

**DOCKET NO. 606559**

IN RE RENEWAL APPLICATION OF	§	BEFORE THE TEXAS
RED EYED FLY LTD. CO. ET AL	§	
PERMIT NOS. MB447348, LB447349	§	
& PE447350	§	ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-6533)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 3rd day of August, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Thomas H. Walston. The hearing convened on July 6, 2004 and adjourned July 6, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 8, 2004. This Proposal For Decision, attached hereto as Exhibit "A", 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.

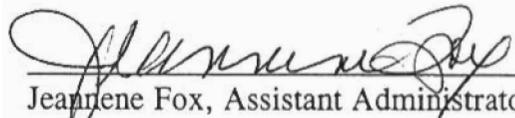
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permits be **CANCELLED FOR CAUSE**.

**This Order will become final and enforceable on AUGUST 24, 2004**, 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.

SIGNED on this the 3rd day of August, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable Thomas H. Walston  
Administrative Law Judge  
State Office of Administrative Hearings  
Austin, Texas  
VIA FAX (512) 475-4994

William C. Dufour  
ATTORNEY FOR RESPONDENT  
VIA FAX (512) 478-2438

Red Eyed Fly Ltd Co. et al  
d/b/a Red Eyed Fly  
RESPONDENT  
715 Red River  
Austin, Texas 78701 3310  
CERTIFIED MAIL NO. 7000 1530 0003 1902 1071

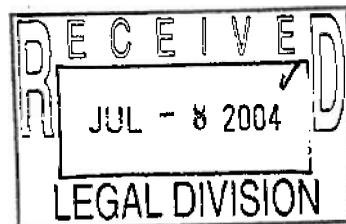
Gayle Gordon  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Licensing Division  
Austin District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge



July 8, 2004

Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78731

HAND DELIVERY

**RE: Docket No. 458-04-6533; Texas Alcoholic Beverage Commission v. Red Eyed Fly Ltd. Co. d/b/a Red Eyed Fly Permit Nos. MB447348, LB447349, PE447350 Travis County, Texas (TABC Case No. 606559)**

Dear Ms. Fox:

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Thomas H. Walston".

Thomas H. Walston  
Administrative Law Judge

THW:ml  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA HAND DELIVERY  
Gayle Gordon, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY  
William C. Dufour, Red Eyed Fly Ltd. Co., d/b/a Red Eyed Fly, 409 W. 14th Street, Austin, TX 78701- VIA REGULAR MAIL

SOAH DOCKET NO. 458-04-6533

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	
	§	
RED EYED FLY LTD CO.	§	OF
D/B/A RED EYED FLY	§	
PERMIT NOS. MB447348, LB447349,	§	
PE447350	§	
TRAVIS COUNTY, TEXAS	§	
(TABC CASE NO. 606559)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff, TABC) brought this enforcement action against Red Eyed Fly Ltd. Co. (Respondent, Permittee), alleging that on or about February 13, 2004, Permittee forfeited its corporate charter and corporate existence. By failing to maintain its corporate status, Permittee violated Texas Alcoholic Beverage Code § 109.53. Staff recommended that Permittee’s permit be canceled.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened on July 6, 2004, at the State Office of Administrative Hearings Office, 300 W. 15th Street, Austin, Texas, and concluded the same day. Staff attorney Gayle Gordon represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Thomas H. Walston presided.

After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, Staff’s factual allegations contained in the Notice of Hearing are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without further discussion of the evidence.

**EXHIBIT**

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## II. FINDINGS OF FACT

1. Red Eyed Fly Ltd. Co. (Permittee/Respondent), located at 715 Red River, Austin, Travis County, Texas 78701 (and whose mailing address is the same), holds Permit Nos. MB447348, LB447349, and PE447350.
2. On June 18, 2004, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent at 715 Red River, Austin, Texas 78701. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held.
3. The Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
4. The hearing on the merits was held July 6, 2004. Respondent did not appear at the hearing.
5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
6. On or about February 13, 2004, Respondent forfeited its corporate status and existence.

## III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, §§ 6.01 and 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. §1.01 *et seq.*
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 proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Proper and timely notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TAC §155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN. § 109.53 commencing on or about February 13, 2004.

6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the cancellation of Respondent's permit is warranted pursuant to TEX. ALCO BEV. CODE ANN. § 109.53 and 16 TAC § 37.60.

**SIGNED July 8, 2004.**



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**THOMAS H. WALSTON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**