

**DOCKET NO. 608444**

IN RE VILLYARD BROS. INVESTMENTS	§	BEFORE THE
INC., D/B/A KLUSOZ	§	
PERMIT NOS. MB-404873 & 404874	§	
	§	TEXAS ALCOHOLIC
	§	
LUBBOCK COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-6097)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 20th day of October, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened on August 13, 2004, and adjourned August 13, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 18, 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 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 Mixed Beverage Permit No. MB-404873 and Mixed Beverage Late Hours Permit No. LB-404874 are hereby **CANCELLED FOR CAUSE**.

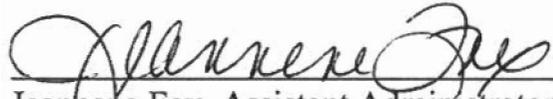
**IT IS FURTHER ORDERED** that all rights and privileges under the above described will be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on November 10, 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.

**WITNESS MY HAND AND SEAL OF OFFICE** on this the 20th day of October, 2004.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

B. L. Phillips  
Administrative Law Judge  
State Office of Administrative Hearings  
Lubbock, Texas  
*VIA FACSIMILE: (806) 792-0149*

Villyard Bros. Investments Inc.  
d/b/a Klusoz  
**RESPONDENT**  
P. O. Box 2156  
Lubbock, Texas 79408  
*CERTIFIED MAIL NO. 7000 1530 0003 1902 6977*  
*RETURN RECEIPT REQUESTED*

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Lubbock District Office

**DOCKET NO. 458-04-6097**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§ § § § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>V.</b>		<b>OF</b>
<b>VILLYARD BROS. INVESTMENTS INC. D/B/A KLUSOZ LUBBOCK COUNTY, TEXAS (TABC NO. 608444), Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC, Staff) brought this disciplinary action against Villyard Bros. Investments, Inc. dba Klusoz (Respondent), alleging that Respondent, its agent, servant, or employee sold or delivered an alcoholic beverage to an intoxicated person on or about December 5, 2003. A hearing was scheduled and convened; however, Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds Staff's allegations are deemed admitted as true and recommends that Respondent's permits be canceled.

**I. PROCEDURAL HISTORY**

On June 28, 2004, Staff issued an Amended Notice of Hearing (NOH) to Respondent at its mailing address of record reflected on Respondent's permits: P. O. Box 2156, Lubbock, Texas, 79408. The NOH was sent by certified mail, return receipt requested, and was returned to Staff by the U.S. Postal Service undelivered.

A hearing was convened before ALJ B. L. Phillips at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas, on August 13, 2004. TABC was represented at the hearing by Dewey A. Brackin, Staff Attorney. Respondent did not appear and was not represented at the hearing. The hearing concluded and the record closed that same day.

## II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. Respondent's certified Permit history was admitted into evidence and reflects that Respondent's mailing address on the permits was: PO Box 2156, Lubbock, Texas 79408-2156. The Amended Notice of Hearing (NOH) sent to Respondent by certified mail was also admitted into evidence showing that the NOH was sent to the mailing address set forth on the permit and that the NOH was returned undelivered with the notation "UNCLAIMED." Sgt. Brian Williams of the Texas Alcoholic Beverage Commission testified that a permittee is required to notify the TABC district office of any change of mailing address and that Respondent has failed to do so. The ALJ finds that Staff issued notice in compliance 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 has incorporated these allegations into the Proposed Findings of Fact below.

Staff requested that the ALJ recommend a penalty in this case of cancellation of Respondent's permits.

## III. PROPOSED FINDINGS OF FACT

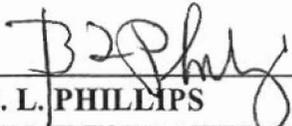
1. Villyard Bros. Investments Inc. dba Klusoz (Respondent) holds a Mixed Beverage Permit, MB404873, and a Mixed Beverage Late Hours Permit, LB404874, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 1802 Buddy Holly Avenue, Lubbock, Lubbock County, Texas.
2. On June 28, 2004, the TABC Staff issued an Amended Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: PO Box 2156, Lubbock, Texas 79408-2156. The Notice was sent by certified mail, return receipt requested and returned by the U.S. Postal Service with a notation on the envelope "UNCLAIMED."
3. A permittee is required to notify the district office of TABC of any change of mailing address, but the Respondent has not done so.
4. 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 statement of the matters asserted.

5. The Notice of Hearing also properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice will be deemed as true, and the relief sought may be granted by default.
6. On August 13, 2004, a hearing was convened before Administrative Law Judge B. L. Phillips at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. TABC was represented at the hearing by Dewey A. Brackin, Staff Attorney. Respondent did not appear and was not represented at the hearing.
7. Respondent committed the violation of selling or delivering an alcoholic beverage to an intoxicated person on or about December 5, 2003.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.32, 5.44, 26.03, and 61.71.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Staff issued the notice of hearing in compliance with 1 TEX. ADMIN. CODE (TAC) §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TAC §155.55.
5. Based upon Proposed Finding of Fact No. 7, Respondent violated TEX. ALCO. BEV. CODE ANN § 11.61(b)(14).
6. Based upon Proposed Conclusion of Law No. 5, Respondent's permits should be canceled.

**SIGNED on the 18<sup>th</sup> day of August, 2004.**

  
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B. L. PHILLIPS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS