

DOCKET NO. 610295

IN RE DANNY TUAN PHAM	§	BEFORE THE TEXAS
D/B/A VU BIDA	§	
	§	
LICENSE NO. BE537690	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-7278)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 19th day of October, 2004, 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 July 23, 2004 and adjourned on July 30, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 21, 2004. The Proposal For Decision, attached hereto as Exhibit "A", 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.

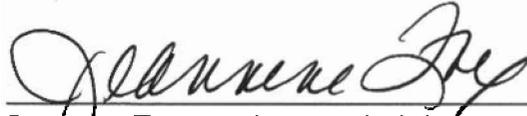
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on NOVEMBER 9, 2004, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 19th day of October, 2004, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/v/

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

Danny Tuan Pham
d/b/a Vu Bida
RESPONDENT
12078 Veterans Memorial Dr.
Houston, TX. 77067
CERTIFIED MAIL RRR #7000 1530 0003 1926 6298

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 21, 2004

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

VIA REGULAR MAIL

RE: Docket No. 458-04-7278; Danny Tuan Pham d/b/a Vu Bida

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.

Sincerely,

A handwritten signature in black ink, appearing to read "T. J. Horan", written over a horizontal line.

Timothy J. Horan
Administrative Law Judge

TJH/mc
Enclosure

xc: **Christopher Gee, TABC, 5806 Mesa, Suite 160, Austin, Texas 78731 - VIA REGULAR MAIL**
Danny Tuan Pham d/b/a Vu Bida, 12078 Veterans Memorial Dr., Houston, Texas 77067 -VIA REGULAR MAIL



DOCKET NO. 458-04-7278

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

DANNY TUAN PHAM,
d/b/a VU BIDA,
HARRIS COUNTY, TEXAS
(TABC CASE NO. 610295)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking forfeiture of the conduct surety bond of Danny Tuan Pham, d/b/a Vu Bida (Respondent) Beer Retailer's On Premise License following final adjudication of three violations by Respondent since September 1995. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

On July 23, 2004 a hearing convened before Administrative Law Judge (ALJ) Timothy J. Horan from the State Office of Administrative Hearings, 2020 North Loop West, Suite # 111, Houston, Texas. Respondent did not appear and was not represented at the hearing. The Commission was represented by its staff attorney Christopher Gee. After the taking of evidence, Staff moved for a default pursuant to 1 TEX. ADMIN. CODE (TAC) §155.55, and the ALJ recommends that it be granted. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the Administrative Law Judge has incorporated those allegations into the findings of fact without discussing the evidence. The record closed on July 30, 2004.



II. FINDINGS OF FACT

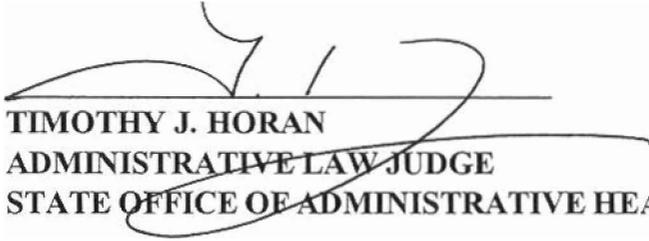
1. Danny Tuan Pham, d/b/a Vu Bida (Respondent) held a Beer Retailer's On Premise License. BE-537690 issued by the Texas Alcoholic Beverage Commission (Commission).
2. Respondent committed three Alcoholic Beverage Code violations beginning in September 1995.
3. On July 7, 2004, the Commission sent a notice to Respondent by certified mail at his last known address, alleging that because of the violations referenced in Finding of Fact No. 2, he had forfeited the full amount of his conduct surety bond and setting the hearing for July 23, 2004.
4. Respondent signed for the notice of hearing on July 8, 2004, as evidenced by the return receipt.
5. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.
6. On July 23, 2004, a hearing convened before ALJ Timothy J. Horan at 2020 North Loop West, Suite # 111, Houston, Texas.
7. The notice of hearing also contained language in 12-point 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.
8. Respondent did not attend and was not represented at the hearing in this matter held July 23, 2004.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§ 6.01 and 61.71 of the TEX. ALCO. BEV. CODE (the Code).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on Findings of Fact Nos. 1 through 8, and Conclusion of Law No. 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.

5. Pursuant to the Code §§ 11.11 and/or 61.13, and 16 TAC § 33.24, Respondent has forfeited the full amount of his conduct surety bond.
6. Based on the foregoing, the full amount of Respondent's conduct surety bond is forfeited to the State of Texas.

SIGNED September 21, 2004.



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