

DOCKET NO. 609510 & 612534

IN RE BUCK'S INC.	§	BEFORE THE
D/B/A THE BUCK STOPS HERE	§	
PERMIT NOS. MB-167634 & LB-167635	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(<i>SOAH DOCKET NO. 458-05-7853</i>)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 13th day of October, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carrie L. McLarty. The hearing convened on August 19, 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 September 14, 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 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 that for **Docket No. 609510** unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **8th day of December, 2005**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **five (5) days, beginning at 12:01 A.M. on the 15th day of December, 2005.**

IT IS FURTHER ORDERED that for **Docket No. 612534** unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the day of **December 15, 2005**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **ten (10) days, beginning at 12:01 A.M. on the 22nd day of December, 2005.**

This Order will become final and enforceable on November 29, 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 8th day of November, 2005.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

LBT/yt

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

Buck, Inc.
d/b/a The Buck Stops Here
RESPONDENT
550 Fm. 1959, Suite C-E
Houston, Texas 77034
CERTIFIED MAIL NO. 7005 0390 0005 7550 3511
RETURN RECEIPT REQUESTED

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

7005 0390 0005 7550 3511

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here
G12534L
109510

Sent To: Buck, Inc.
Street, Apt. No., or PO Box No.
City, State, ZIP+4[®] Hou TX 77034

PS Form 3800, June 2002 See Reverse for Instructions

OFFICIAL USE

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 609510

REGISTER NUMBER:

NAME: Buck's Inc.

TRADENAME: The Buck Stops Here

ADDRESS: 550 Fm. 1959, Suite C-E, Houston, Texas

DATE DUE: December 8, 2005

PERMITS OR LICENSES: MB-167634 & lb167635

AMOUNT OF PENALTY: \$750.00

Amount remitted \$ _____ Date remitted _____

If you wish to a 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 8TH DAY OF DECEMBER 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**

For Overnight Delivery: 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.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

TEXAS ALCOHOLIC BEVERAGE COMMISSION

12

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 609510

REGISTER NUMBER:

NAME: Buck's Inc.

TRADENAME: The Buck Stops Here

ADDRESS: 550 Fm. 1959, Suite C-E, Houston, Texas

DATE DUE: December 15, 2005

PERMITS OR LICENSES: MB-167634 & lb167635

AMOUNT OF PENALTY: \$1,500.00

Amount remitted \$ _____ Date remitted _____

If you wish to a 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 15TH DAY OF DECEMBER 2005, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

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Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

DOCKET NO. 458-05-7853

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

V.

**BUCK'S INC.,
D/B/A THE BUCK STOPS HERE**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought two disciplinary actions against Buck's Inc., d/b/a The Buck Stops Here (Respondent), alleging that Respondent issued checks or drafts for the purchase of beer which were dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that, for the first disciplinary action, Respondent's permit be suspended for five days, or in lieu of suspension, that Respondent pay a civil penalty of \$750. Petitioner also requested that, for the second disciplinary action, Respondent's permit be suspended for ten days, or in lieu of suspension, that Respondent pay a civil penalty of \$1,500. The Administrative Law Judge (ALJ) agrees with these recommendations.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a)(1). The State Office of Administrative Hearings (SOAH) 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.

On July 22, 2005, Petitioner issued its notice of hearing, directed to Buck's Inc., d/b/a The Buck Stops Here, 550 FM 1959, Suite C-E, Houston, Texas 77034, via certified mail, return receipt

requested to Respondent's last known address, which was "unclaimed" by Respondent as evidenced by the certified mail receipt. On August 19, 2005, a hearing convened before ALJ Carrie L. McLarty at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Lindy To, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record was closed on August 24, 2005.

II. DISCUSSION

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 that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

III. FINDINGS OF FACT

1. Respondent, Buck's Inc., d/b/a The Buck Stops Here (Respondent) holds a Mixed Beverage Permit MB-167634, and a Mixed Beverage Late Hours Permit LB167635, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 550 FM 1959, Suite C-E, Houston, Harris County, Texas.
2. On July 22, 2005, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on August 19, 2005. The notice of hearing was sent via certified mail to Respondent's last known address and was "unclaimed" by Respondent, as evidenced by the certified mail receipt.

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. A hearing convened before Carrie L. McLarty, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on August 19, 2005. Respondent did not appear and was not represented at the hearing. The record was closed on August 22, 2005.
6. On or about January 28, 2004, July 2, 2004, and September 10, 2004, Respondent issued checks or drafts for the purchase of beer and liquor which were dishonored when presented for payment.
7. On or about October 1, 2004, December 8, 2004, January 10, 2005, and February 3, 2005, Respondent issued checks or drafts for the purchase of beer and liquor which were dishonored when presented for payment.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a).
2. SOAH 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. Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based upon Findings of Fact Nos. 2-5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 61.73(b).

6. Based upon Finding of Fact No. 7, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 61.73(b).
7. Based upon Conclusion of Law No. 5, Respondent's permit should be suspended for a period of five days or, in lieu of suspension, Respondent should be permitted to pay a civil penalty of \$750.
8. Based upon Conclusion of Law No. 6, Respondent's permit should be suspended for a period of ten days or, in lieu of suspension, Respondent should be permitted to pay a civil penalty of \$1,500.

SIGNED September 14, 2005.



CARRIE L. MCLARTY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 14, 2005



Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-05-7853; TABC v. Buck's Inc., d/b/a The Buck Stops Here

Dear Mr. Steen:

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.

Sincerely

Carrie L. McLarty
Administrative Law Judge

CLM/mc
Enclosure

xc: **Lindy To, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008 -**

VIA REGULAR MAIL

Buck's Inc. d/b/a The Buck Stops Here, 550 FM 1959, Suite C-E, Houston, Texas 77034 -VIA REGULAR MAIL



DOCKET NO. 458-05-7853

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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BEFORE THE STATE OFFICE

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OF

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D/B/A THE BUCK STOPS HERE

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I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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PROPOSAL FOR DECISION

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PROPOSAL FOR DECISION

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PROPOSAL FOR DECISION

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SIGNED September 14, 2005.



**CARRIE L. MCLARTY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**