days or cancel a permit if the permit holder violates a provision of the code. Further, TEX. ALCO. BEV. CODE ANN. § 28.06 prohibits the possession of alcoholic beverages on the licensed premises which are not covered by an invoice from the supplier from which the alcoholic beverages were purchased. Cancellation is the required sanction for this violation.

III. EVIDENCE

A. Respondent's Permit

Respondent holds a Mixed Beverage Permit, MB-630948, with accompanying Mixed Beverage Late Hours Permit, issued by TABC, for the premises located at 4400 White Settlement Road, Fort Worth, Tarrant County, Texas. This permit was originally issued on June 16, 2006, and it has been continuously renewed.

B. Possession of Alcoholic Beverages on the Licensed Premises Not Covered by Invoice

On August 30, 2008, TABC Agent David Welsh conducted an inspection at Respondent's licensed premises. During this inspection, Agent Welsh seized approximately 300 bottles of wine, distilled spirits, and champagne. These alcoholic beverages were not covered by invoice.

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Mark Walden, Respondent's permit holder, explained the presence of the seized alcoholic beverages. Roughly half of the bottles were from Mr. Walden's personal wine collection. He was storing the bottles on the premises following a separation from his spouse. The remaining bottles were being temporarily stored on the premises awaiting charitable auction. Mr. Walden explained that he did not realize that storage of these items on the licensed premises was prohibited.

IV. ANALYSIS

The evidence clearly establishes that Respondent knowingly possessed alcoholic beverages on the licensed premises which were not covered by invoice. Because TEX. ALCO. BEV. CODE ANN. § 28.06 requires cancellation of the permit following this violation, the ALJ must recommend cancellation of Respondent's permit.

V. PROPOSED FINDINGS OF FACT

- 1 Hogg Entertainment, Inc. d/b/a Froggy Bottom's Beach Club (Respondent) holds a Mixed Beverage Permit, MB-630948, with accompanying Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 4400 White Settlement Road, Fort Worth, Tarrant County, Texas.
- 2 This permit was originally issued on June 16, 2006, and it has been continuously renewed.
- 3 On August 30, 2008, TABC Agent David Welsh conducted an inspection at Respondent's licensed premises.
- 4 During this inspection, Agent Welsh seized approximately 300 bottles of wine, distilled spirits, and champagne.
- 5 These alcoholic beverages were not covered by invoice.
- 6 On January 27, 2009, TABC staff (Petitioner) issued its notice of hearing, directed to Respondent at his address of record.

SOAH Docket No. 458-09-1596
TABC Docket No. 580047

Proposal for Decision

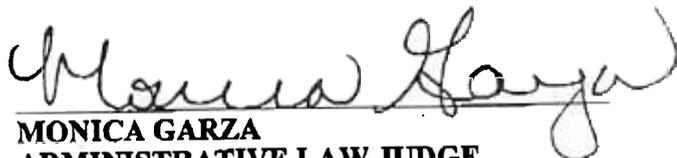
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7. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
8. On March 13, 2009, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas.
9. Petitioner was represented at the hearing by Sandra K. Patton, TABC Staff Attorney. Respondent appeared through its officer and authorized representative, Mark R. Walden.
10. Following presentation of evidence, the record closed on March 13, 2009

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this case. TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61 and 28.06.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing. TEX. GOV'T CODE ANN. § 2001.052.
4. Respondent possessed alcoholic beverages on the licensed premises which were not covered by invoice. TEX. ALCO. BEV. CODE ANN. § 28.06.
5. Respondent's permit should be cancelled. TEX. ALCO. BEV. CODE ANN. §§ 11.61 and 28.06.

SIGNED May 8, 2009.



MONICA GARZA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: Alcoholic Beverage Commission, Texas (TABC)
STYLE/CASE: HOGG ENTERTAINMENT INC / FROGGY BOTTOM'S BEACH CLUB
SOAH DOCKET NUMBER: 458-09-1596
REFERRING AGENCY CASE: 580047

STATE OFFICE OF ADMINISTRATIVE HEARINGS ADMINISTRATIVE LAW JUDGE
ALJ MONICA GARZA

REPRESENTATIVE / ADDRESS **PARTIES**

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TEXAS ALCOHOLIC BEVERAGE COMMISSION
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HOUSTON, TX 77008
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TEXAS ALCOHOLIC BEVERAGE COMMISSION

HOGG ENTERTAINMENT, INC.
D/B/A FROGGY BOTTOMS BEACH CLUB
4400 WHITE SETTLEMENT ROAD
FORT WORTH, TX 76114
(817) 570-9196 (PH)

RESPONDENT

xc: Docket Clerk, State Office of Administrative Hearings
LOU BRIGHT GENERAL COUNSEL, TABC, Fax No. 512-206-3498