University of Tennessee, Knoxville
Trace: Tennessee Research and Creative Exchange

Tennessee Department of State, Opinions from the Administrative Procedures Division

Law

12-11-2012

Alcoholic Beverage Commission, Petitioner, Vs. Beauty Shop Restaurant, Inc., dba B S Lounge, Respondent

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

BEFORE THE ALCOHOLIC BEVERAGE COMMISSION
STATE OF TENNESSEE

IN THE MATTER OF: **Alcoholic Beverage Commission,** **Petitioner,** **Vs.** **Beauty Shop Restaurant, Inc.** **dba B S Lounge,** **Respondent.**	**DOCKET NO: 33.01-118538J**

INITIAL ORDER

This matter was heard as a contested case in Nashville, Tennessee on December 11, 2012 before Leonard Pogue, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Alcoholic Beverage Commission. The State was represented by Ginna Winfree, staff attorney, Tennessee Alcoholic Beverage Commission (TABC). Karen Carrier, owner, appeared on behalf of Beauty Shop Restaurant, Inc., dba B S Lounge.

The subject of the hearing was to consider whether the Respondent's liquor license should be suspended/revoked and/or fined for failure to timely pay taxes.

After consideration of the argument of counsel and the record in this matter, it is determined that Respondent shall be fined an amount of four hundred dollars ($400.00). This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent, Beauty Shop Restaurant, Inc. d.b.a. B S Lounge ("B S Lounge") is a corporation organized under the laws of the state of Tennessee. Respondent's principal address and licensed establishment is located at 966 S Cooper Street, Memphis, TN 38104-5611.

2. Respondent is a "liquor-by-the-drink" licensee within the meaning of T.C.A. § 57-4-102(29)(A).

3. B S Lounge was delinquent in filing and/or paying LBD taxes three times during its licensed year of July 9, 2011 - July 8, 2012. The first offense was August 2011, the second offense was September 2011, and the third offense was January 2012. As a result, citation RI # 12-0779 was issued to Respondent.

4. Ms. Carrier testified that a manager at her business was responsible for paying the taxes and failed to do so. Upon notification by the State of the approximately $46,000 owing in back taxes and penalties, Ms. Carrier immediately paid the amount owing in full.

CONCLUSIONS OF LAW

1. T.C.A. § 57-3-104 *et seq.* authorizes the TABC or its authorized representative to enforce and administer the provisions of this Chapter and the rules and regulations made by it.

2. T.C.A. § 57-4-201(a)(2) provides that: "the commission shall make regulations, not inconsistent with this chapter, for clarifying, interpreting, carrying out and enforcing the terms of this chapter, for ensuring the proper and orderly conduct of business by licensees, and for regulating all advertising of alcoholic beverages by licensees."

3. T.C.A. § 57-4-304(b) (1) states, in part: "when any licensee shall fail to make any return and pay the full amount of the tax as required by this chapter for as many as three (3) times during any one (1) year licensing period, the commission, upon recommendation of the

commissioner, may revoke or suspend the license held by such licensee in the same manner and under the same conditions as provided by § 57-4-202."

4. B S Lounge failed to comply with the rules and regulations of the Tennessee Alcoholic Beverage Commission by being in direct violation of T.C.A. § 57-4-304(b)(1).

5. T.C.A. § 57-4-202(a) provides: "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 in revoking or suspending a permit, or in refusing to grant a permit, may have such action reviewed as provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

6. Tennessee Alcoholic Beverage Commission Rule 0100-05-.01(1) provides: "in any case where the Alcoholic Beverage Commission is given power to suspend or revoke any license or permit issued pursuant to Title 57, Tennessee Code Annotated, the Commission may, in the alternative to suspension or revocation, impose a fine as set out hereafter."

7. Tennessee Alcoholic Beverage Commission Rule 0100-05-.04(5) provides: "any other violations of law or rule which are not specifically listed above may result in a fine from a minimum of one hundred dollars ($100.00) to a maximum of seven hundred and fifty dollars ($750.00).

8. Respondent failed to comply with the rules and regulations of the Tennessee Alcoholic Beverage Commission. However, it should be noted that the owner, when notified of the problem, rectified the past due issue quickly. Counsel for the Commission requests a fine of $900.00. Based on the proof presented, it is determined that a fine of $400.00 is appropriate.

It is therefore **ORDERED** that Respondent be **fined $400.00** and shall be responsible for the costs of this matter.

This Initial Order entered this the _____ day of December, 2012.

_____
Leonard Pogue
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State

this 19 day of December, 2012 Stovall, Director

Administrative Procedures Division