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Tennessee Alcoholic Beverage Comm., Petitioner, Vs. L & W, Inc., d/b/a/ Club Tropicana, Respondent

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BEFORE THE ALCOHOLIC BEVERAGE COMMISSION
FOR THE STATE OF TENNESSEE

IN THE MATTER OF: **Tennessee Alcoholic Beverage Comm.,** **Petitioner,** **Vs.** **L & W, Inc., d/b/a/ Club Tropicana,** **Respondent.**	**DOCKET NO: 33.01-097517J**

ORDER OF DEFAULT AND INITIAL ORDER

This matter came for hearing on October 27, 2008, in Nashville, Tennessee before Steve R. Darnell, Administrative Law Judge, assigned by the Department of State, Administrative Procedures Division. Carolyn U. Smith, attorney for the Tennessee Alcoholic Beverage Commission (hereinafter "ABC") represented the State. The Respondent, having received proper notice, did not attend the hearing. Petitioner was previously represented by attorney Dennis Stanford of Clarksville, Tennessee. Mr. Stanford withdrew his representation and notified Respondent as demonstrated in exhibit 1.

The State therefore moved that an order of default be entered as to Respondent. Since Respondent was provided proper notice of this hearing, an order of default is entered as to Respondent. The ABC chose to proceed with this contested case hearing without the participation of Respondent.

INITIAL ORDER

Respondent sought to renew its ABC license when its previous license expired on November 8, 2007. The ABC staff denied the application finding that Respondent had nine (9)

outstanding citations issued by the ABC. Respondent properly appealed the ABC's decision and this contested case proceeding was instigated.

It is determined that the ABC properly denied Respondent's application to renew its license and its decision is UPHELD. This determination is based on the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent had previously been issued an on premises liquor by the drink license by the ABC. This license expired on November 8, 2007. Respondent sought to renew its license, but this application was denied by the ABC. The ABC denied this application upon a finding that Respondent had nine (9) outstanding citations issued by the ABC.

2. Respondent was issued the following citations by the ABC, all of which remained outstanding on the date of this hearing.

a) October 22, 2007, for selling liquor to a minor.

b) October 23, 2007, giving away liquor.

c) November 16, 2006, failing to properly and timely renew its license.

d) June 11, 2007, failing to maintain minimum restaurant seating, offering "happy hour" prices after 10 p.m., failure to be properly licenses.

e) November 9, 2006, failure to maintain minimum restaurant seating.

f) Janauray 12, 2007, failure to maintain minimum restaurant seating.

g) February 12, 2007, failure to maintain minimum restaurant seating.

h) May 14, 2007, failure to furnish information to the ABC.

i) July 12, 2007, failure to maintain for liquor by the drink licensee.

3. An ABC investigator visited Respondent's establishment on October 21, 2008, and learned that the establishment was under new ownership and individuals that owned the respondent corporation had moved from Clarksville, Tennessee.

CONCLUSIONS OF LAW

1. Rule 1360-4-1-.15(1)(a) of the "Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies" states:

> The failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4-5-309.

2. Rule 1360-4-1-.02(3) states, in pertinent part:

> The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

3. T.C.A. §57-4-202 authorizes the ABC to revoke or suspend or refuse to issue any license for violation of the statutory or regulatory obligations of the licensee. It provides in pertinent part as follows:

> (a) The commission shall have authority to revoke or suspend any permit granted herein for the violations of the provisions of any applicable provision of this chapter, and any person aggrieved by the action of this commission is revoking or suspending a permit, or in refusing to grant a permit, may have such action reviewed as provided by the Uniform Administrate Procedures Act, complied in title 4, chapter 5.

Petitioner has shown by a preponderance of the evidence that Respondent has multiple violations of the ABC's statutes and regulations, all of which have gone unaddressed by Respondent. The ABC was well within its legal authority and obligations in denying Respondent's request to renew its license.

IT IS THEREFORE ORDERED that the Alcoholic Beverage Commission's decision to deny the renewal of Respondent's license is **UPHELD**.

Entered this 9th day of February, 2009.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, this 9th day of February, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division