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DOCKET NO. 613375

IN RE OCEAN CHINA RESTAURANT	§	BEFORE THE
INC.	§	
D/B/A OCEAN CHINA RESTAURANT	§	
INC.	§	
PERMIT NO. BG-545723 & FB-545724	§	TEXAS ALCOHOLIC
	§	
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-0207)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of January, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carol S. Birch. The hearing convened on October 27, 2005, and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 16, 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.

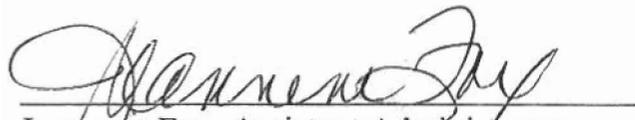
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Wine and Beer Retailer's Permit and Food and Beverage Certificate is hereby **CANCELLED**.

This Order will become final and enforceable on January 26, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 5th day of January, 2005.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JLK/yt

Carol S. Birch
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE: (713) 812-1001

OCEAN CHINA RESTAURANT INC.
OCEAN CHINA RESTAURANT IN.C
RESPONDENT

3421 W. William Cannon Dr., #101
Austin, Texas 78745 7005 0390 0005 7550 4136
CERTIFIED MAIL NO. ~~7001-2510-0007-0098-3825~~
RETURN RECEIPT REQUESTED

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Austin District Office

SOAH DOCKET NO. 458-06-0207

TEXAS ALCOHOLIC BEVERAGE COM- MISSION	§ § § § § § § § § § §	BEFORE THE STATE OFFICE
VS.		OF
OCEAN CHINA RESTAURANT, INC. D/B/A OCEAN CHINA RESTAURANT, INC. PERMIT NOS. BG-545723 & FB-545724 TRAVIS COUNTY, TEXAS (TABC CASE NO. 613375)		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff/Commission) brought this enforcement action against Ocean China Restaurant, Inc. d/b/a Ocean China Restaurant, Inc. (Respondent), alleging that because Respondent is no longer a corporation incorporated under the laws of the state, Respondent is in violation of Texas Alcoholic Beverage Code § 109.53. Staff recommended that Respondent's permit and certificate be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. PROCEDURAL HISTORY

On October 27, 2005, a hearing convened before the State Office of Administrative Hearings in Austin, Texas. ALJ Carol S. Birch presided. The Commission was represented by Judith L. Kennison, staff attorney. Although properly served with notice, Respondent did not appear and was not represented at the hearing. After the taking of evidence, the hearing concluded the same day. Because the hearing proceeded on an uncontested basis, the ALJ has not included a discussion of the allegations, applicable law, and evidence. Instead, those matters will be addressed in the findings of fact and conclusions of law.

II. FINDINGS OF FACT

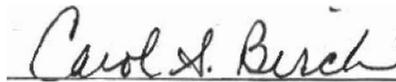
1. Ocean China Restaurant, Inc. d/b/a Ocean China Restaurant, Inc. (Respondent), located at 3421 W. William Cannon Drive #101, Austin, Travis County, Texas, 78745, holds Wine and Beer Retailer's Permit BG545723 and Food and Beverage Certificate FB545724 issued October 14, 2003, by the Texas Alcoholic Beverage Commission (Commission).
2. Notice of the hearing was sent to Respondent on September 28, 2005.
3. The notice was properly addressed and sent by certified mail, return receipt requested, to 3421 W. William Cannon Drive #101, Austin, Travis County, Texas, 78745, Respondent's address as it appears in the Commission's records. Respondent executed the return receipt.
4. The notice 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 hearing on the merits was held October 27, 2005. Staff attorney Judith L. Kennison represented the Commission. Respondent was not present and was not represented at the hearing. After the presentation of documentary evidence, the hearing was adjourned and the record closed that day.
6. On or about November 2, 2004, Respondent forfeited its corporate status and existence.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, §§ 6.01 and 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. §1.01 *et seq.*
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 proposed 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 provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The Commission has the burden of proving the facts necessary to support its reasons for canceling Respondent's permit and certificate.

5. Based on the above Findings of Fact, Respondent violated TEX. ALCO. BEV. CODE ANN. §109.53, beginning on or about November 2, 2004.
6. Based on the above Findings of Fact and Conclusions of Law, the cancellation of Respondent's permit and certificate is warranted pursuant to TEX. ALCO BEV. CODE ANN. § 109.53.

SIGNED December 16, 2005.



CAROL S. BIRCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS