

DOCKET NO. 607594

IN RE RENEWAL APPLICATIONS	§	BEFORE THE
V.L.C. INC., D/B/A THE ROUND-UP	§	
PERMIT NOS. MB-518620 & LB-518621	§	
	§	TEXAS ALCOHOLIC
	§	
FORT BEND COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-3260)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 10th day of May, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Roshunda Pringle. The hearing convened on February 18, 2005, 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 April 18, 2005. 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, 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.

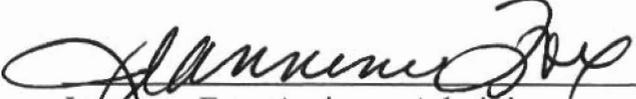
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the renewal applications of Mixed Beverage Permit and Mixed Beverage Late Hours Permit are hereby denied.

This Order will become final and enforceable on May 31, 2005, 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 10th day of May, 2005.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

LBT/yt

Roshunda Pringle
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE: (713) 812-1001

V.L.C. Inc.
d/b/a The Round-Up
RESPONDENT
8915 Main St.
Needville, Texas 77461
CERTIFIED MAIL NO. 7000 1530 0003 1929 9746
RETURN RECEIPT REQUESTED

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Victoria District Office

SOAH DOCKET NO. 458-05-3260

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V,	§	OF
	§	
V.L.C., INC.	§	
d/b/a THE ROUND-UP	§	
PERMIT NOS. MB-518620 & LB-518621	§	
FORT BEND COUNTY, TEXAS	§	
TABC CASE NO. 607594	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff, TABC) brought this enforcement action against V.L.C., Inc. d/b/a The Round Up (Respondent, Permittee) alleging that Permittee failed to pay a debt for taxes, fees, or penalties. By failing to pay a debt for taxes, fees, or penalties, Permittee violated Texas Alcoholic Beverage Code § 11.61 (b) (5) (Vernon 1995 and Supp. 2005). Staff also alleges that the Respondent is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act and the Chapter 321 of the Tax Code in violation of § 11.61 (c)(2) of the Texas Alcoholic Beverage Code (Vernon 1995 and Supp. 2004). Staff recommended that Permittee's renewal application be denied.

I. PROCEDURAL HISTORY

The hearing in this matter convened on February 18, 2005, at the State Office of Administrative Hearings Office, 2020 North Loop West, Ste. 111, Houston, Texas, and concluded the same day. Staff attorney Lindy To represented the Petitioner. Respondent did not appear and was not represented at the hearing. Roshunda Pringle, Administrative Law Judge (ALJ), presided. After presentation of evidence regarding notice and jurisdiction, the record was closed.

II. DISCUSSION

A. Legal Standard

TEX. ALCO. BEV. CODE § 11.61 (b)(5) states “The commissioner or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that the permittee is indebted to the state for taxes, fees, or payment of penalties imposed by this code, by a rule of the commission, or by Chapter 183, Tax Code.”

TEX. ALCO. BEV. CODE § 11.61 (c)(2) states “The commissioner or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a permit if the commission or administrator finds that the permittee is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.”

B. Recommendation

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. As admitted, the allegations support the conclusion by a preponderance of the evidence that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and the penalty is appropriate.

III. FINDINGS OF FACT

1. V.L.C., Inc. d/b/a The Round Up (Permittee/Respondent), located at 8915 Main Street, Needville, Fort Bend County, Texas, 77461, and whose mailing address is the same, holds Permit Nos. MB-518620 & LB-518621.
2. On January 18, 2005, TABC timely sent a Notice of Hearing by regular and certified mail, return receipt requested, to Respondent at 8915 Main Street, Needville, Texas 77461. 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. The return receipt was signed by Respondent and returned to TABC on January 31, 2005.
3. The Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if he failed to appear at the hearing, the factual allegations against him 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 February 18, 2005. 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. Permittee failed to pay a debt for taxes, fees, or penalties.
7. Permittee is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act and/or Chapter 321, Tax Code.

IV. 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 §§ 11.61 (b)(5) and 11.61 (c)(2) of the Texas Alcoholic Beverage Code.
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default decision against Respondent pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the denial of Respondent's renewal application is warranted.

SIGNED April 18, 2005.



**ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**