

**DOCKET NO. 610403**

IN RE MYRTLE BENNIE STEPHENS	§	BEFORE THE TEXAS
D/B/A MYRTLE'S	§	
PERMIT NOS. BG314501, BL534347	§	
	§	ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-8348)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 9th day of November, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened on September 16, 2004 and adjourned September 16, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 12, 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 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 Permit Nos. BG314501 and BL534347 are hereby **CANCELED FOR CAUSE**.

**This Order will become final and enforceable on November 30, 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** on this the 9th day of November, 2004, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

CG/bc

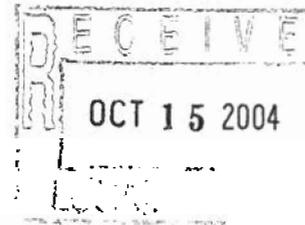
Hon. Kyle J. Groves  
Administrative Law Judge  
State Office of Administrative Hearings  
*VIA FAX (214) 956-8611*

Myrtle Bennie Stephens  
d/b/a Myrtle's  
**RESPONDENT**  
9404 Clearwater Dr.  
Dallas, TX 75243-6424  
*CERTIFIED MAIL/RRR NO. 7000 1530 0003 1902 7127*

Christopher Gee  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Dallas District Office



DOCKET NO. 458-04-8348

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

V.

MYRTLE BENNIE STEPHENS  
D/B/A MYRTLE'S  
PERMIT/LICENSE NOS. BG314501 &  
BL534347  
DALLAS COUNTY TEXAS  
(TABC NO. 601403)

OF

ADMINISTRATIVE HEARINGS

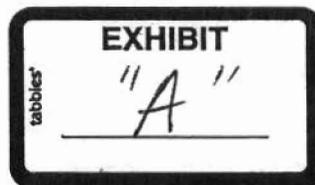
**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Myrtle's (Respondent) seeking cancellation of Respondent's Wine and Beer Retailer's Permit BG-314501 and Retail Dealer's On-Premise Late Hours License BL-534347. TABC alleged Respondent, or her agent, servant, or employee, possessed or permitted others to possess a narcotic on the licensed premises in violation of TEX. Alco. Bev. Code Ann. §§ 61.71 (a) (1) and 104.01 (9), and in violation of 16 TEX. ADMIN. CODE § 35.41 (b).

This Proposal for Decision finds the Respondent's Permits should be canceled

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

The hearing in this matter convened on September 16, 2004. Attorney Christopher Gee represented TABC. The Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing was concluded and the record closed that same day.



No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here

## II. EVIDENCE

TABC staff offered documentary evidence showing:

(a) On January 11, 1996, Respondent was issued Wine and Beer Retailer's Permit BG-314501 and Retail Dealer's On-Premise Late Hours License BL-534347.

(b) On August 19, 2004, the Petitioner sent a Notice of Hearing by certified mail, return receipt requested, to Respondent asserting that the TABC was seeking to cancel Respondent's permit and license. Respondent timely received the notice letter.

(c) The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."

## III. STATUTORY AUTHORITY

TEX. ALCOHOLIC BEVERAGE CODE § 61.71 (a) (1) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period

TEX. ADMIN. CODE §155.55 states

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative on

the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

#### IV. PROPOSED FINDINGS OF FACT

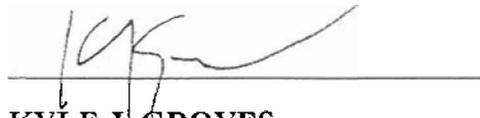
- 1 Myrtle's (Respondent) is the holder of Wine and Beer Retailer's Permit BG-314501 and Retail Dealer's On-Premise Late Hours License BL-534347.
- 2 Respondent was notified of the factual allegations against Respondent in the Notice of Hearing issued by Petitioner on August 19, 2004. The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."
- 3 Respondent was notified of the date, time, and location of the scheduled hearing by the Notice of Hearing dated August 19, 2004.
- 4 On September 16, 2004, the hearing in this matter convened before ALJ Kyle J. Groves. Christopher Gee appeared for Petitioner. Respondent failed to appear.
- 5 Respondent, or her agent, servant, or employee, possessed or permitted others to possess a narcotic on the licensed premises.

#### V. PROPOSED CONCLUSIONS OF LAW

- 1 The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.11.
- 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 findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003
- 3 Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

- 4 The factual allegations in the notice of hearing are deemed admitted as true
- 5 Respondent, or her agent, servant, or employee, possessed or permitted others to possess a  
narcotic on the licensed premises in violation of TEX. Alco. Bev. Code Ann. §§ 61.71 (a)(1) and  
104.01 (9), and in violation of 16 TEX. ADMIN. CODE § 35.41 (b).
- 6 Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Wine and Beer  
Retailer's Permit BG-314501 and Retail Dealer's On-Premise Late Hours License BL-534347  
should be canceled

SIGNED OCTOBER 12<sup>TH</sup>, 2004



KYLE J. GROVES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS