

DOCKET NO. 499613

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	ALCOHOLIC
	§	
UPRISING LLC	§	
D/B/A SHADOWS	§	
PERMIT/LICENSE NO(s). MB545965	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-0866)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of February, 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert M. Brown II. The hearing convened on December 15, 2006 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 19, 2006. 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 Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which 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 Assistant 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 permit is hereby **SUSPENDED**.

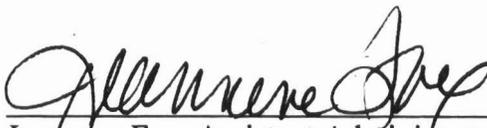
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the 11th day of April, 2007, all rights and privileges under the above described permit will be **SUSPENDED for a period of five (5) days, beginning at 12:01 A.M. on the 18st day of April, 2007.**

This Order will become final and enforceable on March 12, 2007, unless a Motion for Rehearing is filed **before** that date.

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

SIGNED on February 12, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

UPRISING LLC
RESPONDENT
d/b/a SHADOWS
420 E HOUSTON ST
SAN ANTONIO, TX 782052616
CERTIFIED MAIL NO. 7005 3110 0000 0768 2996

Hon. Robert M. Brown II
State Office of Administrative Hearings
San Antonio, Texas
VIA FAX (210) 308-6854

Christopher G. Gee
ATTORNEY FOR PETITIONER
TABC Legal Services

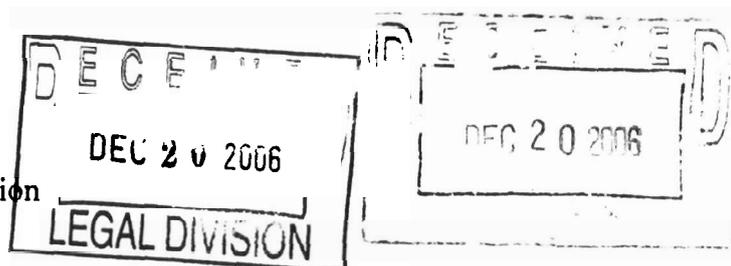
Licensing Division
San Antonio District Office

State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

December 19, 2006

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



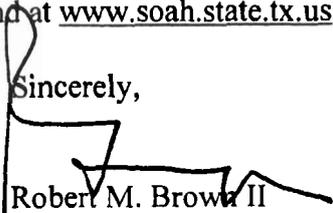
RE: Docket No. 458-07-0866 TABC vs Uprising LLC d/b/a SHADOWS

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,


Robert M. Brown II
Administrative Law Judge

RMB/ilap
Enclosure

cc: **Docket Clerk, State Office of Administrative Hearings- VIA HAND DELIVERY**

✓ Christopher G. Gee, Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-

VIA REGULAR MAIL

Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-

VIA REGULAR MAIL

Uprising LLC, d/b/a Shadows, 420 E. Houston Street, San Antonio, Texas 78205-2616 - VIA REGULAR MAIL

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 19, 2006

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

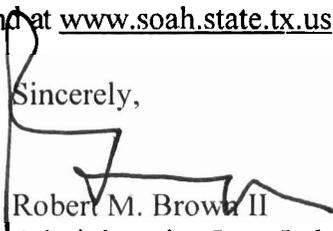
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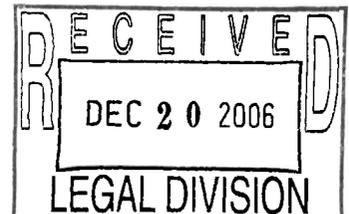
Sincerely,


Robert M. Brown II
Administrative Law Judge

RMB/ilap
Enclosure

xc: **Docket Clerk, State Office of Administrative Hearings- VIA HAND DELIVERY**
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VIA REGULAR MAIL
Uprising LLC, d/b/a Shadows, 420 E. Houston Street, San Antonio, Texas 78205-2616 - **VIA REGULAR MAIL**

10300 Heritage, Suite 250 ♦ San Antonio, Texas 78216
(210) 308-6681 Fax (210) 308-6854
<http://www.soah.state.tx.us>



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. The notice of hearing also included the following language in at least 12-point or larger boldface type: "Upon failure of a party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default." On November 24, 2006, Respondent signed for the Notice.

On December 15, 2006, the hearing convened before the undersigned ALJ at the SOAH office located in San Antonio, Texas. TABC appeared by telephone and was represented by Christopher G. Gee, Staff Attorney. Respondent was absent from and not represented at the hearing. After admission of jurisdictional documents and argument for default and cancellation, the record was closed.

II. DISCUSSION

Based on Respondent's failure to appear at the hearing, TABC requested that proceed under the default provisions of 1 TAC § 155.55. The ALJ agrees as TABC's Notice of Hearing complies with 1 TAC §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE. ANN. § 11.63. Pursuant to 1 TAC § 155.55, the allegations presented in the Notice of Hearing are deemed admitted as true. Accordingly, the ALJ incorporates these allegations into the Findings of Fact below.

TABC recommended a five-day suspension. The ALJ agrees that he recommended penalty is appropriate under TEX. ALCO. BEV. CODE ANN. §§ 11.61(1)(b), 61.73(b), and 102.31 if it is found that the permittee any check as full or partial payment that is dishonored when presented for payment. Further, the ALJ recommends that Respondent be given the option of paying a civil penalty in the amount of \$600.00 in lieu of the suspension in accordance with TEX. ALCO. BEV. CODE ANN. § 11.64.

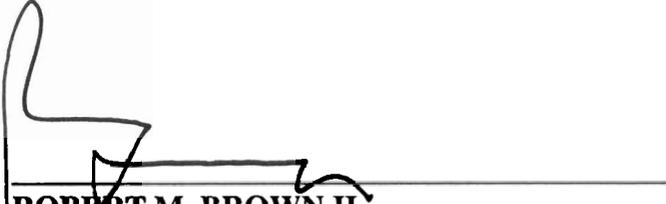
III. PROPOSED FINDINGS OF FACT

1. The Texas Beverage Commission (TABC) issued a Mixed Beverage Permit, Mixed Beverage Late Hours Permit MB545965 (Permit) to Uprising LLC d/b/a Shadows (Respondent).
2. TABC issued Respondent's permit for the premises located at 420 E. Houston Street, San Antonio, Bexar County, Texas 78305 that is also Respondent's mailing address.
3. On or about April 25, 2005, Respondent or its agents, servants, or employee, gave two separate checks or drafts for the purchase of beer that were both subsequently dishonored when presented for payment.
4. On or about April 26, 2005, Respondent or its agents, servants, or employee, gave a check or draft for the purchase of beer that was subsequently dishonored when presented for payment.
5. On or after July 28, 2005, TABC Staff notified Respondent that it intended to seek cancellation or suspension of Respondent's permit for violation of the TEX. ALCO. BEV. CODE. §§ 61.73 and 102.31.
6. On or after November 22, 2006, TABC sent its Notice of Hearing (Notice) to Respondent by certified mail, return-receipt requested.
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; references to particular sections of the statute and rules involved; and a short, plain statement of the matters asserted.
8. In addition, the Notice contained the following language in 12-point or larger bold face type: "If you fail to appear at the hearing, the allegations in this notice will be deemed to be admitted as true and the relief sought may be granted by default."
9. On November 24, 2006, Respondent acknowledged receipt of Notice by signing and returning the mail receipt.
10. On December 15, 2006, a hearing convened at the State Office of Administrative Hearings (SOAH) located at 10300 Heritage Boulevard, Suite 250, San Antonio, Bexar County, Texas with the telephonic appearance of counsel for the TABC, Christopher G. Gee. Respondent was absent from and not represented at the hearing.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE §§ 5.31 and 5.35.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. §5.43 and TEX. GOV'T. CODE ch. 2001.
3. Based on the Proposed Findings of Facts, TABC provided Notice to Respondent as required by the 1 TAC §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based on the Proposed Findings and above Proposed Conclusion of Law, the hearing proceeded on a default basis as authorized by 1 TAC § 155.55.
5. Based on the Proposed Findings and Conclusions, Respondent violated TEX. ALCO. BEV. CODE §102.31.
6. Based on Proposed Conclusions, Respondent should have its Permit suspended for a period of five days or pay \$750.00 in lieu of the suspension under TEX. ALCO. BEV. CODE §§ 11.61(b)(2) and 11.61.

SIGNED: December 19, 2006.



ROBERT M. BROWN II
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS