

**DOCKET NO. 613673**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§ § §	BEFORE THE
VS.	§ §	
JEROME SMITH D/B/A SIDE #2 PERMIT/LICENSE NO. MB438664, LB438665 DALLAS COUNTY, TEXAS (SOAH Docket No. 458-05-5271)	§ § § § § §	TEXAS ALCOHOLIC     BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 17th day of August, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle Groves. The hearing convened on 2nd day of June, 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 the 28th day of July, 2005. The Proposal For Decision, attached 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 the renewal on Respondent's permits and/or licenses are hereby **DENIED**.

This Order will become final and enforceable on 7th day of September, 2005, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

**SIGNED** this 17th day of August, 2005, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG\bc

The Honorable Kyle Groves, ALJ  
State Office of Administrative Hearings  
VIA FAX (214) 956-8611

**JEROME SMITH**  
**RESPONDENT**  
d/b/a SIDE #2  
2615 OAK LAWN #101  
DALLAS, TX 75219  
**CERTIFIED MAIL NO. 7005 0390 0005 7550 2996**

**TIMOTHY GRIFFITH**  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Dallas District Office

**DOCKET NO. 458-05-5271**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**V.**

**JEROME SMITH  
D/B/A SIDE #2  
PERMIT NOS. MB-438664 & LB-438665  
DALLAS COUNTY TEXAS  
(TABC NO. 613673)**

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**BEFORE THE STATE OFFICE**



**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Jerome Smith d/b/a Side #2 (Respondent) seeking denial of the renewal of Respondent's Mixed Beverage Permit MB-438664 and Mixed Beverage Late Hours Permit LB-438665. TABC alleged Respondent falsely answered a question in a renewal application in violation of TEX. ALCO. BEV. CODE ANN. § 11.46 (a)(4). This Proposal for Decision finds Respondent's renewal application should be denied.

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

The hearing in this matter convened on June 2, 2005. Attorney Timothy Griffith represented TABC. Respondent appeared *pro se*. 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 the following documentary evidence:

(a) Copies of Petitioner's files pertaining to Respondent showing that on October 15, 1998, Respondent was issued Mixed Beverage Permit MB-438664 and Mixed Beverage Late Hours Permit LB-438665.

(b) A copy of the Notice of Hearing showing that on April 20, 2005, Petitioner sent Respondent the Notice of Hearing asserting that the TABC was seeking to deny the renewal of Respondent's permits.

(c) The Notice of Hearing stated Petitioner was seeking the denial based on the allegation that Respondent falsely answered a question in a renewal application in violation of TEX. ALCO. BEV. CODE ANN. § 11.46 (a)(4).

(d) A Dallas Police Department Offense Incident Report dated April 4, 2003, that states Respondent allowed gambling at the licensed premises from March 26, 2003, through April 3, 2003.

(e) A probation order and deferral order dated January 1, 2004, that states Respondent pled no contest to the charge of gambling stemming from the Dallas Police Department investigation.

(f) A renewal application signed and dated by Respondent on October 8, 2004. Question 7 (b) of said application asks: "Has any person named in number 4 or 5 or his or her spouse been finally convicted or received deferred adjudication for any of the following offenses...(4) gambling or gaming." To this question, Respondent answered "no." Respondent is the individual named in question 4.

Respondent testified that someone else prepared the renewal application, and he merely signed it. He admitted that his response to question 7 (b) was false.

### III. STATUTORY AUTHORITY

TEX. ALCO. BEV. CODE ANN. § 11.46 (a) (4) states:

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists: ... the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application.

### IV. PROPOSED FINDINGS OF FACT

1. Jerome Smith d/b/a Side #2 (Respondent) is the holder of Mixed Beverage Permit MB-438664 and Mixed Beverage Late Hours Permit LB-438665.
2. Respondent was notified of the factual allegations against Respondent in the Notice of Hearing issued by Petitioner on April 20, 2005.
3. On June 2, 2005, the hearing in this matter convened before ALJ Kyle J. Groves. Timothy Griffith appeared for Petitioner. Respondent appeared *pro se*.
4. On October 1, 2003, Respondent pled no contest to the charge of gambling.
5. Respondent falsely answered a question in his renewal application dated October 8, 2004.

### 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. By falsely answering a question on his renewal application, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.46 (a)(4).

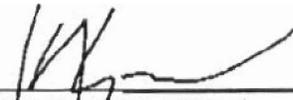
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**PROPOSAL FOR DECISION**

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5. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's renewal application for Mixed Beverage Permit MB-438664 and Mixed Beverage Late Hours Permit LB-438665 should be denied.

**SIGNED JULY 28, 2005.**

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

**SERVICE LIST****AGENCY:** TEXAS ALCOHOLIC BEVERAGE COMMISSION**CASE:** TABC vs. Jerome Smith D/B/A Side #2**DOCKET NUMBER:** 458-05-5271**AGENCY CASE NO:** 613673

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**RESPONDENT**  
**VIA REGULAR MAIL**

as of July 28, 2005