

DOCKET NO. 588272

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE
COMMISSION	§	
	§	
VS.	§	
	§	TEXAS ALCOHOLIC
HERBERT LEE HUGHES	§	
PERMIT NO. A-461143	§	
HARRIS COUNTY, TEXAS	§	
(SOAH Docket No. 458-00-1916)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 14th day of December, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on September 28, 2000, and adjourned September 28, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 6, 2000. This 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, Transcripts, 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 Permit No. A-461143 is hereby **SUSPENDED**.

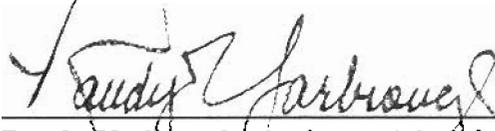
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$450.00** on or before the **29th** day of **January, 2001**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of **three (3) days**, beginning at **12:01 A.M.** on the **5th** day of **February, 2001**.

This Order will become final and enforceable on January 4, 2001, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 14th day of December, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Herbert Lee Hughes
RESPONDENT
10400 Harwin Drive
Houston, Texas 77036
CERTIFIED MAIL NO. Z 473 042 648

Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE: (713) 812-1001

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ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

DOCKET NO. 458-00-1916

- **TEXAS ALCOHOLIC BEVERAGE COMMISSION** § **BEFORE THE STATE OFFICE**
§
§
V. § **OF**
§
§
HERBERT LEE HUGHES §
PERMIT NO. A-461143 §
HARRIS COUNTY, TEXAS §
(TABC CASE NO. 588272) § **ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission) initiated this action seeking cancellation or suspension of permit No. A-461143 issued to Herbert Lee Hughes (Respondent) because Respondent, on December 6, 1999, sold or delivered an alcoholic beverage to an unlicensed business in violation of the Alcoholic Beverage Code (the code). The Respondent made no appearance. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that Respondent's permit be canceled or suspended.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Because the hearing proceeded on a default basis, procedural history, notice, and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion in the text of this proposal.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §6.01 provides that an agent's permit is a purely personal privilege and is subject to revocation or suspension if the holder is found to have violated a provision of this code or a rule of the commission.

TEX. ALCO. BEV. CODE ANN. §35.01 (2) provides that an agent may only solicit and take orders for the sale of liquor from authorized permittees.

The staff attorney introduced Exhibit TABC 1, which is the affidavit of Brian L. Guenther, Custodian of Records, with attached Respondent's TABC records (the records). The records state that the Agent's Permit, A-461143, and Agent's Beer License, BK-461144, were issued to Herbert Lee Hughes, 10400 Harwin Drive, Houston, Harris County, Texas, by the Texas Alcoholic Beverage Commission, on the 3rd day of November, 1999.

The staff attorney mailed a Notice of Hearing to the Respondent, and introduced the Notice of Hearing with a signed certified return receipt as TABC Exhibit 2. Respondent received the Notice of Hearing on July 24, 2000.

III. RECOMMENDATION

The Notice of Hearing, in bold lettering, states "if you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default." Because the Respondent failed to attend the hearing, the allegation that "licensee, Herbert Lee Hughes, on December 6, 1999, sold or delivered an alcoholic beverage to an unlicensed business" is deemed admitted as true. Therefore, the relief sought should be granted and the permit should be canceled or suspended.

IV. FINDINGS OF FACT

1. Herbert Lee Hughes of 10400 Harwin Drive, Houston, Harris County, Texas 77036, was issued a Agent's Permit, A-461143 and a Agent's Beer License, BK-461144 by the Texas Alcoholic Beverage Commission.
2. On July 18, 2000, the staff of the Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing to Respondent concerning the cancellation or suspension of the Permit.
3. Notice of hearing to the Respondent was shown by proof that the notice was sent to the Respondent's last known address, as shown on the referring agency's record, by certified mail, return receipt requested, and received by Respondent by proof of actual receipt of the notice on July 24, 2000.
4. The notice of hearing also contained the following language in capital letters in 10 point or larger boldface type:

If you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. The hearing on the merits was held on September 28, 2000, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Dewey A. Brackin. The Respondent did not appear and was not represented at the hearing.
6. On December 6, 1999, Herbert Lee Hughes sold or delivered an alcoholic beverage to an unlicensed business.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.61.

2. The State Office of Administrative Hearings 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. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. TEX. ALCO. BEV. CODE ANN. Section 35.01 (2) provides that an agent is only authorized to solicit and take orders for the sale of liquor from authorized permittees.
6. TEX. ALCO. BEV. CODE ANN. Section 6.01 provides that an agent's permit is a purely personal privilege and is subject to revocation or suspension if the holder is found to have violated a provision of this code or a rule of the commission.
7. Based on Finding of Fact No. 6, and the above Conclusions of Law, Respondent's permit should be canceled or suspended.

SIGNED this 6 day of November, 2000.



Don Smith
Administrative Law Judge
State Office of Administrative Hearings