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DOCKET NO. 610762

IN RE ADAM'S EVE PRIVATE CLUB INC. §	BEFORE THE TEXAS
D/B/A ADAM'S EVE PRIVATE CLUB INC. §	
PERMIT NOS. N531861, NL531862, §	
PE531863 & FB531864 §	ALCOHOLIC
DALLAS COUNTY, TEXAS §	
(SOAH DOCKET NO. 458-06-0974) §	BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 28th day of April, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Michelle Kallas. The hearing convened on February 6, 2006, and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 4, 2006. This 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.

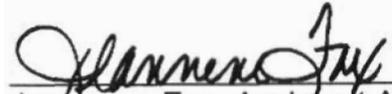
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permits and certificate be cancelled for cause, pursuant to Section 11.46 © of the Code.**

**This Order will become final and enforceable on May 19, 2006**, 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.

**SIGNED** on this 28th day of April 2006, at Austin, Texas.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Michelle Kallas  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE 214-956-8611**

Adam's Eve Private Club Inc.  
d/b/a Adam's Eve Private Club Inc.

**RESPONDENT**

2240 Royal Lane, Ste. 102  
Dallas, Texas 75229

**CERTIFIED MAIL NO. \_\_\_\_\_**  
**RETURN RECEIPT REQUESTED**

Tim Griffith  
**ATTORNEY FOR PETITIONER**  
**VIA FACSIMILE 214-678-4001**  
Ph.: 214-678-4043  
TABC Legal Section

Licensing Division

Ft. Worth District Office

TO +

SOAH DOCKET NO. 458-06-0974

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

Petitioner

v.

ADAM'S EVE PRIVATE CLUB INC.

Respondent

§  
§  
§  
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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Adam's Eve Private Club Inc. (Respondent), alleging that Respondent failed to file a conduct surety bond and failed to respond to a records request, in violation of the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permits be canceled for cause. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits and certificate.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.11, 11.46, 11.61, 32.23, 33.03, and 44.03. 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.

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Petitioner issued its notice of hearing, directed to Respondent at designated mailing address: 2240 Royal Lane, Suite 102, Dallas, Texas. ii, return receipt requested.<sup>1</sup> The notice of hearing contained a

<sup>1</sup> Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the permittee's last known address, as reflected in the commission's records. A certificate of service to such address shall be prima facie evidence of adequate service on the permittee. 16 TEX. ADMIN. CODE § 37.3

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PROPOSAL FOR DECISION

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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, as required by TEX. GOV'T CODE ANN. § 2001.052. 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."

On February 8, 2006, a hearing convened before SOAH ALJ Michelle Kallas at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on February 8, 2006.

## II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. Petitioner's Notice of Hearing complies with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 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. Based on the deemed factual findings in this case, the ALJ recommends that Respondent's permits and certificate be canceled.

## III. FINDINGS OF FACT

1. Adam's Eve Private Club, Inc. (Respondent) holds a Private Club Registration Permit, N-531861, a Private Club Late Hours Permit, NI-531862, a Beverage Cartage Permit, PE-531863, and a Food and Beverage Certificate, FB-531864, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 2240 Royal Lane, Suite 102,

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Dallas, Dallas County, Texas.

2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is 2240 Royal Lane, Suite 102, Dallas, Texas, 75229-3309.
3. On January 6, 2006, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for February 8, 2006.
4. 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.
5. 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."
6. A hearing convened before Michelle Kallas, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on February 8, 2006, Petitioner appeared through its Staff Attorney, Timothy Griffith. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
7. On or about May 6, 2004, Respondent failed to file a conduct surety bond and failed to respond to a records request, in violation of the Texas Alcoholic Beverage Code.

#### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.11, 11.46, 11.61, 32.23, 33.03, and 44.03.
2. SOAH has jurisdiction to conduct the 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. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.55 and 16 TAC § 37.3.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.

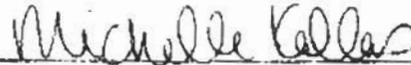
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5. Respondent violated the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. §§5.32, 11.61(b)(2), 11.11(a)(1), and/or 11.46(a)(8).
6. Respondent's permits and certificate should be canceled. TEX. ALCO. BEV. CODE ANN. §11.61 (b)(2).

SIGNED March 30, 2006.



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MICHELLE KALLAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

March 30, 2006

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

**RE:** Docket # 458-06-0974  
TABC VS. ADAM'S EVE PRIVATE CLUB INC.  
D/B/A ADAM'S EVE PRIVATE CLUB INC.

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Michelle R. Kallas".

Michelle R. Kallas  
Administrative Law Judge

MRK/sr  
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**,  
Adam's Eve Private Club Inc., Respondent, **Via Mail**,