

**DOCKET NO. 610393**

IN RE COSGROVE INDUSTRIES INC.	§	BEFORE THE
D/B/A LAZY OAKS	§	
PERMIT NO. MB-533775, LB-533776	§	
& PE-533777	§	TEXAS ALCOHOLIC
	§	
GALVESTON COUNTY, TEXAS	§	
( <i>SOAH DOCKET NO. 458-05-0844</i> )	§	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 closed November 12, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 5, 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 Mixed Beverage Permit, Mixed Beverage Late Hours Permit and Beverage Cartage Pe is hereby **SUSPENDED**.

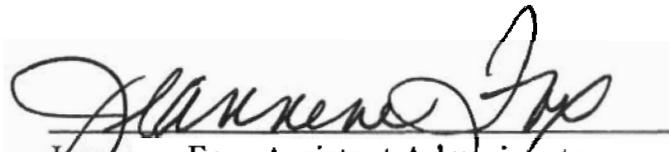
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$900.00 on or before the 28th day of March, 2005, all rights and privileges under the above described will be **SUSPENDED** for a period of six (6) days, beginning at 12:01 A.M. on the 4th day of April, 2005.

**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*

Cosgrove Industries Inc.  
Lazy Oaks  
**RESPONDENT**  
12410 Stewart Road  
Galveston, Texas 77554  
**CERTIFIED MAIL NO. 7001 2510 0007 0098 9036**  
**RETURN RECEIPT REQUESTED**

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

Licensing Division  
Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCED

DOCKET NUMBER: 610393

REGISTER NUMBER:

NAME: COSGROVE INDUSTRIES INC.

TRADENAME: LAZY OAKS

ADDRESS: 12410 Stewart Road, Galveston, Texas 77554

DATE DUE: March 28, 2005

PERMITS OR LICENSES: MB-533775, LB-533776 & PE-533777

AMOUNT OF PENALTY: \$900.00

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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 28th DAY OF MARCH, 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.

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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.

**DOCKET NO. 458-05-0844**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**V.**

**COSGROVE INDUSTRIES INC.  
D/B/A LAZY OAKS  
GALVESTON COUNTY, TEXAS**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Cosgrove Industries Inc. d/b/a Lazy Oaks (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 Respondent's permit be suspended for six days, or in lieu of suspension, that Respondent pay a civil penalty of \$900. The Administrative Law Judge (ALJ) agrees with this recommendation.

**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 October 6, 2004, Petitioner issued its notice of hearing, directed to Cosgrove Industries Inc. d/b/a Lazy Oaks, 24607 Gilbough Dr., Tomball, Texas 77375, 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 October 29, 2004, a hearing convened before SOAH ALJ Timothy J. Horan 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 November 12, 2004.

## 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 allegation 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, Cosgrove Industries Inc. d/b/a Lazy Oaks holds a Mixed Beverage Permit MB-533775, Mixed Beverage Late Hours Permit LB-533776 and Beverage Cartage Permit PE-533777 issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 12410 Stewart Road, Galveston, Galveston County, Texas.
2. On October 6, 2004, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on October 29, 2004. The notice of hearing was sent via certified mail to Respondent's last known address and was "unclaimed" by Respondent 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 Timothy J. Horan, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on October 29, 2004. Respondent did not appear and was not represented at the hearing. The record was closed on November 12, 2004.
6. On or about March 25, 2004 and July 14, 2004, Respondent issued checks or drafts for the purchase of beer which were dishonored when presented for payment for beer.

#### 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. Based upon Findings of Fact Nos. 2-4, 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 Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, and 61.71(a), Respondent's permit should be suspended for a period of six days.
7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$900 in lieu of suspension of the permit/license.

**SIGNED January 5, 2005.**



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