

DOCKET NO. 609938

IN RE J P P S INC.	§	BEFORE THE
D/B/A JACK'S GROCERY #1	§	
PERMIT NO: Q-488435 & BF-488436	§	
	§	TEXAS ALCOHOLIC
	§	
CHAMBERS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-0843)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of February, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on October 29, 2004, and the record was closed on November 12, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 6, 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.

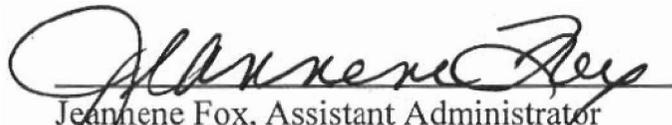
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Wine Only Package Store Permit and Beer Retailer's Off-Premise License is hereby **CANCELLED**.

This Order will become final and enforceable on MARCH 1, 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 February, 2005.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

LT/yt

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

J P P S Inc.
d/b/a Jack's Grocery #1
RESPONDENT
P. O. Box 5039
Beaumont, Texas 77726
CERTIFIED MAIL NO. 7001 2510 0007 0098 9043
RETURN RECEIPT REQUESTED

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

SOAH DOCKET NO. 458-05-0843

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	OF
	§	
J P P S INC.	§	
D/B/A JACK'S GROCERY # 1	§	
PERMIT NO. Q-488435 & BF-488436	§	
CHAMBERS COUNTY, TEXAS	§	
(TABC CASE NO. 609938)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against J P P S Inc., d/b/a Jack's Grocery # 1 (Respondent), alleging that Respondent is no longer a corporation incorporated under the laws of the state. By failing to maintain its corporate status, Respondent violated Texas Alcoholic Beverage Code § 109.53. Staff recommended that Respondent's permit/license be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. PROCEDURAL HISTORY

The hearing in this matter convened on October 29, 2004, at the State Office of Administrative Hearings Office, 2020 North Loop West, Suite # 111, Houston, Texas. The record was closed on November 12, 2004. Staff attorney Lindy To represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Timothy J. Horan presided.

On October 6, 2004, Petitioner issued its notice of hearing, directed to J P P S Inc. d/b/a Jack's Grocery # 1, , P.O. Box 5039, Beaumont, Texas 77726 via certified mail, return receipt requested, to Respondent's last known address and was "unclaimed" by Respondent as evidenced by the certified mail receipt. 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.

II. FINDINGS OF FACT

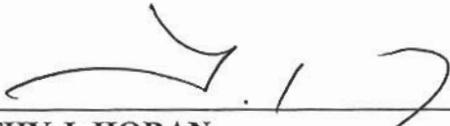
1. J P P S Inc., d/b/a Jack's Grocery # 1 (Respondent), located at 2810 Hwy 124, Winnie, Chambers County, Texas (mailing address is P.O. Box 5039, Beaumont, Texas 77726), holds Wine Only Package Store Permit Q-488435 and Beer Retailer's Off-Premise License BF-488436.
2. On October 6, 2004, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known address at P.O. Box 5039, Beaumont, Texas 77726. 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 October 29, 2004. Respondent did not appear at the hearing. The record was closed on November 12, 2004.
5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
6. Respondent violated 109.53 of the Texas Alcoholic Beverage Code and is no longer a corporation incorporated under the laws of the state. 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.
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 and license is warranted pursuant to TEX. ALCO BEV. CODE ANN. § 109.53.

SIGNED January 6, 2005.



TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS