

DOCKET NO. 616179

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
COACHES PUBS INC. D/B/A COACHES SPORTS BAR & GRILL, Respondent	§	ALCOHOLIC
	§	
	§	
PERMITS MB714461, LB, PE, CB	§	
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-13-4174)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 20th day of December, 2013, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Lindy Hendricks presiding. The hearing convened on July 12, 2013 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 3, 2013. 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. No exceptions were filed.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

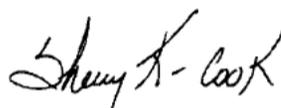
All motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED that the privileges granted by the Commission and activities authorized under the above permit and license by the Code will be **SUSPENDED beginning at 12:01 A.M. on January 29, 2014** and shall remain suspended for **THIRTY (30)** consecutive days, **UNLESS** Respondent pays a civil penalty in the amount of **\$9,000.00 ON OR BEFORE January 21, 2014**.

If this Order is appealed and judgment is issued affirming the Order, the privileges granted by the Commission and activities authorized under the above permit and license by the Code will be **SUSPENDED** beginning at 12:01 A.M. on the **eighteenth (18th)** day following the date the judgment is signed and shall remain suspended for **THIRTY (30)** consecutive days, unless Respondent pays the civil penalty in the amount of **\$9,000.00** on or before the **tenth (10th)** day following the date the judgment is signed.

This Order will become **final and enforceable** on the 14th day of January 2014, **unless a Motion for Rehearing is filed by the 13th day of January, 2014**.

SIGNED this the 20th day of December, 2013, at Austin, Texas.



Sherry K-Cook, Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 20th day of December, 2013.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Lindy Hendricks
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (512) 322-2061

Coaches Pubs Inc.
d/b/a Coaches Sports Bar & Grill
RESPONDENT
P.O. Box 540327
Houston, Texas 77254-1002
VIA FIRST CLASS MAIL, CMRRR # 70120470000133007036

Clyde W. Burlison
ATTORNEY FOR RESPONDENT
1533 W. Alabama, Suite 100
Houston, Texas 77006
VIA FIRST CLASS MAIL, CMRRR #70120470000133007043
AND
VIA FACSIMILE: (713) 526-3787

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: sandra.patton@tabc.state.tx.us

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 616179

REGISTER NUMBER:

NAME: Coaches Pubs Inc.

TRADENAME: Coaches Sports Bar & Grill

LOCATION ADDRESS: 17754 Katy Freeway, Bldg. E, Houston, Texas

DUE DATE: January 21, 2014

PERMITS OR LICENSES: MB714461, PE, LB, CB

AMOUNT OF PENALTY: \$9,000.00

Amount remitted \$ _____ Date remitted _____

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.

Mail this form with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731

You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.

Attach this form and please make certain to include the Docket # on your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 3, 2013

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: SOAH Docket No. 458-13-4174; Texas Alcoholic Beverage Commission vs. Coaches Pub Inc. d/b/a Coaches Sports Bar & Grill

Dear Ms. Cook:

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 § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Lindy Hendricks".

Lindy Hendricks
Administrative Law Judge

LH/mr

Enclosure

xc Sandra Patton Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 -

VIA REGULAR MAIL

Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**

Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA REGULAR MAIL** (with Certified Evidentiary Record and 1 Hearing CD/s)

Clyde Burleson, Attorney at Law, 1533 W. Alabama, Suite 100, Houston, TX 77006 - **VIA REGULAR MAIL**

RECEIVED
SEP 05 2013
FABO HOUSTON
LEGAL

2020 North Loop West Suite 111 Houston, Texas 77018
713.957.0010 (Telephone) 713.812.1001 (Fax)
www.soah.state.tx.us

There are no contested issues of notice or jurisdiction in this case. Therefore, notice and jurisdiction are addressed only in the findings of fact and conclusions of law.

II. ALLEGATIONS AND LEGAL STANDARDS

In its Notice of Hearing, Staff alleged:

1. On or about September 4, 2012, a breach of the peace occurred on the premises, or on the premises under Respondent's control. Said breach of the peace was not beyond the control of Respondent, or its agent, servant, or employee, and resulted from the Respondent's improper supervision of persons permitted to be on the licensed premises or on premises under Respondent's control, in violation of Texas Alcoholic Beverage Code (Code) §§ 28.11 and 11.61(b)(2).
2. On or about September 4, 2012, Respondent or Respondent's agent, servant or employee consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours, in violation of Code §§ 11.61(b)(2) and 11.61(b)(22).
3. On or about September 4, 2012, Respondent or Respondent's agent, servant, or employee sold, served, or offered to sell mixed beverages during prohibited hours, in violation of Code §§ 11.61(b)(2) and 11.61(b)(23).
4. On or about September 4, 2012, Respondent or Respondent's agent, servant, or employee sold, served, or delivered an alcoholic beverage to an intoxicated person, in violation of Code §§ 11.61(b)(2) and 11.61(b)(14).

III. DISCUSSION

On February 11, 2009, TABC issued a Mixed Beverage Permit MB714461, which included a Beverage Cartage Permit, Caterer's Permit, and Mixed Beverage Late Hours Permit, for Respondent's premises located at 17754 Katy Freeway, Building E, Houston, Harris County, Texas.

On the day of the hearing, Respondent agreed and stipulated to the facts contained the offense reports.

On September 10, 2012, TABC received a complaint alleging that, on September 4, 2012, Respondent allowed customers to drink during prohibited hours, served an intoxicated customer, and that the employees assaulted the customers.

On the day of the hearing, Agent Holloway testified that he obtained sworn statements from customers, video, employee records, and medical records from Herman Memorial Hospital as part of his investigation. He testified that Respondent was very cooperative with the investigation, and that Coaches had been opened for five years with only a written warning.

On September 4, 2012, Alex Alishusky, Joe Rocca, and assistant manager Ron Bright were the employees on duty at the bar. Dallas Goodson, Johnny Hardcastle, Michael Witt, Jimmy Sanchez, and Salah Cole were customers. The customers stated they were sold alcohol after 2:00 A.M. in exchange for tips. The video from the bar showed the service and consumption of alcohol between 2:00 and 3:00 A.M.

An argument ensued between the employees and customers, and escalated into a physical fight. The employees punched and hit the customers, forcing them outside. Once outside, Mr. Rocca repeatedly punched and assaulted Mr. Goodson. Mr. Goodson was taken to Memorial Herman Hospital where it was determined that he had sustained orbital and nasal fractures, and that his blood alcohol concentration was .244 mg/dl.

Respondent presented the testimony of Richard Fallon, the owner of Coaches. Mr. Fallon testified that when he found out about the incident the following day, he terminated all the employees on duty that night. According to Mr. Fallon, it was determined that the assistant manager was stealing inventory by not charging for the alcohol served and by pocketing the tips. Mr. Fallon testified that approximately \$2,000 was also missing from the safe, and that the video showed the assistant manager going into the safe. According to Mr. Fallon, Respondent incurred approximately \$9,000 in losses and expenses as a result of the incident, including cash and inventory, video data-recovery expenses, and staff and management replacement.

Mr. Fallon testified that new control measures have been implemented since the incident. A daily log is created to show when the alarm is activated to indicate the time the business is closed. Additionally, the morning manager is responsible for reviewing the video from 1:45 to 3:00 A.M. the previous night, to ensure no after-hours sales or consumption has occurred. The employees' seller-server certificates, including expiration dates, are now listed on the manager's schedule. Finally, managers would conduct weekly reviews to ensure the seller-server certificates are not expired.

Respondent argued that the assistant manager went "rogue" and was stealing from the business, and Respondent was a victim of his theft. Respondent did not deny that the violations occurred but sought mitigation in the penalty to be assessed given the circumstances, Respondent's permit history, and its cooperation with the TABC in its investigation. Respondent requested that only the minimum penalty be assessed.

