

DOCKET NO. 615178

AMTRADE INC.
D/B/A ADG LAMBO
LICENSE NO. BG481910

§ BEFORE THE TEXAS
§
§
§ ALCOHOLIC
§
§
§
§ BEVERAGE COMMISSION

HARRIS COUNTY, TEXAS
(*SOAH DOCKET NO.458-06-1457*)

ORDER

CAME ON FOR CONSIDERATION this 14th day of July 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge, Roshunda Pringle. The hearing convened on April 21, 2005 and the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 22, 2006. 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 your license is hereby **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on 3rd day of August 2006, 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 on this the 14th day of July 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

Hon. Judge Roshunda Pringle
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
Via Facsimile 713-812-1001

Amtrade Inc.
RESPONDENT
d/b/a Adg Lam Bo
6159 Westheimer Rd
Houston, TX 77057
CERTIFIED MAIL NO. 7005 3110 0000 6409 1045

Ramona Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

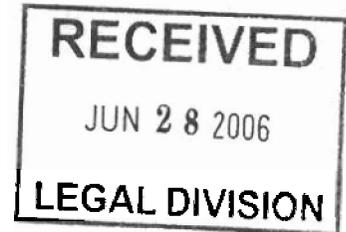
State Office of Administrative Hearings *RP*



615778

Shelia Bailey Taylor
Chief Administrative Law Judge

June 22, 2006



Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

**RE: Docket No. 458-06-1457; Texas Alcoholic Beverage Commission v. Amtrade Inc.
d/b/a Adg Lam Bo**

Dear Mr. Steen:

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.

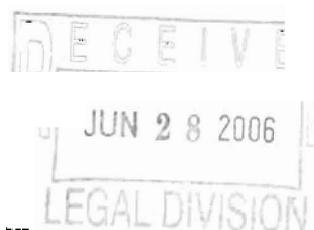
Sincerely,

A handwritten signature in cursive script that reads "Roshunda Pringle".

Roshunda Pringle
Administrative Law Judge

RP/mc
Enclosure

xc: **Ramona Perry**, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008 -
VIA REGULAR MAIL
Amtrade Inc. d/b/a Adg Lam Bo, 6159 Westheimer Road, Houston, Texas 77057 -VIA REGULAR MAIL



SOAH DOCKET NO. 458-06-1457

| | | |
|-------------------------------------|---|-------------------------|
| TEXAS ALCOHOLIC BEVERAGE COMMISSION | § | BEFORE THE STATE OFFICE |
| Petitioner | § | |
| V. | § | OF |
| AMTRADE INC. | § | |
| D/B/A ADG LAM BO | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Amtrade Inc. d/b/a Adg Lam Bo (Respondent), alleging that Respondent failed to remain a corporation incorporated under the laws of the state of Texas, in violation of Tex. Alco. Bev. Code Ann. § 1.01 *et seq* (Vernon 1995 & Supp. 2004) or the Texas Alcoholic Beverage Commission Rules, 16 Texas Administrative Code (TAC) § 31.1 *et seq* (West 2004) or both. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permit be canceled for cause. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.61, 61.71, 29.03, 31.03, 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.

On February 21, 2006, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known designated mailing address: 6159 Westheimer Road, Houston, Harris

County, Texas, 77057, via certified mail, return receipt requested. ¹ The Notice of Hearing was received by Respondent on or before February 24, 2006. 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, 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 April 21, 2006, a hearing convened before SOAH ALJ Roshunda Pringle at 2020 North Loop West, Ste. 111, Houston, Harris County, Texas. Petitioner was represented at the hearing by Ramona Perry, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing by counsel nor a corporate representative. Petitioner presented evidence regarding notice and jurisdiction. The record closed on April 21, 2006.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1(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 permit be canceled.

¹ 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 TAC § 37.3.

III. FINDINGS OF FACT

1. Amtrade Inc. d/b/a Adg Lam Bo (Respondent) holds a Wine and Beer Retailer's On-Premise Permit, BG-481910, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 6159 Westheimer Road, Houston, Harris County, Texas 77057.
2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is 6159 Westheimer Road, Houston, Harris County, Texas 77057.
3. On February 21, 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 April 21, 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 Roshunda Pringle, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on April 21, 2006. Petitioner appeared through its Staff Attorney, Ramona Perry. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
7. On or about October 25, 2006, Respondent was no longer a corporation incorporated under the laws of the state of Texas.

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, 11.61, 61.71, 29.03, 31.03, 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.
5. Respondent violated the TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq* or the Texas Alcoholic Beverage Commission Rules, 16 TAC § 31.1 *et seq* or both.
6. Respondent's permits should be canceled. TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2) and 61.71(a)(1).

SIGNED June 22, 2006.



**ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**