

**DOCKET NO. 607858**

IN RE SAO TRADERS INC.	§	BEFORE THE
D/B/A SHOP N SAVE	§	
LICENSE NO. BF-516973	§	TEXAS ALCOHOLIC
	§	
MONTGOMERY COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-7570)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 8<sup>th</sup> day of November, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened on August 20, 2004 and adjourned August 20, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 15, 2004. 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. BF-516973 is herein **SUSPENDED**.

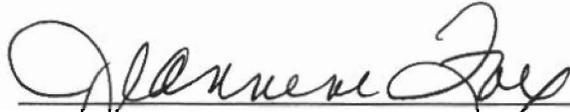
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 12<sup>th</sup> day of January, 2005, all rights and privileges under the above described license will be **SUSPENDED** for a period of ten (10) days, beginning at 12:01 A.M. on the 19<sup>th</sup> day of January, 2005.

**This Order will become final and enforceable on November 29, 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 8th day of November, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/tc

The Honorable Stephen J. Burger  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
**VIA FACSIMILE (713) 812-1001**

SAO Traders Inc.  
**RESPONDENT**  
d/b/a Shop N Save  
15395 FM 3083  
Conroe, Texas 77302  
**CERTIFIED MAIL/RRR NO. 7000 1530 0003 1930 2330**

Lindy To  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Houston District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 607858**

**REGISTER NUMBER:**

**NAME: SAO Traders Inc.**

**TRADENAME: Shop N Save**

**ADDRESS: 15395 FM 3083, Conroe, Texas 77302**

**DATE DUE: January 12, 2005**

**PERMITS OR LICENSES: BF-516973**

**AMOUNT OF PENALTY: \$1,500.00**

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Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 12TH DAY OF JANUARY, 2005, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**P.O. Box 13127**

**Austin, Texas 78711**

**Overnight Delivery Address: 5806 Mesa Drive, Austin, Texas 78731**

**WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.**

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

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Signature of Responsible Party

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Street Address P.O. Box No.

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City State Zip Code

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Area Code/Telephone No.

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

October 15, 2004

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-04-7570; SAO Traders Inc. d/b/a Shop N Save**

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 black ink that reads "S. Burger".

Stephen J. Burger  
Administrative Law Judge

SJB/mc

Enclosure

xc: Lindy To, 427 W. 20<sup>th</sup> Street, Ste. 600, Houston, Texas 77008 - **VIA REGULAR MAIL**  
SAO Traders Inc. d/b/a Shop N Save, 15395 FM 3083, Conroe, Texas 77302 - **VIA REGULAR MAIL**

**DOCKET NO. 458-04-7570**

**TEXAS ALCOHOLIC  
BEVERAGE COMMISSION**

**V.**

**SAO TRADERS INC.  
D/B/A SHOP N SAVE  
LICENSE NO. BF- 516973  
MONTGOMERY COUNTY, TEXAS  
(TABC CASE NO. 607858)**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) brought this enforcement action against SAO Trader's Inc., d/b/a Shop N Save, for allegedly, on five occasions, giving a check or draft for the purchase of beer that was dishonored when presented for payment. Respondent did not appear at the hearing. Staff recommended that Respondent's permit be suspended for 10 days, or that Respondent pay a fine of \$1,500 in lieu of suspension. The Administrative Law Judge (ALJ) agrees with Staff's recommendation.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on August 20, 2004, before ALJ Stephen Burger, at the offices of the State Office of Administrative Hearings in Houston (SOAH), Harris County, Texas. Staff was represented by Lindy To, attorney. Respondent did not appear and was not represented at the hearing; therefore, the hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the Findings of Fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the Conclusions of Law.

## II. LEGAL STANDARDS

Where a licensee gives a check or draft for the purchase of beer that is dishonored when presented for payment in violation of TEX. ALCO. BEV. CODE ANN. §§ 61.73(b) and 102.31, such a violation may be punished by cancellation or a maximum 60-day suspension of a license. Penalties for the violations of TEX. ALCO. BEV. CODE ANN. § 61.73(b) may be determined in accordance with the Commission's standard penalty chart found at 16 TAC § 37.60. The penalty chart prescribes suspensions of varying lengths, depending on a Licensee's history of violations.

## III. DISCUSSION AND ANALYSIS

In this case, there were allegations that Respondent, on five occasions, gave a check or draft for the purchase of beer that was dishonored when presented for payment, as set forth in the Findings of Fact, below. Respondent was sent proper Notice of Hearing to its address of record, but Respondent failed to appear at the hearing, and failed to contact the Staff or SOAH as to any reason for Respondent's failure to appear. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the permittee must be offered the opportunity to pay a civil penalty in lieu of a suspension. The penalty may not be less than \$150 nor more than \$25,000 for each day of the suspension. Staff recommends a 10 day suspension, or a \$1,500 civil penalty in lieu of a suspension (10 days at \$150 per day). The ALJ agrees with Staff's recommendation.

## IV. FINDINGS OF FACT

1. SAO Traders Inc., d/b/a Shop N Save, Respondent, located at 15395 FM 3083, Conroe, Montgomery Count, Texas, 77302, holds a Beer Retailer's Off-Premise License No. BF-516973.
2. Respondent received proper and timely notice from the Texas Alcoholic Beverage Commission in a Notice of Hearing, dated July 19, 2004. The notice was properly sent to Respondent at the address provided in Finding of Fact No. 1. Respondent was sent the notice by certified mail, which was signed for by Respondent.

3. The Notice of Hearing 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; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The Notice of Hearing also contained the following language in 12-point or larger boldface type:

**If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.**

5. The hearing was convened on August 20, 2004, at 10:00 a. m., at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. Respondent did not appear and was not represented at the hearing. Lindy To, attorney, represented Staff.
6. On September 25, 2003, January 4, 2004, March 9, 2004, March 22, 2004, and April 29, 2004, Respondent gave a check or draft for the purchase of beer that was dishonored when presented for payment.

## V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 61.71, and 61.73.
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. ALCO. BEV. CODE ANN. § 5.43, and TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55(d), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. On September 25, 2003, January 4, 2004, March 9, 2004, March 22, 2004, and April 29, 2004, the Respondent gave a check or draft for the purchase of beer that was dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b) and 102.31.
5. Based on the foregoing Findings and Conclusions, a 10 day suspension of Respondent's license is warranted. 16 TEX. ADMIN. CODE § 37.60.

6. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be allowed to pay a \$1,500 civil penalty in lieu of suspension of its license.

**SIGNED October 15, 2004.**



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**STEPHEN J. BURGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**