Staff argued that the facts are undisputed, and the video and witness statements showed employees allowed people to drink during prohibited hours. A fight ensued on the premises which resulted in serious injury to a customer. Staff recommended Respondent's permits be suspended for 30 days, or in lieu of a suspension, Respondent pay a civil penalty in the amount of \$300 per day, for a total of \$9,000.

IV. RECOMMENDATION

Respondent's stipulation to the facts in the offense report and the evidence established that Respondent violated the Code. Respondent has taken affirmative action since the violations of September 4, 2012. Aside from a written warning, Respondent has not had an administrative violation before or after the incident and requested that only a minimum penalty be assessed.

In determining the penalty for a violation, Section 11.61 of the Code states that the TABC may suspend a license for up to 60 days or cancel a permit for any single violation. The statute does not establish a minimum suspension period.¹ As for the amount of civil penalty,

¹ In 16 Texas Administrative Code Ch. 34, the TABC has adopted a standard penalty chart to be used to settle a

Code § 11.64 states that a civil penalty may not be less than \$150 or more than \$25,000 for each day the permit is to be suspended. In this matter, there were four violations of the Code. Additionally, the intoxicated person to whom alcohol was sold or served had a blood alcohol concentration of over three times the legal limit, and the injuries he sustained as a result of the assault by the employees were serious and included nasal and orbital fractures. For these reasons, the ALJ concludes that the suspension period and civil penalty recommended by Staff are reasonable under the circumstances. Therefore, the ALJ recommends that Respondent's permits be suspended for 30 days, or in lieu of a suspension, Respondent be allowed to pay a civil penalty of \$300 per day, for a total of \$9,000.

V. FINDINGS OF FACT

1. Coaches Pub Inc. d/b/a Coaches Sports Bar & Grill (Respondent) holds a Mixed Beverage Permit, MB714461, with accompanying Beverage Cartage Permit, Caterer's Permit, and Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 17754 Katy Freeway, Building E, Houston, Harris County, Texas.
2. The permit was originally issued on February 11, 2009.
3. On or about September 4, 2012, Respondent or Respondent's agent, servant or employee consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.
4. On or about September 4, 2012, Respondent or Respondent's agent, servant, or employee sold, served, or offered to sell mixed beverages during prohibited hours.
5. On or about September 4, 2012, Respondent or Respondent's agent, servant, or employee sold, served, or delivered an alcoholic beverage to an intoxicated person.
6. The intoxicated customer had a blood alcohol concentration of over three times the legal limit.
7. On or about September 4, 2012, a breach of the peace occurred on the premises when Respondent's agent, servant, or employee punched and assaulted its customers.
8. The injuries sustained by a customer, caused by Respondent's employee, were serious and included nasal and orbital fractures.

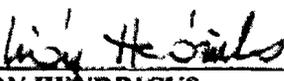
complaint. It includes a minimum-maximum penalty range. However, Chapter 34 does not apply to a contested case brought under the Administrative Procedure Act, Texas Government Code Ch. 2001.

9. On May 15, 2013, Staff issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice contained the time, place, and nature of the hearing; stated the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
10. The hearing convened on July 12, 2013, before State Office of Administrative Hearings (SOAH) ALJ Lindy Hendricks. Sandra K. Patton, staff attorney, represented TABC at the hearing. Clyde Burleson, attorney, represented Respondent. The hearing concluded and the record closed the same day.

VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Texas Alcoholic Beverage Code (Code) ch. 5 and § 11.61.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code ch. 2003.
3. Respondent received notice of the proceedings and hearing, pursuant to Texas Government Code §§ 2001.051 and 2001.052 and 1 Texas Administrative Code ch. 155.
4. Respondent violated Code §§ 11.61(b)(2), 11.61(b)(14), 11.61(b)(22), 11.61(b)(23), and 28.11.
5. Based on the findings of fact and conclusions of law, Respondent's permit should be suspended for a period of 30 days, or in lieu of any suspension, Respondent should be ordered to pay a civil penalty of \$300 per day, for a total of \$9,000. Code § 11.61.

SIGNED September 3, 2013.



LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS