

DOCKET NO. 612045

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	ALCOHOLIC
D & D SMYSER INC.	§	
D/B/A LYNN'S SALOON	§	
PERMIT/LICENSE NOS. MB408295,	§	
LB408296	§	
TARRANT COUNTY, TEXAS	§	
(SOAH Docket No. 458-05-4127)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 25th day of May, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis Craz. The hearing convened on April 7, 2005, and adjourned on that same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 6, 2005. 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.

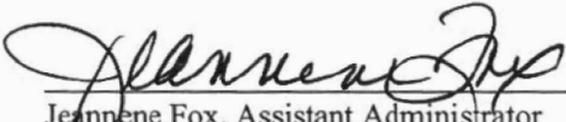
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permits/licenses be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on June 14, 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.

SIGNED this 25th day of May, 2005.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Phyllis Cranz, ALJ
State Office of Administrative Hearings
VIA FAX (817) 377-3706

D & D SMYSER INC.
d/b/a LYNN'S SALOON
RESPONDENT
1037 SE PARKWAY ST.
AZLE, TX 76020-3662
CERTIFIED MAIL NO. 70001530 0003 1929 3058

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Division

Licensing Division

Fort Worth District Office

5-23

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



May 6, 2005

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

D & D Smyser, Inc.
d/b/a Lynn's Saloon
1037 SE Parkway St.
Azle, Texas 76020-3662,

VIA REGULAR MAIL

**RE: Docket No. 458-05-4127; Texas Alcoholic Beverage Commission vs D & D Smyser, Inc.
d/b/a Lynn's Saloon (TABC Case No. 612045)**

Dear Mr. Steen:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to D & D Smyser, Inc. d/b/a Lynn's Saloon, Respondent. The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against D & D Smyser, Inc. d/b/a Lynn's Saloon (Respondent), alleging that Respondent failed to pay ad valorem taxes to Tarrant County. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true, and the relief sought including cancellation of the Respondent's permits is granted by default.

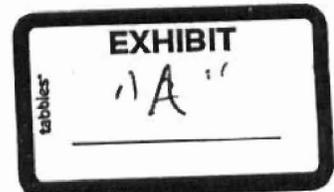
Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Phyllis Cranz
Administrative Law Judge

attachments

6777 Camp Bowie Blvd., Suite 400 ♦ Fort Worth, Texas 76116
(817) 731-1733 Fax (817) 377-3706
<http://www.soah.state.tx.us>



DOCKET NO. 458-05-4127

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner**

V.

**D&D SMYSER, INC. D/B/A
LYNN'S SALOON
TARRANT COUNTY, TEXAS
Respondent
(TABC No. 612045)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against D&D Smyser, Inc., d/b/a Lynn's Saloon (Respondent), alleging that Respondent failed to pay ad valorem taxes to Tarrant County. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true, and the relief sought including cancellation of the Respondent's permits is granted by default.

I. PROCEDURAL HISTORY

On February 9, 2005, TABC Staff issued a notice of hearing to Respondent at its mailing address of record reflected on Respondent's permits: 1037 SE Parkway Street, Azle, Texas 76020-3662. The notice of hearing was sent by certified mail (7000 1530 0003 1930 1159), return receipt requested. The notice of hearing was received at that address by Respondent's agent, Liz Pederson, as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service on February 11, 2005.

A hearing was convened as scheduled before ALJ Phyllis Cranz at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Texas, on April 7,

2005. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.

During the hearing, TABC Staff offered documents that were admitted into evidence and support a recommendation for default against Respondent. The hearing concluded on April 7, 2005, and the record closed on that same day. The ALJ will proceed with consideration of TABC Staff's request for a default recommendation and penalty, as discussed below.

II. ANALYSIS

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that TABC Staff issued notice of the hearing 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 Findings of Fact below.

The ALJ finds that TABC Staff's penalty recommendation is appropriate because Respondent's permit history contains multiple prior violations including a cash law violation that resulted in a three day suspension and a prior nonpayment of ad valorem taxes that was corrected. Based upon this default and the Respondent's permit record, cancellation of the Respondent's permits is recommended.

III. FINDINGS OF FACT

1. Lynn's Saloon (Respondent) holds a Mixed Beverage Permit MB-408295 and a Mixed Beverage Late Hours Permit LB-408296, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 1069 SE Parkway, Azle, Tarrant County, Texas.
2. On February 9, 2005, the TABC Staff issued a notice of hearing to Respondent at its mailing

SOAH DOCKET NO. 458-05-4127

PROPOSAL FOR DECISION

PAGE 3

address of record reflected on Respondent's permits: 1037 SE Parkway Street, Azle, Texas, 76020-3662. This notice was sent by certified mail (7000 1530 0003 1930 1159), return receipt requested, and was received at that address by Respondent's agent, Liz Pederson, on February 11, 2005, as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service.

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 statement of the matters asserted. TEX. GOV'T CODE ANN. §2001.052.
4. The notice of hearing properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice will be deemed as true, and the relief sought may be granted by default.
5. On April 7, 2005, a hearing was convened before ALJ Phyllis Cranz at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. The allegation in the notice of hearing is that the Respondent did not pay its ad valorem taxes to Tarrant County.
7. Respondent's licensing history maintained by TABC Staff reflects several violations of the Texas Alcoholic Beverage Code and TABC rules.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and 6.
2. The State Office of Administrative Hearings 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. 2001.
3. Based upon Findings of Fact Nos. 2 - 4, Staff 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.

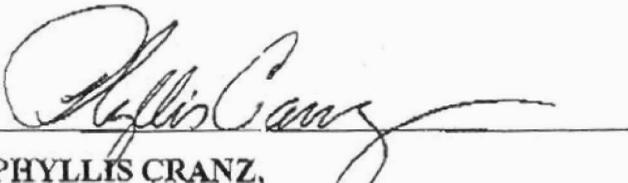
SOAH DOCKET NO. 458-05-4127

PROPOSAL FOR DECISION

PAGE 4

5. Respondent violated TEX. ALCO. BEV. CODE ANN §§ 11.38 (e) and 61.36.
6. Based upon Findings of Fact Nos. 6 and 7, Conclusion of Law No. 5, and TEX. ALCO. BEV. CODE ANN. §§ 11.38 (e), 61.36, and 29.03, TABC Staff is granted the relief sought in the notice of hearing including cancellation of the Respondent's permits.

SIGNED ON MAY 6, 2005.



PHYLLIS CRANZ,
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: D & D Smyser, Inc. d/b/a Lynn's Saloon

DOCKET NUMBER: 458-05-4127

AGENCY CASE NO: 612045

Timothy Griffith
Staff Attorney
Texas Alcoholic Beverage Commission
Fax: 972/547-5093
Ph: 972/547-5092

AGENCY COUNSEL
BY FAX

D & D Smyser, Inc.
d/b/a Lynn's Saloon
1037 SE Parkway St
Azle, Texas 76020-3662

RESPONDENT
BY MAIL

As of May 6, 2005